

The commission adopts the repeal of §115.950, concerning Standard Construction Permit for Volatile Organic Compounds (VOC) Control Projects. The repeal is adopted without change and will not be republished.

Explanation of Repealed Rule

The commission adopts this revision to Chapter 115, concerning Control of Air Pollution from VOC, and to the State Implementation Plan in order to streamline rule requirements. The Chapter 115 standard permit was adopted in 1993 as a temporary measure because at the time there was no standard permit for pollution control projects in Chapter 116. The two standard permits are largely duplicative. The more logical location for a standard permit is in Chapter 116, which concerns Control of Air Pollution by Permits for New Construction or Modification. Concurrent with this repeal, the commission adopts revisions to the Chapter 116 standard permit which are designed to allow greater flexibility in making the demonstration that a project is environmentally beneficial.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the rule repeal is to eliminate largely duplicative requirements in multiple chapters. Promulgation and enforcement of the repeal will not affect private real property which is the subject of the rule because the repeal makes minor changes to the requirements for obtaining a standard permit for VOC control projects.

Coastal Management Program (CMP) Consistency Review

The commission has determined that this rulemaking action is subject to the Texas CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The primary CMP policy applicable to the rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area. The elimination of the section removes any possibility of conflict. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies.

Hearing and Commenters

A public hearing on this proposal was held in Austin on January 6, 1997 at the commission's Austin offices. Written comments were received from Eastman Chemical Company (Eastman), Exxon Company, U.S.A. (Exxon), and the Texas Chemical Council (TCC). Eastman, Exxon (through their support of the TCC's comments) and the TCC generally supported the amendments, as a streamlining improvement to the rules.

Analysis of Testimony

Eastman, Exxon and the TCC supported the repeal of the standard permit in Chapter 115, only if no substantive changes which would impose additional requirements on facilities are made to the proposed Chapter 116 standard permit.

The commission appreciates the support. The adopted Chapter 116 standard permit for pollution control projects, published in this issue of the *Texas Register*, is substantially unchanged from the proposed version.

Statutory Authority

The repeal is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

SUBCHAPTER J : ADMINISTRATIVE PROVISIONS

STANDARD PERMITS

**§115.950. Standard Construction Permit for Volatile Organic Compounds (VOC) Control
Projects. (Repeal.)**

The agency hereby certifies that the repeals as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

The commission adopts amendments to §§116.610, 116.611, 116.615; a new §116.617; the repeal of existing §116.617, concerning Standard Permits, and revisions to the State Implementation Plan (SIP) regarding these amendments, repeal, and new section. Since the changes to §116.617, concerning Standard Permit for Pollution Control Projects, were extensive, the commission determined that it was administratively more efficient to repeal §116.617 and replace it with a new §116.617. These changes are part of a consolidation of the three standard air permits for pollution control facilities, previously located in Chapters 115, 116, and 117, into a single location in Chapter 116.

Adopted with changes as published in the December 6, 1996 issue of the *Texas Register* (21 TexReg 11744) are §§116.610, 116.611, 116.615 and 116.617. Section 116.617 is repealed without changes and will not be republished.

Explanation of Adopted Rules

The commission defines “project” for purposes of §116.610, concerning Applicability. The definition has been added to reflect the regulatory intent of the term in this subchapter. A project may include the construction or modification of a single facility or the construction or modification of a group of facilities. Examples of projects are: the installation of a single facility such as a flare or the installation of a group of facilities such as a gas production plant. The use of this definition is intended to prevent projects from being artificially separated for the purposes of circumventing Chapter 116 permitting requirements.

Adopted revisions to §116.610(a)(1) add seven air contaminants from §106.4(a)(1), concerning Requirements for Exemption from Permitting, to the list of compounds for which no additional impacts analysis is required. Revisions to terminology are made to be consistent with commission rule drafting guidelines. Also, the revisions establish that a specific standard permit may provide for an impact analysis other than requiring the limitations of §106.261 and §106.262 be met. The commission deletes §116.610(a)(4) because the agency has the authority to add such conditions to permits without this language. Paragraph (5) is renumbered to (4) and revised to be grammatically consistent with paragraphs (1)-(3).

The revisions to §116.610(b) clarify that for pollution control projects, the determination of a new major source or major modification is modified by the procedures of §116.617.

