The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, and 116.1428. Sections 116.1402, 116.1404, 116.1408, 116.1414, 116.1416, 116.1422, and 116.1424 are adopted *with changes* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7831). Sections 116.1400, 116.1406, 116.1410, 116.1418, 116.1420, 116.1426, and 116.1428 are adopted *without changes* to the proposed text and will not be republished. The new sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide (CO_2) enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under the adopted rules, eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for

contested case hearings. Other portions of HB 2201 reflected in the adopted rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the adopted rules originates from Texas Health and Safety Code (THSC), new §382.0565, Clean Coal Project Permitting Procedure, and Texas Water Code (TWC), new §5.558 and §27.022, which were created by HB 2201.

The purpose of the revisions to Chapter 116 is to implement the requirements of HB 2201, specifically, to establish a reasonably streamlined procedure for the commission to authorize the emission of certain air contaminants by projects within the commission's jurisdiction that are a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings.

Corresponding rulemakings are published in this issue of the *Texas Register* that include changes to 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 50, Action on Applications and Other Authorizations; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities; and 30 TAC Chapter 331, Underground Injection Control.

SECTION BY SECTION DISCUSSION

§116.1400. Purpose; and §116.1402. Applicability.

The commission adopts these new sections to specify the purpose and applicability of new Subchapter L, Permits for Specific Designated Facilities. Specifically, the purpose of the new subchapter is to establish reasonably streamlined procedures to issue authorization for certain projects; those procedures are applicable to authorizations to construct and operate a component of the FutureGen project. In response to comments, the commission has revised §116.1402 to clarify that modifications that would trigger amendments to a FutureGen permit will be subject to the notice and hearing provisions of Subchapter L, and would not be subject to a contested case hearing. In response to comments, the commission has also revised §116.1402 to establish a sunset date of January 1, 2018. Applications or other requests for authorization submitted after January 1, 2018, would not be eligible to use the streamlined permitting provisions established in Subchapter L. In response to comments, the commission has also revised certain phrases for greater clarity.

§116.1404. Permit Required.

The adopted new section requires anyone planning to construct a component of the FutureGen project designated in §116.1402 that may emit air contaminants into the air of this state to obtain a permit under this chapter or qualify for a permit by rule under 30 TAC Chapter 106, Permits by Rule. The commission has revised this section in response to comments, specifically to clarify that modifications that trigger amendments to a FutureGen permit will be subject to the notice and hearing provisions of Subchapter L, and to indicate that other authorizations under Chapter 116, such as a standard permit, may be used to authorize facilities that are a component of the FutureGen project.

§116.1406. Compliance History.

The adopted new section requires compliance history reviews for any applications under the new subchapter.

§116.1408. Definitions.

The adopted new section contains definitions applicable to the new subchapter, clean coal projects, and the FutureGen project. Specifically, the section defines: clean coal project, coal, FutureGen project, component of the FutureGen project, FutureGen project profile, hearing, and designated project. In response to comments, the commission has added a definition of "Hearing" to ensure that this term as used in Subchapter L is understood to mean a notice and comment hearing and not a contested case hearing.

§116.1410. Emissions Profile for FutureGen Projects.

The adopted new section establishes an emissions profile for FutureGen projects. This emissions profile is included in the event that the United States Department of Energy does not specify an emissions profile for the FutureGen project. The emissions profile establishes limitations for the emissions of air contaminants from a component of a FutureGen project.

§116.1414. Applications for Facilities that are Components of a Designated Project.

The adopted new section provides the requirements for applications submitted under new §116.1404 and requires any application to be submitted with a completed Form PI-1, Facility Permit Application. New §116.1414(1) - (12) requires applicants to make certain demonstrations regarding: protection of public health and welfare; measurement of emissions; New Source Performance Standards; National

Emissions Standards for Hazardous Air Pollutants (NESHAPs); NESHAPs for source categories (applicable maximum achievable control technology standard); performance demonstrations; nonattainment review; prevention of significant deterioration review; air dispersion modeling or ambient monitoring; federal standards of review for constructed or reconstructed major sources of hazardous air pollutants; application content; and best available control technology (BACT). In response to comments, the commission has made several minor changes to this section to improve consistency with permit application requirements in other subchapters of Chapter 116.

