AIR QUALITY STANDARD PERMIT FOR POLLUTION CONTROL PROJECTS SUMMARY DOCUMENT

I. EXECUTIVE SUMMARY

The Texas Commission on Environmental Quality (commission) issues a new non-rule Pollution Control Project Standard Permit (PCP SP) for pollution control projects authorized under the Texas Health and Safety Code (THSC), § 382.05195. In a concurrent action, the commission is adopting amendments to the PCP SP in 30 Texas Administrative Code (TAC) Subchapter F, § 116.617. Upon issuance by the commission, the new standard permit can be used to authorize pollution control projects undertaken voluntarily or as required by any federal or state statute or rule that reduce or maintain currently authorized air emission limits for facilities authorized by a New Source Review (NSR) permit under 30 TAC Chapter 116, a standard permit adopted under 30 TAC Chapter 116 Subchapter F, or Permits by Rule (PBR) adopted under 30 TAC Chapter 106.

II. EXPLANATION AND BACKGROUND OF AIR QUALITY STANDARD PERMIT

Prior to the issuance of this standard permit, pollution control projects have been authorized through the PCP SP in 30 TAC § 116.617. This new non-rule standard permit replaces the existing 30 TAC § 116.617 for authorization of new pollution control projects (PCP). The PCP SP provides a method to expedite the authorization process for certain pollution control projects that do not necessitate a full case-by-case NSR permit review. This standard permit applies to PCPs undertaken voluntarily or as required by any federal or state air quality requirement, which reduce or maintain currently authorized emission rates for existing facilities authorized by a permit, standard permit, or permits by rule (PBR). It applies to existing similar facilities by restricting the application and use of the PCP SP to this narrowly defined category of activities that are designed to result in emission reductions while ensuring that any collateral emission increases are compliant with the requirements to protect public health and welfare and ensure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

This non-rule standard permit provides a streamlined approval process that may be used for pollution control projects complying with the standard permit requirements that are not prohibited by other federal or state permitting statutes or regulations.

To qualify for use of the PCP SP, pollution control projects cannot be a major modification at an existing major source for any criteria pollutants and cannot trigger major NSR permitting. Projects that would otherwise require major NSR permit authorizations, including major sources and modifications under Nonattainment Area Review or

Prevention of Significant Deterioration (PSD) permitting under 30 TAC Chapter 116, Subchapter B, Divisions 5 and 6, may not be authorized under the PCP SP. In addition, the PCP SP cannot be used for reconstruction of a facility that emits hazardous air pollutants under 30 TAC § 116.400(a)(2).

On September 23, 2009, the United States Environmental Protection Agency (EPA) proposed disapproval of 30 TAC § 116.617 (74 Federal Register (FR) 48467), as adopted by the commission effective February 1, 2006. The amendments to 30 TAC § 116.610 and § 116.617 were adopted in 2006 to address prior comments from EPA after the opinion of the D.C. Circuit Court of Appeals in *New York, et al. v. EPA* (413 F.3d 3, June 24, 2005) which ruled that EPA's rules that exempted pollution control projects from PSD review by defining "modifications" to exclude collateral emission increases associated with those projects did not meet the requirements of the Federal Clean Air Act. Specifically, the amendments adopted in 2006 clarified that any project that constitutes a new major stationary source or major modification of an existing major source as defined in 30 TAC § 116.12 is subject to the requirements of 30 TAC Chapter 116, Subchapter B, rather than the requirements of 30 TAC Chapter 116, Subchapter F. The commission appropriately interpreted the *New York* opinion to apply to the PSD permitting program, and therefore made amendments to § 116.617 to continue the program to assist with the efficient authorization method for installation of pollution control equipment for projects that do not trigger federal review.

On September 15, 2010, EPA published disapproval of § 116.617 (75 FR 56423). EPA's grounds for disapproval were that it does not meet the requirements of the Texas Minor NSR Standard Permits Program; it does not apply to similar sources; and, because it does not apply to similar sources, it lacks the requisite replicable standardized permit terms specifying how the Executive Director's discretion is to be implemented for the case-by-case determinations.

Section VIII. Analysis of Comments, below, includes responses to the EPA's stated reasons for proposed disapproval and final disapproval of § 116.617, and its specific comments on this new standard permit.

This issued PCP SP does not merely reestablish the requirements of the PCP SP in § 116.617, but it is similar. In response to EPA's notices and comments, this new PCP SP includes additional replicable procedures.

III. OVERVIEW OF AIR QUALITY STANDARD PERMIT

The commission issues a new non-rule standard permit, the PCP SP, that will serve a similar function and will replace the PCP SP authorized under 30 TAC § 116.617 which became effective February 1, 2006. This new permit, like existing § 116.617, authorizes

pollution control projects undertaken voluntarily or as required by any federal or state air statute or rule, that reduce or maintain currently authorized emission rates for facilities authorized by a permit, standard permit, or PBR. The project may include: (A) the installation or replacement of emissions control equipment; (B) the implementation or change to control techniques; or (C) the direct substitution of compounds used in manufacturing processes. This new permit is issued in compliance with THSC, §§ 382.05195 and 382.057, and 30 TAC Chapter 116, Subchapter F. In addition, this non-rule standard permit provides an alternative to case-by-case NSR authorization for pollution control projects with environmental benefit and limited regulatory complexity.

For the purposes of this standard permit, the term "project" means the construction or modification of a facility or a group of facilities submitted under the same registration (30 TAC § 116.610(a)).

The commission has determined that the PCP SP authorizes environmentally beneficial projects that do not cause nor contribute to a condition of air pollution. Projects that constitute a major source or major modification at an existing major source do not qualify to use the PCP SP. Projects authorized under the PCP SP include, but are not limited to, the installation of new control equipment or a new control technique that would reduce previously authorized emissions and the replacement of existing control equipment with new equipment that would control air emissions at least as effectively as the originally authorized equipment, but at a lower cost or improved reliability. PC SP projects that result in any collateral actual or allowable air emission increases are required to demonstrate protectiveness of the NAAQS and of public health and welfare. The PCP SP also allows direct substitution of compounds with less toxic ones that would have less impact on human health or the environment.

The commission concludes that these types of projects would benefit from a streamlined authorization process that allows for more expedient implementation. The PCP SP may only be used at facilities that are currently authorized for air emissions by an existing permitting mechanism. Projects authorized under the PCP SP must be administratively incorporated into the existing air emission authorization at the next permitting action in accordance with 30 TAC § 116.615(3). The Commission finds that the Permit is enforceable and the Commission can adequately monitor compliance with the terms of the Permit, and that changes within any facility that will be authorized by the Permit will not make a significant contribution of air contaminants to the atmosphere. The Commission also finds that for the installation of emission control equipment that constitutes a modification or a new facility, the Permit includes the conditions necessary to restrict the applicability in a manner that the Commission deems necessary to accomplish the intent of the Texas Clean Air Act (TCAA), Tex. Health & Safety Code Chapter 382.