The revisions to §116.611, concerning Registration Requirements, reformat the section, establish that a particular standard permit may provide for a different registration period, and add subsection (c), which provides a consistent process by which a person can affirmatively establish a federally enforceable emissions limit. Revisions to terminology are made to be consistent with commission rule drafting guidelines.

The revisions to §116.615, concerning General Conditions, delete paragraph (4), which relates to the voiding of a standard permit for failure to construct. Voiding a standard permit has no practical effect, since the registrant could reclaim the standard permit at any time. The revisions renumber paragraphs

(5)-(11) as (4)-(10). Newly renumbered paragraphs (4) and (5) are revised to clarify that a particular standard permit may modify the requirements of these paragraphs. Terminology is revised to more accurately reflect that standard permits are authorized by rule and to provide consistency with commission rule drafting guidelines.

The adoption of new §116.617, concerning Standard Permit for Pollution Control Projects, carries through the commission's previous decision to place each standard permit in a separate section, and the title reflects the current substance of the section.

The introductory text for the new §116.617 describes the applicability of the standard permit for pollution control projects. Section 116.617 previously consisted of two permit types, paragraph (1) for mandatory pollution control projects and paragraph (2) for voluntary pollution control projects. These are identical except for their approach to future netting and the ability of the source to take advantage of incidental production increases. The new applicability text combines the mandatory and voluntary standard permits. In addition, the applicability of the standard permit is extended to authorize the replacement of existing emission control equipment. The standard permit applicability is also clarified to authorize the substitution of compounds necessary to come into compliance with governmental standards (such as the Montreal Protocol), or to reduce emission effects (such as the replacement in a manufacturing process of a toxic compound with one less toxic).

New §116.617(1) eliminates the procedure of using §106.261 and §106.262 (previously Standard Exemptions 106 and 118) to evaluate any emission increases of an air contaminant for which there is no applicable National Ambient Air Quality Standard. The new section is a more general approach to ensure that any such increases will not cause significant health effect concerns. Internal guidance has been developed to address how the executive director will evaluate increases of non-criteria pollutants. The new approach gives the executive director the discretion to object to the claim for a standard permit when he determines there are significant health effect concerns such as the conversion of an air contaminant to a highly toxic by-product that is projected to have an unacceptable off-property impact. The agency's experience has been that abatement projects very rarely raise such concerns. The new approach is designed to facilitate the construction of air pollution control facilities by simplifying their permitting, while retaining the ability of the agency to protect air quality. For pollution control facilities which previously would have been authorized under Chapter 115 or 117 standard permits, the new approach represents an additional opportunity for agency review of air impacts.

New §116.617(2) reduces the period of time necessary to obtain construction authorization compared to the previous Chapter 116 rule and increases the time necessary to obtain authorization for projects previously authorizable under Chapters 115 and 117. This uniform period is sufficient for the agency to evaluate and notify the registrant of any concerns, while at the same time expediting the installation of pollution control facilities.

New §116.617(3) reduces required information reporting to the agency for pollution control projects. Standard permit reports of construction progress and start-up for pollution control projects are not essential to the agency.

New §116.617(4) establishes requirements for the replacement of existing emission control equipment. Under the proposed new §116.617(4), if replacement of control equipment or a control technique permitted under §116.110 occurs, the testing and recordkeeping requirements of the permit would continue to apply. An exception to this is a replacement control device of a different type for which the old provision no longer makes sense. Section 116.617(4)(C) allows replacements that result in no emissions increases to be registered after the change occurs.

New §116.617(5) maintains the distinctions between required and voluntary standard permits for production capacity increases which may occur incidentally as a result of installing pollution control equipment or implementation of control techniques.

New §116.617(6) provides for incidental emissions increases which may result from mandatory, voluntary, or replacement pollution control projects.

New §116.617(8)(C) simplifies the approach to emission netting by referencing the underlying federal standards. There continues to be no required netting of emission changes in evaluating the proposed

pollution project. Future netting calculations must include the pollution control project emission changes, if the changes are determined to be creditable under federal rules.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose of the rules is to streamline and consolidate the permitting process for pollution control projects. The rules substantially advance this specific purpose by simplifying and adding flexibility to an existing permit-by-rule option to the permitting process. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because it is an optional approach to existing permitting requirements.