§116.1416. Public Notice.

The adopted new section establishes public notice requirements for applications to construct a component of a FutureGen facility. These requirements include the following: publication of the draft permit and preliminary decision in a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site; and availability of a copy of the application and draft permit for review and copying at a public place. New §116.1416(a)(1) - (10) states the required contents of the notice, which in addition to factual information about the applicant and the proposed location of the facility, includes a description of the comment procedures; a statement that a person affected by the emission of air pollutants is entitled to request a notice and comment hearing under §116.1418, Public Participation, in a font size that provides emphasis and distinguishes it from the rest of the notice; a description of the procedure by which a person may be placed on a mailing list for further information; the time and location of any public meeting, as applicable; and the name, address, and phone number of the commission office to be contacted for further information.

New §116.1416(b) and (d) provides the following procedural requirements: the applicant shall provide the executive director and all local air pollution control agencies having jurisdiction a copy of the public notice and date of publication; and the executive director shall make available for public inspection during the public comment period a copy of the draft permit and complete application.

New §116.1416(e) establishes the requirements for the sign that the applicant shall place at the site declaring the filing of the application and stating how the executive director may be contacted for further information; new §116.1416(c) requires the applicant to submit certification of compliance with the signage requirements in §116.1416(e).

New §116.1416(f) requires that the executive director receive public comment for 30 days after the notice is published; new §116.1416(g) allows the draft permit to be changed based on comments received. In response to comments, the commission has added a new §116.1416(h), concerning alternative language public notice and sign-posting requirements consistent with other permit applications under Chapter 116.

§116.1418. Public Participation.

The adopted new section provides specific procedures for public participation in the issuance of a FutureGen permit. The new section states that permit applications for a component of a FutureGen project are not subject to a contested case hearing, establishes a process for issuing permits required to construct a component of the FutureGen project, and provides procedures for public comment. THSC, §382.0565(c), and TWC, §5.558(b), both require the commission's use of "public meetings, informal

conferences, or advisory committees to gather the opinions and advice of interested persons." With respect to the use of public meetings, the intent of new §116.1418 is to provide a notice and comment hearing procedure to facilitate those public meetings. Any public hearing held under this subchapter is not an evidentiary proceeding.

New §116.1418(a) states that applications under this chapter are not subject to the contested case hearing process, but are subject to a notice and comment hearing process.

New §116.1618(b) - (m) specifies the notice and comment hearing process. Specifically, subsections (b) - (m) allow for any person affected by emissions from a site regulated by this subchapter to request, within the 30-day comment period, the executive director to hold a notice and comment hearing on the draft permit; provide that the executive director shall decide whether to hold a hearing; state the requirements for publication of notice of a hearing on a draft permit; require the applicant to submit to the executive director and all local air pollution agencies having jurisdiction a copy of the notice of hearing and date of publication; allow the hearing notice to be combined with the notice of the draft permit required by this subchapter; allow any person to submit oral or written statements and data concerning the draft permit; require that any person believing that the draft permit or preliminary decision are inappropriate shall submit all reasonable arguments before the end of the comment period; and state the requirements for the executive director in responding to comments. These subsections also include administrative provisions requiring a tape recording or written transcript of the hearing to be made available to the public; requiring the executive director to keep and make available to the public a record of all comments received and issues raised at the hearing; allowing the draft permit to

be changed based on comments; and establishing the procedure for the executive director to provide notice of the executive director's final decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and the identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

Finally, new §116.1418(n) requires the commission to use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter. Any public meetings held under this subchapter shall follow the notice and comment hearing procedures as defined in subsections (a) - (m). The executive director shall hold a public meeting on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

The adopted new section requires payment of a permit fee consistent with the requirements of Chapter 116, Subchapter B, Division 4, Permit Fees.

§116.1422. General and Special Conditions.