The PCP SP is designed to authorize pollution control projects that meet all requirements of the standard permit. Owners or operators of facilitates that cannot meet all conditions of this standard permit may seek authorization under 30 TAC § 116.111, General Application.

IV. PERMIT CONDITION ANALYSIS AND JUSTIFICATION

This standard permit creates an authorization mechanism for air pollution control projects authorized under the THSC, § 382.05195. This standard permit requires air pollution control projects to comply with certain general requirements that define the administrative obligations of an owner/operator and operational requirements for the ongoing control of emissions from equipment and activities at a site.

The PCP SP allows for a streamlined review of projects that do not require case-by-case review due to implementation of established control technologies or techniques or direct compound substitutions that have a net environmental benefit.

Requests for authorization of established control technologies or techniques include generally accepted initial compliance demonstrations, monitoring, and recordkeeping that can be applied to the project. Projects that involve innovative technologies or innovative application of established technologies require case-by-case review and may not be authorized under the PCP SP.

Request for authorization of direct compound substitutions must include a demonstration that the replacement compound has a lessened effect on human health and the environment. This is generally demonstrated by comparing the commission's established Effects Screening Levels (ESL) of the proposed compound to the ESL of the existing compound. Projects that involve substitution of a compound with a lower ESL may not be authorized under the PCP SP.

Where replacement projects result in like-kind replaced equipment, the owner or operator is required to use the same monitoring, recordkeeping, and reporting requirements imposed by the original authorization deemed appropriate for that equipment. Where new or different equipment is used in this standard permit, the owner or operator is required to propose monitoring "sufficient to demonstrate compliance" that meets industry or technology standards for that equipment. These monitoring, recordkeeping, and reporting requirements ensure continued enforceability for replacement projects.

During the technical review of the PCP SP, the executive director's staff identifies the scope of the project. PCP SP reviews consist of confirming that the control equipment or technique is as effective as the currently authorized equipment or technique. The executive director's staff also ensures the proposed project does not trigger PSD or nonattainment review. All collateral emission increases are reviewed to ensure compliance with the

NAAQS, protectiveness requirements, and with applicable original authorization requirements. All PCP SP projects must reduce or maintain emissions, which are verified by reviewing the applicable NSR permit. Finally, PCP SPs are required to be administratively incorporated into NSR renewals or amendments upon the next permitting action of the original authorization.

The following demonstrates how this standard permit is enforceable and how the commission can adequately monitor compliance with the permit terms.

Scope and Applicability

The general conditions for standard permits, located in 30 TAC Chapter 116, Subchapter F, apply to all owners and operators of facilities seeking authorization under this standard permit. Pollution control projects do not qualify for authorization under this standard permit if the project constitutes a new major stationary source or major modification at an existing major source as defined by 30 TAC § 116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions. All air pollution control projects are required to meet 30 TAC Chapter 116, Subchapter F rule requirements, as well as the specific conditions of the standard permit. This non-rule standard permit incorporates existing requirements contained in 30 TAC § 116.617, while clarifying language in the new non-rule standard permit; these clarifications in language provide further assurance that only projects that are environmentally beneficial are authorized under the PCP SP.

Section (1) outlines the applicability of the standard permit (what can and cannot be authorized under the standard permit). This section is organized into subsections (A) - (D), which include scope and applicability conditions of this standard permit. No new facilities or changes to existing facilities are authorized by this permit unless they are or are part of a pollution control project.

Subsection (1)(A) lists the three types of existing authorizations (permit, standard permits, and PBR) that may be modified by a PCP SP and requires that the PCP SP project must reduce or maintain currently authorized emissions rates for existing facilities authorized by a permit, standard permit, or PBR. Subsection (1)(A)(i) prohibits the use of the PCP SP for projects that constitute a new major stationary source or major modification at an existing major source as defined in 30 TAC § 116.12. This condition is intended to specify the scope of the standard permit authorization and to ensure that the standard permit is not used for projects that require federal review for PSD or nonattainment. Subsection (1)(A)(ii) prohibits the use of the PCP SP for projects that constitute reconstruction of a major source of hazardous air pollutants.

Subsection (1)(B) clarifies the three types of projects that may be authorized by a PCP SP (installation or replacement of emission control equipment, implementation or change to a control technique, or direct substitution of compounds). Limiting use of the PCP SP only to installation or replacement of control equipment or techniques or to direct substitution of less polluting or less toxic compounds ensures that the projects authorized by this standard permit are environmentally beneficial. This also ensures that registrations are issued with replicable conditions that are based on the existing authorization or that are based on technologies that have established requirements for performance testing, monitoring, recordkeeping, and reporting. All other types of pollution control projects require case-by-case review, which necessitate another method of preconstruction authorization.

Paragraph (1)(B)(i) allows installation of emission control equipment or replacement of emission control equipment in the original authorization.

Paragraph (1)(B)(ii) allows implementation or change to a control technique in the original authorization.

Paragraph (1)(B)(iii) allows the substitution of compounds that are a direct substitution for compounds used in a process in the original authorization. To provide further protectiveness, the PCP SP requires that the direct substitution of compounds not result in process reconfiguration, new emission point sources, changes to the process conditions, or increased health impacts.

Subsection (1)(C) outlines the prohibitions for use of the PCP SP. Specifically, subsection (1)(C) does not allow facilities to be replaced or modified in any way under this authorization, since these types of changes need to be reviewed for Best Available Control Technology (BACT) and potential harmful effects to health and property in accordance with THSC, Chapter 382, the TCAA, § 382.0518, Applicability, and 30 TAC § 116.610, unless the conditions of a standard permit or PBR are met. Projects that require specific case-by-case reviews do not qualify for the streamlined review of the PCP SP; the owner or operator must seek approval under another method of preconstruction authorization for these types of projects.

Paragraph (1)(C)(i) prohibits the use of the PCP SP to authorize complete replacement of an existing facility or reconstruction of a production facility; such projects require a more detailed review.

Paragraph (1)(C)(ii) prohibits the use of the PCP SP if collateral emission increases associated with this standard permit cause or contribute to any exceedances of a NAAQS or cause a condition of air pollution. The PCP SP is only intended to be used to authorize projects that are environmentally beneficial. Some types of air emission controls generate

new or increased emissions of certain air contaminants while reducing emissions of others. By prohibiting collateral increases to cause or contribute to any exceedance of the NAAQS or cause a condition of air pollution, this provision ensures that the overall effect of the projects authorized under the PCP SP are environmentally beneficial.