Coastal Management Program (CMP) Consistency Review

The commission has determined that this rulemaking action is subject to the Texas CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP

goals and policies. The following is a summary of that determination. The primary CMP policy applicable to the proposed rules is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area. The proposed rules are consistent with the applicable CMP policy because they are consistent with Title 40. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies.

Hearing and Commenters

A public hearing on this proposal was held in Austin on January 6, 1997 at the commission's Austin offices. Written comments were received from the City of Dallas (Dallas), Eastman Chemical Company (Eastman), Exxon Company, U.S.A. (Exxon), and the Texas Chemical Council (TCC). Eastman, Exxon, and the TCC generally supported the amendments, as a streamlining improvement to the rules. Exxon endorsed the TCC's comments in addition to making their own comments. Dallas did not generally support or oppose the revisions, but suggested changes.

Analysis of Testimony

Eastman and the TCC provided detailed support for the majority of the proposed substantive changes.

The commission appreciates the supportive comments made by Eastman and the TCC. Where necessary, to amplify the commission's intent or to analyze qualifications to the support, the commission has responded specifically to the supporting comments.

In §116.610(a)(1), Eastman, Exxon and TCC supported the exclusion of pollutants that are environmentally abundant from the netting and qualifying impacts criteria. They recommended in future rulemaking, the addition of other compounds which are neither toxic nor present ozone generation potential, such as acetone.

The commission appreciates the support and the suggestions for future rulemaking. Acetone, an organic solvent, was excluded from the definition of "volatile organic compound" in 1996, due to United States Environmental Protection Agency's conclusion that it does not participate in the photochemical reactions which lead to ozone formation. It is, however, an air contaminant, with a health effects screening level. If new data on the health effects of acetone were generated, this could provide the basis for revising the effects screening level. This would be more appropriate than adding acetone to the list of environmentally abundant compounds in §116.610(a)(1). The commission has made no changes in response to the comment.

TCC and Eastman supported in §116.610(b) the exclusion of pollution control projects which constitute new major sources or major modifications from §116.110 applicability.

The commission would like to point out that the exception for pollution control projects in 116.610(b) does not relieve registrants of these pollution control projects entirely from making the types of demonstrations required by prevention of significant deterioration or nonattainment

review. Sections 116.617(8) and (9) provide the requirements. The commission has made no changes in response to the comment.

TCC and Eastman commented that the preamble discussion concerning the language in §116.611(c) allowing a person to establish a federally enforceable limit in their registration is misleading, because of the characterization that the agency is enabling federally enforceable limits to be set.

The commission agrees that the proposal preamble language could be misleading. The adoption preamble has been revised to state that the new subsection is intended to establish a consistent process by which a person can affirmatively establish a federally enforceable emissions limit.

TCC and Eastman commented that §116.611(c) of the rule should allow standard permit registrations at unmanned sites to be maintained at the owner's or operator's nearest manned location.

The commission agrees and has incorporated into §116.611(c) the language in §116.615(8) that addresses the handling of information at unmanned sites.

Dallas commented that the last sentence of §116.615(8) should be clarified to require that the two-year record retention period does not apply to the permit itself, or the permit application.

The commission agrees that a copy of the standard permit is to be maintained as a permanent record and has revised the wording to be clearer. Although the recordkeeping paragraph does not currently require the permit holder to maintain a copy of the registration ("application") on site, this was the intent. In order to allow the regulated community the opportunity for public notice and comment on this requirement, the commission intends to propose it in future rulemaking.

Dallas commented that paragraph §116.615(10) should explicitly include local agencies.

The commission agrees that local agencies having jurisdiction are included, and has revised the wording of §116.615(10) to be consistent with other references to authorized air pollution control authorities.

Exxon commented that the proposed review of standard permits for control projects does not appear to prescribe a scientific method for the executive director to decide whether or not "significant" health concerns exist. Exxon said such analyses should be confined to accepted scientific methods. Eastman and the TCC said that the terms "significant health effects concerns" in §116.617(1) are intended to provide the executive director discretion to address compliance options that are deemed wholly unacceptable to public health. They also said the terms are intended to be a high hurdle/fail safe test, in which no action is the presumed default, and the exception is in cases where unacceptable health effects concerns are positively identified.