The adopted new section states certain general and special conditions that will be included in permits issued under this subchapter. The general conditions in new §116.1422(b) include a report of construction progress, startup notification, sampling requirements, equivalency of methods,

recordkeeping, maximum allowable emission rates, maintenance of emission control, and compliance with applicable rules. New §116.1422(c) allows special conditions that are more restrictive than those in this title to be attached to a permit. In response to comments, the commission added a requirement that an additional startup notification be submitted to any local air pollution control agencies having jurisdiction.

§116.1424. Amendments and Alterations of Permits Issued Under this Subchapter.

The adopted new section provides requirements for amendments or alterations of permits issued under this subchapter. In response to comments, the commission revised this section to clarify that amendments and alterations to a FutureGen permit would not be subject to a contested case hearing.

§116.1426. Renewal of Permits Issued Under this Subchapter.

The adopted new section provides for renewals of permits issued under this subchapter.

§116.1428. Delegation.

The adopted new section delegates to the executive director authority to take action on a permit issued under this subchapter.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule" as defined in the statute. Therefore, Texas Government Code,

§2001.0225, does not apply to this rulemaking. "Major environmental rule" is defined in Texas Government Code, §2001.0225(g)(3), as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The adopted rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the definition of "major environmental rule" in Texas Government Code, §2001.0225.

Furthermore, the adopted rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to

implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, the adopted rules are consistent with, and do not exceed, the standards set by federal law. Second, the adopted rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of THSC, §382,0565, as added by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission, by rule, to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of CO_2 produced by a clean coal project to the extent authorized by federal law.

Because the adopted rules do not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The adopted rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The adopted rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The adopted rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, the adopted rules do not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules

Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted rules include procedural mechanisms to authorize new sources of air contaminants; however, the rules do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because new Subchapter L includes applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the new Subchapter L requirements for each emission unit affected by the addition of the requirements in Subchapter L at their site.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 20, 2005, in Austin, and the comment period closed on December 27, 2005. The commission received comments from EPA, Environmental Defense (ED), the FutureGen Texas Advisory Board (FGTAB), the Sierra Club Houston Regional Group (HSC), the Center for Energy and Economic Development (CEED), and the Clean Coal Technology Foundation of Texas (CCTFT).

RESPONSE TO COMMENTS

HSC supported the provisions added to Chapters 91 and 116, which implement public notice, public meeting opportunities, and public comment opportunities before the executive director, and indicated support that the commission can conduct public meetings and hear an appeal of the decision of the executive director.

HSC expressed general opposition to the proposed rules that would allow a permit to be issued for a FutureGen project without providing the public with an opportunity to request and receive a contested case hearing.

The commission is not changing the rules in response to this comment. The adopted rules implement HB 2201, passed by the 79th Texas Legislature. Sections 3 and 7 of HB 2201 amend portions of the THSC and TWC to provide that permit applications for facilities that are a component of the FutureGen project are not subject to contested case hearings. The commission is required by HB 2201 to adopt rules to implement the statutory changes specified by HB 2201.

Under the adopted rules, the public retains the ability to participate in the permitting process by submitting written comments during the comment period, and/or by requesting a notice and comment hearing on the permit.

HSC asked that TCEQ provide a description of the economic, social, and environmental benefits of the FutureGen project.

In its findings articulated in HB 2201, the legislature described a number of economic and social benefits that the FutureGen project could bring to Texas, including the creation of more than 11,000 jobs, compensation for workers exceeding $374 million, increased tax revenue of $98 million, and an estimated total economic benefit of $1.20 billion. With respect to the environment, the FutureGen project has the potential to produce power with reduced emissions of air contaminants compared to other widely used power generation technologies, and may result in the subsequent wider adoption of clean coal technology in future power generating projects.

HSC commented that FutureGen represents a complex, unproven set of technologies that may have significant impact on air quality, groundwater quality, and surface and subsurface land. HSC commented that an environmental impact statement is needed for any FutureGen proposal so all impacts can be considered by TCEQ and the public. HSC urged that TCEQ determine all air, water, and land environmental impacts and reveal them to the public, such that the public will have an opportunity to comment in an inclusive and comprehensive manner.