Paragraph (1)(C)(iii) prohibits the use of the PCP SP for the purpose of bringing a facility or group of facilities into compliance with an existing authorization or permit, unless approved by the executive director. The purpose of the PCP SP is to reduce or maintain emissions that have already been authorized. Projects that would only serve to bring an existing facility into compliance with the original authorization do not meet the criteria for the streamlined review the PCP SP allows.

Paragraph (1)(C)(iv) prohibits the use of the PCP SP to authorize changes to scrubbers used to control odor or that allows substitution of compounds used in scrubbers. The commission has determined these types of projects require a more detailed review because of a high potential for odor nuisance and compliance issues.

Subsection (1)(D) addresses how pollution control projects will be required to meet the conditions of this standard permit. The requirements of subsection (1)(D) make certain that all PCP SP projects (including those issued under previous versions of the State Pollution Control Project Standard Permit that were authorized prior to the effective date of this standard permit) will either be: 1) administratively incorporated back into the source's authorization, reducing the compliance management burden on the source by consolidating authorization and facilitating enforcement, or 2) upon ten-year anniversary and renewal of the original registration will meet the requirements of the current PCP SP standard permit. This requirement ensures public participation in the review of the incorporation of the PCP SP conditions.

Paragraph (1)(D)(i) addresses how standard permit registrations under previous versions of the State Pollution Control Project Standard Permit, that were authorized prior to the effective date of this standard permit, shall remain authorized under the original authorization's requirements until the ten-year anniversary and renewal of the current authorization, or when the registration is voided.

Paragraph (1)(D)(ii) requires the owner or operator to include the increases and decreases in emissions resulting from pollution control projects in any future netting calculation for all standard permit registrations authorized under previous versions. This paragraph ensures that previous standard permit registrations, that were authorized prior to the effective date of this standard permit, include emission increases and decreases for netting calculations.

Paragraph (1)(D)(iii) requires that all conditions of this standard permit be met upon the ten-year anniversary and renewal of the original registration, or when the registration is authorized by the facilities' permit and the registration is voided.

General Requirements

Section (2) is organized into subsections (A) - (I), which include the general requirements of this standard permit. Compliance with these general requirements ensures that only projects that are environmentally beneficial can be authorized under the PCP SP.

Subsection (2)(A) requires compliance with the specific conditions for all standard permits of 30 TAC § 116.604, Duration and Renewal of Registrations to Use Standard Permits; 30 TAC § 116.605, Standard Permit Amendment and Revocation; 30 TAC § 116.610, Applicability; 30 TAC § 116.611, Registration to Use a Standard Permit; 30 TAC § 116.614, Standard Permit Fees; and 30 TAC § 116.615, General Conditions.

Subsection (2)(B) specifies that construction or implementation of the PCP SP shall begin within 18 months of receiving written acceptance of the registration from the executive director, with one 18-month extension consistent with 30 TAC § 116.115(b)(2) and § 116.120, Voiding of Permits, and that changes to maximum allowable emission rates are effective only upon completion or implementation of the project. These timelines are consistent with the start of construction permit requirements for all TCEQ issued permits, including minor source modifications.

Subsection (2)(C) exempts PCP SPs from the emission limits and distance requirements of 30 TAC § 106.261, as referenced in § 116.610(a)(1). Projects under this standard permit are required to reduce or maintain emission rates. Given the nature of PCP SP projects, the emission limits and distance requirements of 30 TAC § 106.261, as referenced in § 116.610(a)(1) are not necessary because other provisions of the PCP SP ensure that any collateral emission increases that may occur as a result of certain controls are protective of human health and the environment.

Subsection (2)(D) requires that planned maintenance, startup, and shutdown (MSS) emissions directly associated with the PCP SP be included in the maximum emissions represented in the registration. This requirement ensures that MSS emissions are quantified and represented for the PCP SP project.

Subsection (2)(E) requires that performance testing, monitoring, recordkeeping, and reporting be proposed that demonstrates initial and continuous compliance with representations made in the registration.

Subsection (2)(F) requires that any increases in actual or allowable emission rates or any increase in production capacity, including increases associated with recovering lost production capacity, occur only as a result of the pollution control project, as represented in the registration. Emissions increases that are not the direct result of the pollution control project and/or incidental production capacity increases cannot be authorized using this standard permit and require another method of preconstruction authorization. This condition guarantees that actual or allowable emission increases or increases in production capacity not directly associated with the pollution control project are not authorized through the PCP SP, as this standard permit is not the appropriate authorization mechanism.

Subsection (2)(F) is not intended to limit the owner or operator's ability to recover lost capacity resulting from a derate, as long as the facility continues to be limited to the original design and authorized capacity of the equipment. Lost capacity may be a result of changes in equipment that restrict operations below design capacity, such as an air flow restriction caused by the installation of emission control equipment. Since the air to fuel ratio in a fired source is a fixed number, the owner or operator may have to reduce the fuel flow and hence the firing capacity of the equipment to remain in compliance with authorized emission limits. For this example, under the PCP SP, the owner or operator may install a higher capacity fan to recover the lost capacity of the fired equipment. This condition prohibits the owner or operator from using the PCP SP to install equipment that would effectively increase the facility's capacity beyond what was previously rated and authorized. Increases in capacity may be authorized on a case-by-case basis by the TCEQ NSR permits section.

Subsection (2)(G) requires demonstration that all air emissions resulting from the PCP SP are protective of the NAAQS, public health and welfare, and physical property. Projects that result in decreases of emission rates of all air pollutants are deemed to be adequately protective. Projects that result in collateral increases of emission rates of air pollutants or a change in the nature of an air pollutant requires the owner or operator to demonstrate protectiveness in accordance with THSC, § 382.0518(b)(2) and 30 TAC § 116.610. These provisions assure a positive net effect on air quality from projects that have increases in some air contaminants while decreasing others.

Subsection (2)(H) requires demonstration that any direct substitution of a compound does not cause additional health impacts not previously reviewed in the original authorization. The ESL for any substituted compound, including resulting emissions of new products and byproducts, which result from the direct compound substitution shall not be less than the ESL value for the currently authorized compound and the emission rate for the substituted compound, including resulting emissions of new products and byproducts, which result from the direct compound substitution shall not be greater than the emission rate for the currently authorized compound. This provision assures that only direct compound

substitutions that result in a net environmental benefit are authorized under the PCP SP and that the PCP SP may not be used for process modifications that should be reviewed on a case-by-base basis.