The commission agrees with the comments on the intent of the effects review. The staff's experience has been that in most cases, installation of air pollution abatement equipment will not result in emission increases which could cause a concern, and no additional review will be needed. The internal guidance developed to address how the executive director will evaluate increases of non-criteria pollutants is based on effects screening levels and management review. Although this is policy, the screening levels are based on underlying scientific knowledge of specific air pollutants. The commission has made no changes to the rule language in response to the comments.

TCC and Eastman supported the proposed reduction in the time period for the executive director to object to a standard permit claim in §116.617(2) and expressed hope that, in practice, the commission processes could be streamlined to be much more rapid than the thirty day limit.

The commission appreciates the support for the streamlining. When the registrant makes the executive director aware of other time constraints, the agency will work to accommodate the constraint.

Dallas commented that both §116.617(4)(C) and the referenced paragraph appear to specify identical 30-day time periods for registration of a standard permit for a replacement pollution control project.

The time periods are different. The registration time period for projects that do not increase emissions is thirty days after operation of the replacement project begins. The time period for replacement projects that have an emissions increase is thirty days before construction on the replacement project begins.

Exxon commented that the term "grandfathered baseline" in §116.617(5)(A)(I) is not defined and suggested the use of the terms "maximum allowable emissions rates for grandfathered facilities," as described in the §116.10 definition of grandfathered facility.

The suggested terms are in the definition of "allowable emissions", not the definition of "grandfathered facility". The definition of "allowable emissions" in §116.10 is specialized for use in §116.116(e), a subsection developed to implement the requirements of Senate Bill 1126 (74th Legislature, 1995). The term "grandfathered baseline" refers to the level of emissions allowed of a "grandfathered facility", a term defined in §116.10. In order to be grandfathered, a facility must not have been modified, as defined in §116.10, since the inception of the permit system. The grandfathered baseline is the emission rate of an unmodified, grandfathered facility. The commission has made no change in response to this comment.

Eastman, Exxon and TCC commented that the language in §116.617(5) and (6) could potentially prevent a facility from recovering lost capacity that occurred as a result of installing a pollution control project.

The language in §116.617(5) and (6) does not prevent a facility from recovering lost capacity that occurred as a result of installation of pollution controls. The language precludes using the standard permit to increase a facility's capacity above what was authorized prior to the pollution control project. The exception, for mandatory control projects, allows a capacity increase above what was authorized prior to the control project, if the increase is purely incidental to the project. The commission has maintained the wording contained in the rule proposal.

The commission has made additional changes to §§116.610, 116.611, 116.615, and 116.617 to simplify wording in accordance with the agency's rule drafting standards and to reflect the renumbering of standard exemptions to individual sections in Chapter 106.

Statutory Authority

The amendments and new section are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and TCAA, §382.051, which provides the commission the authority to issue permits.

SUBCHAPTER F : STANDARD PERMITS

§116.610. Applicability.

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.051, a project which meets the requirements for a standard permit listed in this subchapter is hereby entitled to the standard permit; provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration claim.

(1) any project which results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a National Ambient Air Quality Standard has been established must meet the emission limitations of §106.261(3) or (4) or §106.262(3) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance Limitations)), unless otherwise specified by a particular standard permit;

(2) construction or operation of the project must be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit;

(3) the proposed project must comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (regarding Federal New Source Performance Standards) and §112 (regarding Hazardous Air Pollutants);

(4) the owner or operator of the facility shall register the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).

(b) Any project, except those authorized under §116.617 of this title (relating to Standard Permits for Pollution Control Projects), which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) Persons may not circumvent by artificial limitations the requirements of §116.110 of this title.

§116.611. Registration Requirements.

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the Texas Natural Resource Conservation Commission (commission) Office of Air

Quality, the appropriate commission Regional Office, and any local air pollution program with jurisdiction, before a standard permit can be claimed. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to:

- (1) the basis of emission estimates;
- (2) quantification of all emission increases and decreases associated with the project being registered;
- (3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);
- (4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;
- (5) a description of the project and related process; and
- (6) a description of any equipment being installed.

(b) Construction may begin any time after receipt of written notification from the executive director that there are no objections or 45 days after receipt by the executive director of the registration, whichever occurs first, except where a different time period is specified for a particular standard permit.

(c) Any person claiming a standard permit may certify and register a federally enforceable emission limitation for one or more air contaminants by stating a maximum allowable emission rate in the registration. The certification may be amended and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration shall be maintained on-site and be provided upon request to a representative of the executive director or any air pollution control agency having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration.