As a normal part of the commission's permit review process, the environmental effects on all affected media will be considered. The public will have an opportunity to review and comment on these effects through the public notice and public comment process that is available for each type of applicable permit.

HSC submitted numerous comments speculating on the effects of CO_2 sequestration and underground injection, and acknowledged that little data exists on this technology. HSC urged the commission to determine air, water, and land effects through its permitting authority. Examples of its concerns included: 1) the effects of existing wells in the carbon sequestration area; 2) the effect of CO_2 injection on saline aquifer water quality; and 3) the harm that may come to soil bacteria as a result of carbon sequestration.

The commission's federally authorized Underground Injection Control (UIC) Program has significant experience and data relating to protection of fresh water from the potential adverse impact of underground injection of liquid waste, including proper evaluation of injection and confining zones, subsurface faults and fractures, and other wells in the area of review. While the commission does not have data on some of the specific CO_2 injection concerns listed by HSC, the commission notes that underground injection of CO_2 has been commonly used for enhanced recovery of oil and gas under the Railroad Commission of Texas jurisdiction without any known harmful effects. The commission also recognizes that the technical concerns posed by HSC are the subject of significant research efforts being conducted by the Texas Bureau of Economic Geology in association with a number of other research institutions, participating industries, and

government agencies. The commission will review individual requests for well authorization under these rules using the environmentally protective rules and procedures of the UIC well permitting program. Therefore, the commission is not changing the rules in response to these comments.

FGTAB, CCTFT, and CEED commented that proposed Chapter 116, Subchapter L should be clarified to ensure that the initial permitting and subsequent amendments to a FutureGen project permit are not subject to the contested case hearings process. FGTAB and CCTFT suggested that Chapter 116 should state that Subchapter L will define the complete procedural requirements that apply to the issuance of any or all permits for a component of the FutureGen facility.

The commission agrees that the proposed rules should be clarified to ensure that both initial permitting, and amendments to a FutureGen permit, are not subject to the contested case hearing process. The commission is revising §§116.1402, 116.1404, and 116.1424 accordingly.

ED commented that an exemption from contested case treatment for all amendments and alterations of FutureGen permits would be too broad, and suggested that an amendment or alteration should not qualify for streamlined permitting unless the proposed changes themselves satisfy the HB 2201 definition of a FutureGen project component.

In response to other comments, the commission has added language to §§116.1402, 116.1404, and 116.1424 to clarify that amendments and alterations of a FutureGen permit are also eligible to use

the streamlined public participation requirements contained in Subchapter L. The streamlining provisions of HB 2201 only apply to the construction or modification of a component of the FutureGen project.

CEED commented that there was no need for a sunset provision in the rules, because the FutureGen initiative represented a one-of-a-kind project. HSC and ED commented that an expiration date should be included in the rules. HSC suggested an expiration date of 2010, and ED suggested an expiration date of January 1, 2015.

The commission is changing the rule in response to this comment and is establishing a sunset date of January 1, 2018. Applications or other requests for authorization submitted after this date would not be excluded from contested case hearings. This change will ensure that the streamlined permitting processes of Chapters 91 and 116 are only used for their intended purpose of providing an incentive for the FutureGen project construction.

ED commented that the proposed rules should contain a provision ensuring that the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons, as mandated by HB 2201.

The suggested provision was proposed and is being adopted in §116.1418(n).

ED commented that the commission should not exempt nonattainment or prevention of significant deterioration reviews from contested case hearings, and to do so would be inconsistent with federal clean air law.

Although federal law requires the availability of a hearing for nonattainment and prevention of significant deterioration permits, a notice and comment style hearing is sufficient to satisfy the applicable federal requirements. The commission is not changing the rules in response to this comment.

HSC suggested defining the terms "integrated sequestration," "sequester," and "carbon sequestration" since these terms are relevant to define eligible projects. HSC also suggested defining the term "carbon dioxide capture technology."

The commission reviewed the use of these terms in the context of the FutureGen project and determined that the rule language provides sufficient limits on eligible projects and that definitions of these terms are not necessary. The commission is not changing the rules in response to this comment.