Subsection (2)(I) identifies that any changes to representations will only replace the requirements affected by the pollution control project itself; the owner or operator is still bound to all other representations made in the current authorization. This condition ensures that representations in the original authorization continue to apply to all facilities not changed by the PCP SP.

Replacement Projects

Section (3) is organized into subsections (A) - (C), which include requirements specific to replacement projects for this standard permit. This section ensures that the replacement projects are environmentally beneficial by requiring that the replacement control or control technique is at least as effective, with a demonstrated performance level that meets or exceeds the control or control technique being replaced.

Subsection (3)(A) allows the replacement control or control technique to be different than those currently authorized, as long as the new replacement control or control technique is at least as effective in controlling emissions as those currently authorized.

Subsection (3)(A) also requires that the replacement control equipment or control technique have the demonstrated ability to meet or exceed the performance level of the control equipment or control technique being replaced. Demonstrated ability means that the emission reduction option(s) proposed must be successfully proven in Texas or the United States to perform as represented for the same industry or different industry with similar emission stream. This language ensures that an established control method with a demonstrated performance level is not replaced with an innovative or novel technique that has not previously been demonstrated to achieve the required emission control performance; such a technique requires a case-by-case review. In addition, demonstrated technologies must have established initial testing, monitoring, and record keeping requirements that are replicable for all applications when applied as intended.

Subsection (3)(B) allows for increases in MSS emissions only if MSS emissions were reviewed and included as part of the original authorization for the existing control equipment or control technique, and if the increases are necessary to implement the replacement project. This subsection prohibits increases in, or new, MSS emissions if MSS emissions are not included in the original authorization.

Subsection (3)(C) requires that testing, monitoring, recordkeeping, and reporting requirements associated with the currently authorized control or control technique

transmit to the replacement control or control technique to ensure continuing compliance with associated emission limits and the special conditions of the current authorization. If the replacement control or control technique is substantially different than the existing control or control technique being replaced, the owner or operator shall propose equivalent alternatives for testing, monitoring, recordkeeping, and reporting. These provisions ensure that the replacement controls are properly monitored to assure continuous compliance with all applicable emission rate limits.

Registration Requirements

Section (4) is organized into subsections (A) and (B), which include the fee schedule and the documentation requirements for PCP SP registration. Fee requirements are designed to encourage the installation and use of pollution control projects, especially if there is no increase in emissions or the changes require minimal review. This section also describes when a registration should be submitted and when construction or implementation may begin. Various deadlines are proposed to provide flexibility and encourage the use of pollution control projects. Regardless of these deadlines, all projects shall meet all requirements of the PCP SP and it is the responsibility of the owner or operator to demonstrate that these requirements are met for the pollution control project.

Subsection (4)(A) is organized into paragraphs (i) - (ii), which address fees and timelines for PCP SP registration. For all projects that require registration, the applicant must submit the PI-1S.

Paragraph (4)(A)(i) requires registration no later than 30 days after construction or implementation of the PCP SP begins, if there are no increases in authorized emission rates of any air contaminant for: 1) in-kind replacement of emission control equipment; or 2) changes to representations occurring to a previously authorized pollution control project. The commission has determined that these types of projects do not require review prior to construction or implementation because the projects do not result in emission increases and are deemed environmentally beneficial.

Subparagraph (4)(A)(i)(a) requires registration for in-kind replacement of emission control equipment to be accompanied by a $900 fee consistent with 30 TAC § 116.115. No response will be provided because the commission has determined that these projects are environmentally beneficial, having no increases in authorized emission rates of any air contaminant and replacement of emission control equipment with in-kind equipment.

Subparagraph (4)(A)(i)(b) requires registration for changes to representations occurring to a previously authorized pollution control project. No fee applies because the commission has determined that changes to representations for this authorization do not require a fee,

similar to NSR permit alterations. No response will be provided for these projects because the commission has determined that these projects are environmentally beneficial, having no increases in authorized emission rates of any air contaminant.

Paragraph (4)(A)(ii) requires registration no later than 45 days prior to construction or implementation of the PCP for: 1) implementation or change to control technique with a demonstrated and established performance level; 2) replacement of existing emissions control equipment with a different type of control, or in-kind replacement of emissions control equipment that results in an increase in emission of any air contaminant; 3) direct compound substitution; or 4) changes in representations to a previously authorized PCP SP that result in increased emission rates of an authorized air contaminant or causes the emission of an air contaminant not previously authorized. Construction or implementation may begin only after written acceptance of the pollution control project has been issued by the executive director.

In the case of these more complex PCP SP projects, the registration requirements in paragraph (4)(A)(ii) provide the executive director's staff 45 days to evaluate the proposed PCP prior to construction or implementation of the project. This provision ensures that projects, which will result in: 1) implementation or change to control technique with a demonstrated and established performance level; 2) replacement of existing emissions control equipment with a different type of control or in-kind replacement of emissions control equipment that results in an increase in emission of any air contaminant; 3) direct compound substitution; or 4) changes in representations to a previously authorized PCP SP that result in increased emission rates of an authorized air contaminant or cause the emission of an air contaminant not previously authorized, are evaluated by the executive director's staff prior to construction or implementation to ensure that the project meets the criteria of the PCP SP.

Based on the nature of these projects, the commission has determined that 45 days is an adequate amount of time to allow the executive director's staff to complete the evaluation of these projects. The current PCP SP in 30 TAC § 116.617 allows these types of projects to proceed after 30 days if no response has been received by the executive director. Based on a review of the historic issuances of PCP SPs in 30 TAC § 116.617 (since 1995 approximately 1,600 PCP SP projects have been completed), no projects have been allowed to proceed without a timely response from the executive director; therefore, there is no direct benefit to a 30-day assumed authorization. The prohibitions in (4)(A)(ii), against starting construction or implementation of the PCP SP without the executive director's express acceptance of the project, ensures that PCP SP projects are only allowed to proceed after a proper and timely review.

Subparagraph (4)(A)(ii)(a) requires registration for implementation or change to control technique with a demonstrated and established performance level to be accompanied by a $900 fee consistent with 30 TAC § 116.115.

Subparagraph (4)(A)(ii)(b) requires registration for replacement of existing emissions control equipment with a different type of control or in-kind replacement of emissions control equipment that results in an increase in emission of any air contaminant to be accompanied by a $900 fee consistent with 30 TAC § 116.115.

Subparagraph (4)(A)(ii)(c) requires registration for direct compound substitution to be accompanied by a $900 fee consistent with 30 TAC § 116.115.