§116.615. General Conditions.

The following general conditions are applicable to holders of standard permits, but will not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility must comply with all applicable rules and regulations of the Texas Natural Resource Conservation Commission (commission) adopted under the Texas Health and Safety Code, Chapter 382, and with intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible for a standard permit, the owner or operator of the facility shall notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director no later than 30 days after the change.

(3) (No change.)

(4) Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.

(5) Start-up notification. The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the standard permit in such a manner that a representative of the executive director may be present. For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit. A particular standard permit may modify start-up notification requirements.

(6) Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the Office of Air Quality and any other air pollution control program having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(7) Equivalency of methods. The standard permit holder shall 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 standard permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, United States Environmental Protection Agency, or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information and data sufficient to demonstrate applicability of and compliance with the standard permit must be retained for at least two years following the date that the information or data is obtained. The copy of the standard permit must be maintained as a permanent record.

(9) Maintenance of emission control. The facilities covered by the standard permit may 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. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Notification Requirements for Major Upset and Notification Requirements for Maintenance).

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition governs. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control program having jurisdiction into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

§116.617. Standard Permits for Pollution Control Projects. (New.)

This standard permit applies to the installation of emissions control equipment or implementation of control techniques as required by any governmental standard, or undertaken voluntarily, or to replace existing emission control equipment or control techniques. This standard permit also authorizes the substitution of compounds used in manufacturing processes for the purpose of complying with governmental standards or to reduce emission effects.

(1) The emissions limitations of §106.261(3) or (4) and §106.262(3) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance Limitations)), referenced in §116.610(a)(1) of this title (relating to Applicability) do not apply to this standard permit. This standard permit cannot be used if the registrant receives notification that in the opinion of the executive director there are significant health effects concerns resulting from an increase in emissions of any air contaminant other than those for which a National Ambient Air Quality Standard has been established, until those concerns are addressed by the registrant to the satisfaction of the executive director.

(2) The time period of 45 days in §116.611(b) of this title (relating to Registration Requirements) is modified to 30 days.

(3) Sections §116.615(4) and (5) of this title (relating to General Conditions) are not applicable to this standard permit.

(4) Replacement projects are subject to the following:

(A) The replacement emissions control equipment or control technique must be at least as effective an air pollution control method as the emissions control equipment or control technique being replaced. Equipment installed under this section is subject to all applicable testing and recordkeeping requirements.

(B) The replacement of emissions control equipment or control technique under this section is not limited to the method of control currently in place. Any type of control equipment or control technique may be replaced with any other type of control equipment or control technique as long as all other requirements of this standard permit are met.

(C) If the replacement project does not result in an increase in emissions of any air contaminant, the owner or operator of the facility shall submit registration notice not later than 30 days after the operation of the replacement project begins. If the replacement project will result in an increase of any air contaminant, the registration time period requirements of paragraph (2) of this section are applicable.

(5) Installation of the control equipment or implementation of the control technique must not result in an increase in the facility's production capacity unless the capacity increase occurs solely as a result of the installation of control equipment or the implementation of control techniques on existing units. This paragraph is not intended to limit the owner or operator's ability to recover lost capacity caused by a derate resulting from the installation of control equipment or the implementation of a control technique.

(A) The owner or operator shall obtain or qualify for any necessary authorization pursuant to §116.110 of this title (relating to Applicability) or §116.116 of this title

(relating to Changes to Facilities) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

(i) results in the exceedance of any emission limit in an existing permit, other authorization, or grandfathered baseline; or

(ii) results in an emissions increase which exceeds the emission reduction due to the installation of control equipment or implementation of control techniques.

(B) Any production capacity increase resulting from the voluntary installation of controls or the implementation of control techniques may not be utilized until the owner or operator obtains or qualifies for any necessary authorization pursuant to §116.110 or §116.116 of this title.

(6) Any emission increase of an air contaminant must occur solely as a result of the installation of control equipment or implementation of a control technique authorized by this section. Emissions increases associated with recovering a derate resulting from the installation of control equipment or the implementation of a control technique are not prohibited by this paragraph.