HSC questioned how the commission defines "reasonably streamlined procedures" under §116.1400?

The term "reasonably streamlined procedures" refers to the altered public participation process for FutureGen permit applications, specifically the use of a notice and comment hearing process instead of a contested case hearing process.

EPA commented that the definition of coal used in the proposed rules should be revised to match the definition of coal specified in 40 Code of Federal Regulations Part 60, Subpart Da, §60.41Da.

HB 2201 specified a definition of coal to be used in association with permitting of FutureGen sources and the commission believes it is necessary to maintain the proposed definition of coal to maintain consistency with HB 2201. The commission is not changing the rules in response to this comment.

FGTAB, CCTFT, and CEED suggested rephrasing §116.1402(b) to extend the applicability of the FutureGen rules to applications for permit amendments.

The commission agrees with the suggested change and has rephrased the section accordingly.

FGTAB, CCTFT, and CEED commented that proposed §116.1404 appears to limit the options for authorizing a component of the FutureGen project, because it only refers to permits issued under Subchapter L and to permits by rule under Chapter 106. FGTAB and CEED noted that other options, such as standard permits, should be available.

The commission agrees that the proposed rules should be clarified to ensure that all types of authorization, including standard permits, are available to authorize components of the FutureGen project. The commission has revised §116.1404 accordingly.

HSC commented that §116.1410 should address how leaks of CO_2 to the atmosphere or to water would be addressed in the applicable permit.

As part of the permitting process, TCEQ specifies appropriate leak detection and repair (LDAR) programs in situations where there is a potential for harmful leaks. These LDAR programs vary depending on the nature of the process and the nature of the air contaminants involved. However, the commission typically does not require LDAR programs for emissions of CO_2, because the commission does not currently regulate emissions of CO_2 when it is directly vented to the atmosphere or as a fugitive emission. At this time, the commission does not have enough information to specify what, if any, LDAR program will be required for any proposed FutureGen installation.

EPA commented that the emissions profile in §116.1410(1) and (2) is based on percentages of sulfur and mercury concentrations found in the coal, instead of a specific limit based on control technologies, and allows for emissions that are too variable to ensure low emission rates. EPA suggested that a discussion should be provided to explain how the emission limitations in the proposed rules were derived. EPA also commented that a discussion should be provided to explain how the emission limitations for nitrogen oxides and particulate emissions in §116.1410 were determined.

The emission profile specified in §116.1410 was established by HB 2201, which amended portions of the THSC to define the profile in statute. In general, the commission is obligated to follow the profile in the statute. However, in order to obtain a permit under Chapter 116, a proposed facility is required to employ BACT to control emissions from the facility. If control technology advances to a point where BACT would result in lower emissions than the profile, the facility would be required to comply with a lower allowable emission rate that reflects applicable BACT.

EPA commented that a contingency statement should be included in §116.1410 so that if future technology results in the ability to achieve lower emission rates, the regulations will be revised to ensure that they remain up-to-date with current technology.

In order to obtain a permit under Chapter 116, a proposed facility is required to meet BACT, regardless of the emission limitations in the emission profile. If BACT would result in an emission rate that is lower than the rate specified in the profile, the applicant would be required to include BACT in the design of the facility. Because existing rules already require BACT, adding EPA's suggested change would be redundant. The commission is not changing the rules in response to this comment.

HSC commented that §116.1414 does not require compliance with EPA regional haze rules or interstate transport rules, and that any FutureGen proposal must comply with rules under those EPA programs.

A FutureGen installation is potentially subject to a wide range of state and federal regulations. Although §116.1414 does not specifically refer to the regulations cited by HSC's comment, compliance with all applicable federal regulations is still required. The fact that §116.1414 does not identify every regulation does not relieve a FutureGen source from the obligation to comply with all applicable regulations. It is not practical to identify every applicable rule or regulation in the adopted rules; therefore, the commission is not adding a reference to the specified rules.