Subparagraph (4)(A)(ii)(d) requires registration for changes in representations to a previously authorized PCP SP that result in increased emission rates of an authorized air contaminant or cause the emission of an air contaminant not previously authorized to be accompanied by a $450 fee, unless received within 180 days of the original registration. The reduced fee of $450 reflects the fact that this type of project requires the evaluation of a recently authorized PCP rather than a review for a newly proposed project.

Subsection (4)(B) defines registration requirements. PCP SP registrations shall include the following: a description of all process units affected by the project; a description of the project; identification of all existing permits and registrations affected by the project; quantification of maximum emission rate data and calculations for all emission rate increases and decreases associated with the project (at a minimum, the registration shall represent the maximum hourly and total annual emission rates for all facilities affected by the project, including emission rates for planned MSS facilities and related activities); supporting calculations and the technical bases for the emission rates are required; a description of monitoring and recordkeeping for all units affected by the project to demonstrate that the requirements of section (3) of this standard permit are met; a description of how the standard permit will be administratively incorporated into the existing permit(s); and, a demonstration that the proposed changes will not cause or contribute to an exceedance of the NAAQS or commission's Effects Screening Level and that the resulting emissions are protective of human health and the environment. These requirements ensure that the executive director's staff has all the necessary information required to determine if the project is eligible for the PCP SP and that project meets the minimum requirements for protectiveness and compliance assurance.

Operational Requirements

Section (5) is organized into subsections (A) and (B), which include operational requirements for general duty and recordkeeping for this standard permit. These provisions

provide additional assurance that authorized PCP SP projects are protective of human health and the environment.

Subsection (5)(A) requires that all units affected by the pollution control project be operated in a manner consistent with good industry and good engineering practices in such a way as to minimize emissions of collateral pollutants.

Subsection (5)(B) requires that copies of specific types of documentation be kept demonstrating compliance with registration representations and with the conditions of this standard permit. This requirement will facilitate enforcement of the PCP SP.

Incorporation Requirements

Section (6) is organized into subsections (A) and (B), which include requirements for incorporation and outline the procedures for, and under what conditions, a PCP SP shall be administratively incorporated into a facility's authorization. Requiring administrative incorporation of the PCP SP into the facility's original authorization, upon the next permit action that affects the original authorization, improves enforceability by clarifying how the PCP SP impacts the emission limits and the special conditions in the original authorization.

Subsection (6)(A) requires that new facilities or changes in method of control or control technique authorized by this standard permit be administratively incorporated into that facility's permit when that permit is next amended or renewed.

Subsection (6)(B) requires that all increases in previously authorized emissions, new facilities, or changes in method of control or control technique authorized by this standard permit for facilities previously authorized by PBR comply with 30 TAC § 106.4, Requirements for Permitting by Rule, except for the emission limitations in 30 TAC § 106.4(a)(1) and 30 TAC § 106.8, Recordkeeping.

V. PROTECTIVENESS REVIEW

All projects authorized under this PCP SP are required to demonstrate that emissions from the project are protective of public health and welfare and physical property. Projects that result in decreases in all air pollutants are deemed to be adequately protective. Projects that may result in collateral increases of air pollutants or a change in the nature of an air pollutant shall be accompanied by a demonstration of protectiveness in accordance with THSC, § 382.0518(b)(2) and 30 TAC § 116.610.

VI. PUBLIC NOTICE AND COMMENT PERIOD

In accordance with 30 TAC § 116.603, Public Participation in Issuance of Standard Permits, the TCEQ published notice of the proposed standard permit in the *Texas Register* (35 *TexReg* 7928) and newspapers of the general circulation in the metropolitan areas of Austin, Dallas, and Houston, Texas on August 27, 2010. The public comment period was for 30 days from the date of publication.

The commission received comments regarding the proposed permit. Reponses to those comments are included in Section VIII. Analysis of Comments, below. In addition, the commission will mail the response to each commenter.

VII. PUBLIC MEETING

The TCEQ held a public meeting on the proposed PCP SP on September 20, 2010, 10:00 a.m., at the TCEQ, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas, for the receipt of oral or written comments by interested persons.

VIII. ANALYSIS OF COMMENTS

Comments were received from Luminant and Region 6 of the EPA.

Luminant commented that condition number 1.D.(iii) may contain a typographical error. Specifically, Luminant commented that use of the word “until” seems inconsistent with the remainder of the condition, and also seems to make 1.D.(iii) inconsistent with 1.D.(i).

No changes were made in response to this comment. Paragraph (1)(D)(i) allows facilities that made changes under standard permit registrations obtained under previous versions of the PCP SP to continue to operate under the version of the standard permit that was effective at the time of authorization.
Paragraph (1)(D)(iii) requires authorizations under previous versions of the PCP SP to renew the authorization upon the ten-year anniversary of the original registration using the new non-rule standard permit, or when the registration for those facilities is later authorized by the facilities' permit and the registration is voided. In cases where incorporation of the standard permit is completed by incorporation by reference, rather than incorporation by consolidation, the standard permit must be renewed using the new non-rule standard permit.

Paragraph (i) is a type of "savings clause" that allows operation for registrations under a previous version of the PCP SP so that those PCPs do not have to meet the requirements of

this new PCP SP. However, that ability to operate is limited by paragraphs (ii) and (iii). Therefore, the two paragraphs are not inconsistent. This is consistent with the commission's rule regarding duration and renewal of registrations to use standard permits in 30 TAC § 116.604.

EPA's Comment Regarding 40 CFR 70.6(d) and Guidance Documents

EPA's commented that 40 CFR 70.6(d), one of its rules for the operating permits program under Title V of the FCAA, states that general permits must be issued to cover "numerous similar sources." EPA states that it views this rule as a requirement to be followed when developing general permits issued under Title I, as well as permits developed under Title V, of the FCAA. EPA again referred to the documents cited in its proposed disapproval notice (74 FR 48476, September 23, 2009).

Although not asserted in its prior disapproval action, EPA cites to 70.6(d) as authority for general permits to be limited to similar sources, a rule adopted under Title V of the FCAA for the operating permits program. Notably, this rule was not adopted under the authority of Title I relating to NSR. EPA's "view" that this rule is a requirement to be followed when developing general permits under Title I is not supported by any rulemaking that adopts this position under Title I. For this to be a requirement to be followed for any "general" NSR permits issued by either EPA or any State, EPA must conduct rulemaking under the Federal Administrative Procedure Act which provides opportunity for notice and comment of its proposed requirement. See *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000). EPA's appropriation of 40 CFR 70.6(d) for NSR purposes is apparently due to the lack of a rule adopted by EPA under its authority in Title I of the FCAA. Additionally, EPA's approval of the commission's Standard Permits Program in 2003 did not cite to 40 CFR 70.6(d) as authority for that approval. EPA's "view" of rule applicability simply has no basis in law. Lastly, EPA has cited no rational basis for applying 40 CFR 70.6(d) to the NSR program generally, or to its review of the PCP SP specifically. Without such an explanation, the commission has no information to review, and cannot take action to change the proposed standard permit.