(7) Installation of emission control equipment or implementation of a control technique may not include the installation of a new production facility, reconstruction of a production facility as

defined in 40 Code of Federal Regulations (CFR) §60.15(b)(1) and (c), or complete replacement of an existing production facility.

(8) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, a person claiming this standard permit shall submit, with the registration, information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) The net emissions increase may not:

(i) considering the emission reductions that will result from the project, cause or contribute to a violation of any national ambient air quality standard;

(ii) cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) increment; or

(iii) cause or contribute to a violation of any PSD visibility limitation.

(B) For purposes of this section, "significant net increase" means those emissions increases resulting solely from the installation of control equipment or implementation of control techniques that are equal to or greater than:

(i) the major modification threshold listed in §116.12 of this title (relating to Nonattainment Review Definitions), Table I, for pollutants for which the area is designated as nonattainment, or for precursors to these pollutants; or

(ii) significant as defined in Title 40 CFR §52.21(b)(23) (effective July 20, 1993) for pollutants for which the area is designated attainment or unclassifiable, or for precursors to these pollutants.

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project must be included in any future netting calculation if they are determined to be otherwise creditable under PSD and nonattainment new source review provisions of the Federal Clean Air Act (FCAA), Parts C and D and regulations promulgated thereunder.

(9) For purposes of compliance with the PSD and nonattainment new source review provisions of the FCAA, Parts C and D and regulations promulgated thereunder, any increase that is less than significant, or satisfies the requirements of paragraph (8) of this section does not constitute a physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the United States Environmental Protection Agency at 40 CFR §60.14 (effective December 16, 1975), an increase that

satisfies the requirements of paragraph (8) of this section also satisfies the requirements of 40 CFR §60.14(e)(5).

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

SUBCHAPTER F : STANDARD PERMITS

The repeal is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§116.617. Standard Permits List. (Repeal.)

This agency hereby certifies that the repeal as adopted has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

The commission adopts the repeal of §117.550, concerning Standard Construction Permits for Nitrogen Oxides Reasonably Available Control Technology (NO_x RACT) Projects. The repeal is adopted without change and will not be republished.

Explanation of Repealed Rule

The commission adopts this revision to Chapter 117, concerning Control of Air Pollution from Nitrogen Compounds, and to the State Implementation Plan in order to streamline rule requirements. The Chapter 117 standard permit was adopted as an expedience in 1993 because at the time there was no standard permit for pollution control projects in Chapter 116. The two standard permits are largely duplicative. The more logical location for a standard permit is in Chapter 116, which concerns Control of Air Pollution by Permits for New Construction or Modification. Concurrent with this repeal, the commission adopts revisions to the Chapter 116 standard permit which are designed to allow greater flexibility in making the demonstration that a project is environmentally beneficial.

Takings Impact Assessment

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the repeal is to eliminate largely duplicative requirements in multiple chapters. Promulgation and enforcement of this rule repeal will not affect private real property which is the subject of the rule because the repeal makes minor changes to the requirements for obtaining a standard permit for NO_x RACT projects.

Coastal Management Program (CMP) Consistency Review

The commission has determined that this rulemaking action is subject to the Texas CMP in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The primary CMP policy applicable to the rulemaking action is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal area. The elimination of the section removes any possibility of conflict. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies.

Hearing and Commenters

A public hearing on this proposal was held in Austin on January 6, 1997 at the commission's Austin offices. Written comments were received from Eastman Chemical Company (Eastman), Exxon Company, U.S.A. (Exxon), and the Texas Chemical Council (TCC). Eastman, Exxon (through their support of the TCC's comments) and the TCC generally supported the amendments, as a streamlining improvement to the rules.

Analysis of Testimony

Eastman, Exxon and the TCC supported the repeal of the standard permit in Chapter 117, only if no substantive changes which would impose additional requirements on facilities are made to the proposed Chapter 116 standard permit.

The commission appreciates the support. The adopted Chapter 116 standard permit for pollution control projects, published in this issue of the *Texas Register*, is substantially unchanged from the proposed version.

Statutory Authority

The repeal is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

SUBCHAPTER D : ADMINISTRATIVE PROVISIONS

§117.550. Standard Construction Permits for NO_x RACT Projects. (Repeal.)

The agency hereby certifies that the repeal as adopted has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 30, 1997.

Redline/Strikeout - Showing Changes to *Texas Register* Proposal:

§116.610. Applicability.