FGTAB and CCTFT suggested inserting the word "applicable" prior to the phrase "rules and regulations" in §116.1414(1) for consistency with similar language in Chapter 116, Subchapter B. FGTAB suggested inserting the word "significant" prior to the phrase "air contaminant" in §116.1414(2) and deleting the phrase "at least" prior to the phrase "the requirements of any applicable" in §116.1414(3) - (5), for consistency with similar language in Chapter 116, Subchapter B.

The commission agrees with the suggested changes and has revised the indicated section accordingly.

HSC commented that §116.1414(2) and (6) should be revised to specify that the permit will contain provisions for measuring the emission of air contaminants, including initial performance testing and emission monitoring. HSC commented that the monitoring of process variables, or parametric or predictive monitoring, would not be sufficient to demonstrate the performance of the technology or measure the actual contaminants being released.

The commission has revised §116.1414(2) to state that the permit will contain provisions for measuring the emission of air contaminants as determined by the commission. The commission disagrees with the remainder of HSC's comment. As part of the permit review, appropriate methods of demonstrating compliance and monitoring compliance will be identified and incorporated into the permit. The commission acknowledges that the monitoring of process variables, or other parametric or predictive monitoring, is not suitable in every circumstance, but those technologies should not be excluded from possible use.

EPA commented that §116.1414(12) should state that a proposed facility shall use lowest achievable emission rate (LAER) technology if the project is located in a nonattainment area.

All projects located in nonattainment areas must comply with applicable requirements of Chapter 116, Subchapter B, Division 5, Nonattainment Review. This includes the FutureGen project. Because the applicable requirements concerning nonattainment review and LAER are fairly detailed and are already specified in Chapter 116, Subchapter B, it would be redundant to repeat those requirements within Subchapter L. A reference to these nonattainment permitting requirements is already included in §116.1414(7). The commission is not changing the rules in response to this comment.

FGTAB, CCTFT, and CEED commented that proposed §116.1416 repeatedly refers to hearings and that further clarification is needed to avoid misinterpretation or conflicts. FGTAB and CEED suggested that the term "hearings" be defined to mean notice and comment hearings.

The commission concurs with this comment and has added a definition of "Hearing" to §116.1408, to ensure that when the term is used within Subchapter L, the term will mean a notice and comment hearing and not a contested case hearing.

HSC commented that the public notice requirements in §116.1416 for both newspaper notices and signs should be in at least two languages (or as many as are spoken by people in the area), similar to what the commission requires for federal operating permits. HSC made a similar comment on §116.1418 concerning notices for public meetings and public hearings.

The commission has added additional language to §116.1416 to provide for alternative language public notice.

HSC commented that the commission should define the phrases "reasonably ascertainable public issues" and "reasonably available arguments" as used in §116.1418(j) to provide greater clarity for the public.

These phrases have the same meaning as used in the existing notice and hearing requirements of Chapter 122, and they have not been a significant source of confusion. The commission is not changing the rules in response to this comment.

HSC commented that the commission should make clear in §116.1422 that the permit application is a legal document and its conditions are legally binding on the permit holder.

Except where otherwise noted, permits issued under Chapter 116, Subchapter L, remain subject to the requirements of Chapter 116, Subchapter B, New Source Review Permits. Section 116.116(a), Changes to Facilities, requires that representations in a permit application are conditions upon which the permit is issued. The suggested change to §116.1422 would be redundant, and the commission is not changing the rules in response to this comment.

HSC commented that §116.1422(b)(2)(A), which requires a notification of startup to the appropriate regional office, should include a similar notification requirement for local air pollution control agencies having jurisdiction so those local agencies would be informed and have an opportunity to observe the commencement of operation.

The commission agrees with HSC's comment and is making the suggested change to the rules.

HSC commented that documentation of compliance with permit conditions under §116.1422(b)(5)(E) should be maintained for at least five years, and not two years as proposed. HSC commented that the time period should be consistent with the five-year compliance history review.

The two-year record retention period is consistent with the normal record retention period used for air permits, and the commission believes it is sufficient to provide a means to determine compliance. The commission is not changing the rules in response to this comment.