Similarly, guidance documents are not a valid legal basis and are not legally binding on states. For EPA to adopt binding requirements, it must do so through notice and comment rulemaking. *Appalachian Power Co. v. EPA. Id.*, Therefore, if EPA wants requirements for standard permits to be limited to a particular narrowly defined source category, it must do so through rulemaking. The analysis provided by the Texas Association of Business on pages 8-12 of its comment letter in response to the FR notice (under Docket ID No. EPA-R06-OAR-2006-0133) provides specific analysis of the guidance documents cited by EPA and concludes that these documents are related to EPA's consideration of various mechanisms to limit potential to emit (PTE). Minor NSR permit programs do provide the

ability to establish a PTE. However, not only do the cited memos not discuss PTE for pollution control standard permits, they do not provide any legal basis for disapproval of this type of permitting program as a minor NSR program. Additionally, EPA has provided no rational basis for why the commission's decisions regarding source category limitations are inappropriate, or fail to assure attainment and maintenance of the NAAQS. Given that EPA has approved the commission's minor case-by-case, standard permit, and PBR minor NSR programs, the commission is not persuaded that the guidance EPA relies on is appropriate for evaluation of a minor NSR PCP SP.

Moreover, EPA's approval of the rules governing the commission's Standard Permits Program, including requirements for the development and issuance of standard permits, is a finding that the FCAA and relevant permitting rules are satisfied. The commission's existing § 116.617 and this new PCP SP meet those applicable laws and the Texas Minor NSR SIP as discussed hereafter.

EPA's Comment Regarding the Texas Minor Standard Permits NSR SIP

EPA also commented that it continues to have the same concerns expressed in the disapproval notice published on September 15, 2010 (75 FR 56423). EPA's comment letter specifically referred to its determination that the PCP SP, as proposed, does not meet the Texas Standard Permits NSR SIP, approved November 14, 2003 (68 FR 64545) because it applies to numerous types of PCPs which can be used at any source that wants to use a PCP. EPA stated that SIP provides an alternative process for approving the construction of certain categories of new and modified sources by providing a streamlined mechanism within categories which contain numerous similar sources.

It is important to consider the history of EPA's consideration of the commission's PCP SPs since first adopted and submitted to EPA as part of the commission's standard permit program in commission rules. The following addresses EPA's reasons for not approving the original version of § 116.617, for disapproving the version of § 116.617 adopted in 2006, and this new PCP SP. The commission concludes that EPA's basic opposition as expressed in these notices and comments is not based in applicable law, and that each version of the PCP SP complies with the Texas SIP and federal law as in effect at the time adopted or issued. In this new PCP SP, the commission has, however, made changes in the issued PCP SP with regard to replicable procedures to further ensure establishment of an enforceable permit.

EPA's Original Analysis of § 116.617 PCP SP

Prior to the publication of the September 23, 2009 FR notice, EPA had provided only one reason for not approving an earlier version of § 116.617 submitted to EPA December 9, 2002. In a notice dated November 14, 2003, EPA stated that it was not approving § 116.617

because it did not include any provisions relating to the process by which the standard permit must be issued or modified. (68 *FR* 64543, at 64547) No other reasons were included in the 2003 notice. In that notice, and two subsequent notices, EPA approved the commission's Standard Permit Program, which includes the requirements for issuance of a standard permit, that is, the process by which the commission proposes and adopts all standard permits. Those rules are in 30 TAC §§ 116.601 – 116.615, all of which are approved into the State Implementation Plan (SIP), except the most recent version of § 116.610 (40 Code of Federal Regulations [CFR] § 52.2270). Furthermore, § 116.617 and this issued new PCP SP includes the registration and registration review requirements that are prerequisites for use of a PCP SP. Therefore, this EPA stated concern has been addressed by the commission; this is discussed in further detail in Section IV Permit Condition ~~and~~ Analysis and Justification, above.

In the 2009 proposed disapproval notice~~,~~ EPA added several reasons for proposed disapproval of the PCP SP. The following addresses those comments.

Minor NSR SIP Revision Under the FCAA and EPA rules

EPA commented in the 2009 proposed disapproval and 2010 final disapproval FR notices that the latest version of the PCP SP in § 116.617, even after it was amended to address the *New York* opinion, does not meet the requirements for a minor NSR SIP revision. In the 2009 FR notice, EPA acknowledges on page 48476 that § 116.617 (as adopted in 2006) explicitly prohibits the use of the PCP SP for new major sources and major modifications, thus addressing the court's decision in *New York v. EPA*. This proposed standard permit is specifically designed to be part of the minor NSR permit program; see Section (1)(A).

In the proposed disapproval notice, EPA states that this type of minor NSR permit is required to be applicable to "narrowly defined categories of emission sources, rather than a category of *emission types*." (74 FR 48467, 48476, emphasis supplied) Then, it states that the basis for proposing disapproval of § 116.617 as part of the SIP is that "[a] Standard Permit is a minor NSR permit limited to a particular narrowly defined source category for which the permit is designed to cover and cannot be used to make site-specific determinations that are outside the scope of this type of permit." EPA does not cite any statute or rule that provides the legal basis for its finding. If there is no specific statute regarding standard permits, and the commission is unaware that there is any such reference in the FCAA, then EPA must rely on its rules as a valid legal basis for this proposed finding.

EPA's approval of the rules governing the commission's Standard Permits Program, including requirements for the development and issuance of standard permits, is a finding that the FCAA and relevant permitting rules are satisfied. The commission's existing §

116.617 and this new PCP SP meet those applicable laws and the Texas Minor NSR SIP as discussed below.

Section 110(a)(3) of the Federal Clean Air Act (FCAA) provides that "air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments." This general obligation must be read in conjunction with § 110(a)(2)(C), which includes the requirement to have a minor NSR permitting program. EPA has acknowledged that states have broad discretion to develop their minor NSR programs. *See e.g.,* EPA comments to Texas in 73 *FR* 72001, at and 72008 (November 26, 2008), which state "EPA recognizes that, under the applicable Federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. The State has significant discretion to tailor minor NSR requirements that are consistent with the requirements of Part 51. The State may also provide a rationale for why the rules are at least as stringent as the Part 51 requirements where the revisions are different from Part 51."