(a) (1) any project which results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a National Ambient Air Quality Standard has been established must meet the emission limitations of ~~§106.261(3) or (4) or §106.262(3) Standard Exemption 106(c) or (d) or Standard Exemption 118(c) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance Limitations))~~, unless otherwise specified by a particular standard permit;

(4) the owner or operator of the facility ~~shall~~ **must** register the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).

§116.611. Registration Requirements.

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the Texas Natural Resource Conservation Commission (~~commission~~) (~~TNRCC~~) Office of Air Quality, the appropriate ~~commission~~ **TNRCC** Regional Office, and any local air pollution program with jurisdiction, before a standard permit can be claimed. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to:

(c) Any person claiming a standard permit may certify and register a federally enforceable emission limitation for one or more air contaminants by stating a maximum allowable emission rate in the registration. The certification may be amended and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration ~~shall~~ **must** be maintained on-site and be provided upon request to a representative of the executive director or any air pollution control agency having jurisdiction. **For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration.**

§116.615. General Conditions.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must be constructed and operated. It is unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible ~~for to claim~~ a standard permit, the owner or operator of the facility ~~shall~~ **must** notify the executive director of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of

changes in representations must be received by the executive director no later than 30 days after the change.

(5) Start-up notification. The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by the standard permit in such a manner that a representative of the executive director may be present. For phased construction, which may involve a series of units commencing operations at different times, the owner or operator of the facility shall provide separate notification for the commencement of operations for each unit. A particular standard permit may modify start-up notification requirements.

(7) Equivalency of methods. ~~It shall be the responsibility of the~~ The standard permit holder shall 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 standard permit. Alternative methods must be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

(8) Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director, United States Environmental Protection Agency, or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the

nearest staffed location within Texas specified by the standard permit holder in the standard permit registration. This information must include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of the standard permit. Information **and data sufficient to demonstrate applicability of and compliance with the standard permit** ~~in the file~~ must be retained for at least two years following the date that the information or data is obtained. **The copy of the standard permit must be maintained as a permanent record.**

(10) Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the conditions precedent to the claiming of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition governs. Acceptance includes consent to the entrance of commission employees and designated representatives **of any air pollution control program having jurisdiction** into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

§116.617. Standard Permits for Pollution Control Projects. (New.)

(1) The emissions limitations of **§106.261(3) or (4) and §106.262(3) of this title (relating to Facilities (Emission Limitations), and Facilities (Emission and Distance Limitations)),** ~~Standard Exemptions 106(e) or (d) and 118(e)~~ referenced in §116.610(a)(1) of this title (relating to

Applicability) do not apply to this standard permit. This standard permit cannot be used if the registrant receives notification that in the opinion of the executive director there are significant health effects concerns resulting from an increase in emissions of any air contaminant other than those for which a National Ambient Air Quality Standard has been established, until those concerns are addressed by the registrant to the satisfaction of the executive director.

(4) Replacement projects are subject to the following:

(A) The replacement emissions control equipment or control technique must be at least as effective an air pollution control method as the emissions control equipment or control technique being replaced. Equipment installed under this section ~~is must be~~ subject to all applicable testing and recordkeeping requirements.

(C) If the replacement project does not result in an increase in emissions of any air contaminant, ~~the owner or operator of the facility shall submit~~ registration notice ~~must be submitted~~ not later than 30 days after the operation of the replacement project begins. If the replacement project will result in an increase of any air contaminant, the registration time period requirements of paragraph (2) of this section are applicable.

(5) (A) The owner or operator ~~shall must~~ obtain or qualify for any necessary authorization pursuant to §116.110 of this title (relating to Applicability) or §116.116 of this title (relating to Changes to Facilities) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

(8) (A) (No change.)

(B) For purposes of this section, "significant net increase" means those emissions increases resulting solely from the installation of control equipment or implementation of control techniques that are equal to or greater than ~~clauses (i) or (ii) of this subparagraph:~~

(i) the major modification threshold listed in §116.12 of this title (relating to Nonattainment Review Definitions), Table I, for pollutants for which the area is designated as nonattainment, or for precursors to these pollutants; **or**

(ii) significant as defined in Title 40 CFR §52.21(b)(23) (effective July 20, 1993) for pollutants for which the area is designated attainment or unclassifiable, or for precursors to these pollutants.