SUBCHAPTER L: PERMITS FOR SPECIFIC DESIGNATED FACILITIES

§§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418, 116.1420, 116.1422, 116.1424, 116.1426, 116.1428

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.0518, concerning preconstruction permits; THSC, §382.056, concerning notice of intent to obtain permit or permit review and hearing; THSC, §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The adopted new sections implement TWC, §5.558(c) and THSC, §382.0565(d).

§116.1400. Purpose.

The purpose of this subchapter is to establish, by rule, reasonably streamlined procedures for the commission to issue authorization for projects within the commission's jurisdiction under Texas Health and Safety Code, Chapters 361 and 382 and Texas Water Code, Chapters 5 and 26.

§116.1402. Applicability.

(a) This subchapter applies to applications for authorization required to construct and operate a component of the FutureGen project, and to applications to authorize modification of a component of the FutureGen Project.

(b) This subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

(c) This subchapter does not apply to any applications or other requests for authorization submitted after January 1, 2018.

§116.1404. Permit Required.

Any person who plans to construct or modify a component of a project as designated in §116.1402 of this title (relating to Applicability) that may emit air contaminants into the air of this state must obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

§116.1406. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

§116.1408. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Clean coal project**--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) **Coal**--All forms of coal, including lignite.

(3) **Component of the FutureGen project**--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(4) **Designated project**--Any project subject to the jurisdiction of the commission and designated by the legislature as subject to the alternate public notice requirements in this subchapter.

(5) **FutureGen project**--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(6) **FutureGen project profile**--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

(7) **Hearing**--A notice and comment hearing and not a contested case hearing.

§116.1410. Emissions Profile for FutureGen Projects.

If the United States Department of Energy does not specify an emissions profile for the FutureGen project, emissions of air contaminants from a component of a FutureGen project shall equal no more than:

(1) 1% of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10% of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units (MMBTU) of energy produced at the component; and

(4) 0.005 pounds of particulate matter per MMBTU of energy produced at the component.

§116.1414. Applications for Facilities that are Components of a Designated Project.

Any application submitted under §116.1404 of this title (relating to Permit Required) must include a completed Form PI-1, General Application for Air Preconstruction Permits and Amendments.

The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information that must be provided before the application is deemed complete. In order to be granted a permit, the applicant for a project as designated in §116.1402(a) of this title (relating to Applicability) shall submit information to the commission that demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility will comply with all applicable rules and regulations of the commission and with the intent of Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit will have provisions for measuring the emission of significant air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the United States Environmental

Protection Agency (EPA) under the authority granted under Federal Clean Air Act (FCAA), §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emissions from each facility as defined in 40 CFR Part 61 will meet the requirements of any applicable NESHAPs, as listed under 40 CFR Part 61, promulgated by EPA under the authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) Performance demonstration. The facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of significant deterioration review. A facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

(A) identify each facility to be included in the permit;

(B) identify the air contaminants emitted; and

(C) provide emission rate calculations.

(12) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

§116.1416. Public Notice.

(a) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) the permit application number;

(2) the applicant's or permit holder's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3) a description of the location of the site or proposed location of the site;

(4) a description of the activity or activities involved in the permit application;

(5) the location and availability of the following:

(A) the complete permit application;

(B) the draft permit;

(C) all other relevant supporting materials in the public files of the agency;

(6) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(7) a statement that a person who may be affected by the emission of air pollutants from the facility or facilities is entitled to request a notice and comment hearing, under §116.1418 of

this title (relating to Public Participation), printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(9) if applicable, the time and location of any public meeting; and

(10) the name, address, and phone number of the commission to be contacted for further information.

(b) The applicant shall submit a copy of the public notice and date of publication to the executive director and any local air pollution control agencies having jurisdiction over the site.

(c) The applicant shall submit a statement to the executive director certifying that the sign required by subsection (e) of this section has been posted consistent with the provisions of that subsection.

(d) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the appropriate commission regional office where the site is located.

(e) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than 1-1/2 inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "PROPOSED AIR QUALITY PERMIT."

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact."

(E) The sign shall include the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission regional office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site's main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations, if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director shall approve the variations before signs are posted.