EPA has not adopted any rules that provide detailed requirements for this type of permit, or any rules prohibiting it. In fact, the applicable rule in 40 CFR § 51.160, governing requirements for SIP approval of minor NSR programs, is broadly written and has been interpreted by EPA to provide states discretion to tailor their own minor NSR permit programs. As noted earlier, the commission's standard permit program is part of the approved Texas SIP, and EPA has determined it meets Part 51. With regard to § 51.160, the commission provides the following analysis to demonstrate that this proposed new standard permit meets the rule, as well as the SIP-approved standard permit program.

Subsection (a) of § 51.160 requires that SIPs set forth legally enforceable procedures that enable a state to determine whether construction or modification of a source will result in a violation of the applicable portions of the control strategy or interfere with attainment or maintenance of any NAAQS in which the proposed source or modification is located. The TCAA , THSC, Chapter 382, in § 382.0518, and the Texas SIP require that all facilities, as that term is defined in THSC, § 382.003 and 30 TAC §116.10(6), obtain a permit prior to construction or modification. The commission has implemented this requirement through its major and minor NSR permit programs, which are SIP approved (40 CFR § 52.2270). Failure to comply with these requirements subjects the applicant to enforcement under the TCAA and the Texas Water Code, Chapters 5 and 7.

Construction and operation under a registration of a standard permit requires compliance with the applicable rules of the commission (30 TAC § 116.615(10)). In this permit, applicable conditions are specifically included in Section (2). The applicable conditions include protection of public health (30 TAC § 116.610 and § 116.615(1)). In this standard permit, these requirements are included in Sections (1)(C)(ii) and (2)(G) and (H).

Subsection (b) of § 51.160 requires the SIP to include permit procedures to address the requirements in subsection (a) of § 51.160, ensuring that there will be no violations. In addition to the commission's enforcement authority, compliance with § 51.160(b) is met by 30 TAC §§ 116.610, 116.611, and 116.615 and Sections (1)(C)(ii), (2)(G) and (H), (4), and (5)(A) of this standard permit.

Subsection (c) of § 51.160 requires that the procedures include submission of specific information to make the determination in subsection (a), and subsection (d) requires that the procedures provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. These are met by 30 TAC §§ 116.610, 116.611, and 116.615, and in Section (4) of this standard permit.

Subsection (e) of § 51.160 requires that the procedures identify what types and sizes of facilities are subject to review, and the basis for determining which facilities are subject to review. This standard permit meets this requirement in Sections (1) and (3).

Finally, subsection (f) of § 51.160 requires that the procedures discuss the air quality data and the dispersion or other air quality modeling used to meet the requirements of this subpart. Modeling may be required to demonstrate that any collateral increases in actual or allowable emission rates are protective of the NAAQS, public health and welfare, and physical property. This requirement is met by 30 TAC § 116.615 and Section (2)(G) of this standard permit.

In addition, given that Texas has a long history of implementing a comprehensive air permitting program, most of which is in the approved Texas SIP and includes the Standard Permit Program, the commission is not persuaded that the EPA guidance memos and rulemaking for other states cited in the FR notice provide adequate authority for proposing disapproval of § 116.617. In particular, the FR notices cited on page 48476 do not concern PCP SPs, and do not involve disapprovals based on any failure to meet applicable legal requirements for minor NSR SIPs.

The Texas Minor NSR SIP

In its approval of the Texas Standard Permit Program, EPA characterized the program as one that provides for a streamlined mechanism for approving the construction of certain sources within categories that contain numerous similar sources, and states that a standard permit is available to sources that belong in categories for which TCEQ has adopted a standard permit under 30 TAC Chapter 116, Subchapter F (68 *FR* 64543, at 64546 (November 14, 2003)). The TCEQ rules which EPA approved in that rulemaking do not describe the program as applicable to "narrowly defined source" categories. The TCAA provides the commission with authority to issue standard permits for new or existing

similar facilities, provided certain findings are made. THSC §§ 382.05195 and 382.057. For the PCP SP, the similarities are in the application and use of the permit to control emissions of air contaminants. Numerous similar sources within categories will apply to use the PCP SP to control emissions in similar ways. The approved program allows for a standard permit, like this one, that has broad applicability because the necessary safeguards for protection of public health and compliance with other applicable legal requirements, as discussed elsewhere in this proposal, are included in the PCP SP.

EPA's specific comments regarding its analysis as to why § 116.617 does not meet the requirements of a minor NSR SIP are also not supported by statute or rule. EPA's first comment is that § 116.617 does not delineate the type of pollution control equipment that can be authorized. Rather, it remains a generic permit that applies to numerous types of pollution control projects, which can be used at any source that wants to use it. EPA stated that an individual standard permit must be limited to a single source category which consists of numerous similar sources that can meet standardized permit conditions.

The PCP SP, which was first adopted by the commission in 1995, was and is based on both the requirements to properly control the quality of the air, and policy that promotes an efficient and compliant means for achieving that requirement. The commission's PCP SP was adopted for ease of meeting requirements to install certain pollution control equipment both as required under law and to voluntarily achieve emission reductions. The commission has found that a streamlined, yet protective, mechanism for installing pollution control equipment meets both the legal and public policy goals for clean air. The commission finds no basis to adopt separate permits for individual types of facilities (or, as EPA describes it, for single source categories), with the exact same conditions. The proposed PCP SP clearly distinguishes the requirements for replacement of controls from those for new controls.

EPA commented in the proposed disapproval notice, that if case-by-case review and source specific technical determinations are necessary, then the state must use its minor NSR SIP case-by-case process under § 116.10(a)(1), instead of § 116.617. The commission disagrees. Although this new PCP SP requires the owner or operator to provide documentation that demonstrates that all PCP SP requirements will be met, which is checked by the executive director, there is no case-by-case review. Rather, the executive director's staff ensures that compliance can be achieved with the PCP SP as well as any other applicable authorizations, and the executive director provides written acceptance of the project. If case-by-case review or facility specific technical determinations are necessary, the executive director's staff can notify the owner or operator that the PCP SP would not be available and that a NSR permit under 30 TAC Chapter 116, Subchapter B would be required.

EPA also commented in the proposed disapproval notice that the PCP SP does not contain replicable conditions that state how the executive director's discretion is to be implemented

for the individual determinations, particularly with regard to those necessary in individual cases in lieu of generic enforceable requirements. EPA stated that specific replicable criteria must be set forth in the PCP SP establishing equivalent emissions rates and ambient impact. The owner or operator must provide adequate information that is checked by the executive director's staff to ensure compliance with all federal and state rules and regulations, rather than making individual determinations. As discussed below, the commission addresses this comment in Section (4) of this proposed standard permit, explaining that the conditions of new this PCP SP are enforceable and replicable permit procedures and conditions.