(f) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments.

(h) Bilingual public notice requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs), or if either school received a waiver for a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 shall not be considered in determining applicability of the requirements of this section. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise affected by 19 TAC §89.1205(a), will not have to meet the requirements of subsection (a) of this section. If the notices required by this section and §116.1418 of this title are combined, the combined notice is subject to the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC

§89.1205(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of this section not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted at the site in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of this section.

§116.1418. Public Participation.

(a) With the exception of the permitting procedural requirements specified in any other chapter of this title, permits authorized under this subchapter are not subject to the requirements relating to a contested case hearing under Texas Health and Safety Code, Chapter 382; Texas Water Code; or Texas Government Code, Chapter 2001, Subchapters C - G. Permit applications under this chapter shall be subject to a notice and comment hearing as specified in subsections (b) - (n) of this section, as well as any applicable requirements in Chapters 39 and 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment).

(b) Any hearing regarding a permit will be conducted under the procedures in this section and not under the Administrative Procedure Act.

(c) Any person who may be affected by emissions from a site regulated under this subchapter may request the executive director to hold a hearing on the draft permit. The request must be made during the 30-day public comment period.

(d) The executive director shall decide whether to conduct a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a site regulated under this subchapter, and that request is reasonable, the executive director shall conduct a hearing.

(e) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice must be published at least 30 days before the date of the hearing. The notice must include the following:

(1) the time, place, and nature of the hearing;

(2) a brief description of the purpose of the hearing; and

(3) the name and phone number of the commission to be contacted to verify that a hearing will be held.

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies having jurisdiction in the county in which the site is located.

(g) At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this subchapter.

(h) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

(1) Reasonable time limits may be set for oral comments, and the submission of comments in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(i) A tape recording or written transcript of the hearing must be made available to the public.

(j) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(k) The executive director shall keep a record of all comments received and issues raised in the hearing. This record must be made available to the public.

(l) The draft permit may be changed based on comments.

(m) After the public comment period or the conclusion of any notice and comment hearing, the chief clerk of the commission shall send by first-class mail the executive director's decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

(n) The commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter.

(1) Any public meetings held in accordance with this subsection shall follow the notice and comment hearing procedures in subsection (a) - (m) of this section.

(2) The executive director shall hold a public meeting:

(A) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(B) if the executive director determines that there is substantial public interest in the proposed activity.

§116.1420. Permit Fee.

(a) Fees required. Any person who applies for a permit under this subchapter must remit a fee as provided in Chapter 116, Subchapter B, Division 4 of this title (relating to Permit Fees) at the time of application for such permit.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the "Texas Commission on Environmental Quality" and delivered to the Texas Commission on Environmental Quality, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

§116.1422. General and Special Conditions.

(a) Permits issued under this subchapter may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) Holders of permits issued under this subchapter shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(2) Startup notification.

(A) The permit holder shall notify the appropriate regional office of the commission, and any local air pollution control agencies having jurisdiction, prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission and a representative of any local air pollution control agency having jurisdiction to be present at the commencement of operations.

(B) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(C) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the commission's Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(3) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(4) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to using these methods in fulfilling any requirements of the permit.

(5) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of the executive director or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(E) retain information in the file for at least two years following the date that the information or data is obtained; and

(F) for persons certifying and registering a federally enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(6) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(7) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification for emissions events and maintenance in accordance with Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities.

(8) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission

issued in conformity with Texas Health and Safety Code, Chapter 382, Texas Clean Air Act, and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent of the executive director to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this subchapter shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)); or

(II) the provisions in Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review and Prevention of Significant Deterioration Review).

§116.1424. Amendments and Alterations of Permits Issued Under This Subchapter.

The owner or operator planning the modification of a facility permitted under this subchapter must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter, except that the public notice and public participation requirements of this subchapter shall apply instead of any public notification or public comment procedures required by Subchapter B of this chapter.

§116.1426. Renewal of Permits Issued Under This Subchapter.

Permits issued under this subchapter shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

§116.1428. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this subchapter.