Finally, EPA commented in the proposed disapproval notice that the PCP SP is not the appropriate vehicle for any case-by-case establishment of recordkeeping and monitoring requirements. This new PCP SP requires owners or operators to maintain copies on site of the testing, monitoring, or other emission records to demonstrate that the pollution control project is operated consistent with the requirements of the PCP SP. The PCP SP allows for replacement of control equipment, and therefore the recordkeeping requirements of any other applicable authorizations would apply. For new equipment, the requirements in sections (1) and (5)(B) apply.

In summary, EPA has not expressly restricted the use or applicability of general permits to achieve emission reductions from new or existing facilities for activities that are for the purpose of reducing or maintaining emissions by rulemaking adopted under Title I of the FCAA. The scope of the SP is limited to emission reduction activities at existing facilities to control emissions in similar ways to reduce or maintain emissions. Thus, this new PCP SP meets EPA's purported standard that a permit be limited to similar sources.

IX. STATUTORY AUTHORITY

This standard permit is issued under THSC, § 382.002, Policy and Purpose, which authorizes the commission to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property; THSC, § 382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, § 382.012, State Air Control Plan, which requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, § 381.016, Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants, and to require owners or operators of the source to make and maintain records on the measuring and monitoring of emissions; THSC, § 382.023, Orders, which authorizes the commission to issue orders necessary to carry out the policy and purposes of the TCAA; THSC, § 382.051, Permitting Authority of Commission; Rules, which authorizes the commission to issue permits, including standard permits for similar

facilities; THSC, § 382.0511, Permit Consolidation and Amendment, which authorizes the commission to consolidate into a single permit any permits, special permits, standard permits, PBR, or exemptions for a facility or federal source; THSC, § 382.0512, Modification of Existing Facility, which prescribes that the commission can consider when determining whether a facility has been modified; THSC, § 382.0513, Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with Subchapter C of the Texas Clean Air Act; THSC, § 382.05195, Standard Permit, which authorizes the commission to issue standard permits according to the procedures set out in that section; and THSC § 382.057, which authorizes the commission to issue a standard permit for the installation of emission control equipment if certain conditions are established for the permit.

Air Quality Standard Permit for Pollution Control Projects
Effective Date: February 9, 2011

This air quality standard permit authorizes pollution control projects that meet all of the conditions listed in sections (1) – (6) of this standard permit.

(1) Scope and applicability.

(A) This standard permit applies to pollution control projects undertaken voluntarily or as required by any federal or state air quality requirement, which reduce or maintain currently authorized emission rates for existing facilities authorized by a permit, standard permit, or permits by rule (PBR). Pollution control projects do not qualify for authorization under this standard permit if the project constitutes a

(i) new major stationary source or major modification of an existing major source as defined in 30 Texas Administrative Code (30 TAC) § 116.12, Nonattainment and Prevention of Significant Deterioration Review Definitions; or

(ii) reconstruction of a major source under 30 TAC § 116.400(a)(2), Applicability.

(B) The project may include:

(i) the installation or replacement of emission control equipment;

(ii) the implementation or change to the control technique; or

(iii) the direct substitution of compounds used in manufacturing or related processes that are a direct substitution for compounds used in a process in the original authorization. The direct substitution of compounds must not result in process reconfiguration, new emission point sources, changes to the process conditions, or increased health impacts.

(C) This standard permit shall not be used to authorize the installation or replacement of emission control equipment, the implementation or change to a control technique, or the direct substitution of compounds used in manufacturing or related processes:

(i) that constitutes the complete replacement of an existing production facility or reconstruction of a production facility as defined in 40 Code of Federal Regulations §60.15(b)(1) and (c);

(ii) that causes an exceedance of a National Ambient Air Quality Standards (NAAQS), or is expected to adversely affect human health and the environment due to an increase or change in the nature of any air contaminant until those concerns are addressed by the owner or operator to the satisfaction of the executive director;

(iii) that returns a facility or group of facilities to compliance with an existing authorization or permit unless authorized by the executive director; or

(iv) that makes changes to scrubbers used to control odor or that allows substitution of compounds used in scrubbers.

(D) Only new or modified pollution control projects shall meet the conditions of this standard permit.

(i) All standard permit registrations under previous versions of the State Pollution Control Project Standard Permit shall remain authorized under the original authorization's version until the ten-year anniversary and renewal of the current authorization, or when the registration is voided.

(ii) All standard permit registrations that were authorized under previous versions of the State Pollution Control Project Standard Permit shall include the increases and decreases in emissions resulting from those projects in any future netting calculation.

(iii) All conditions of this standard permit shall be met upon the ten-year anniversary and renewal of the original registration, or when the registration is authorized by the facilities' permit and the registration is voided.

(2) General requirements.

(A) Any claim under this standard permit shall comply with:

(i) 30 TAC § 116.604(1) and (2) (Duration and Renewal of Registrations to Use Standard Permits);

(ii) 30 TAC § 116.605(d)(1) and (2) (Standard Permit Amendment and Revocation);

(iii) 30 TAC § 116.610 (Applicability);

(iv) 30 TAC § 116.611 (Registration to Use a Standard Permit);

(v) 30 TAC § 116.614 (Standard Permit Fees) except as provided otherwise in this standard permit; and

(vi) 30 TAC § 116.615 (General Conditions).

(B) Construction or implementation of the pollution control project shall begin within 18 months of receiving written acceptance of the registration from the executive director, with one 18-month extension available, and shall comply with 30 TAC § 116.115(b)(2) and 30 TAC § 116.120 (General and Special Conditions and Voiding of Permits). Any changes to allowable emission rates authorized by this section become effective when the project is complete and operation or implementation begins.

(C) The emissions limitations of 30 TAC § 116.610(a)(1) do not apply to this standard permit.

(D) Planned maintenance, startup, and shutdown emissions directly associated with the pollution control projects shall be included in the representations of the registration.

(E) Initial performance testing, monitoring, recordkeeping, and reporting shall be proposed that demonstrates initial and continuous compliance with the representations made in the registration.

(F) Any increases in actual or allowable emission rates or any increase in production capacity authorized by this section, including increases associated with recovering lost production capacity, shall occur solely as a result of the project as represented in the registration. Any increases of production associated with a pollution control project shall not be utilized until an additional authorization is obtained. This paragraph is not intended to limit the owner or operator's ability to

recover lost capacity caused by a derate that may be recovered and used without any additional authorization.

(G) Any collateral increases in actual or allowable emission rates shall be demonstrated to be protective of the NAAQS, public health and welfare, and physical property. The owner or operator shall demonstrate protectiveness in accordance with THSC, § 382.0518(b)(2) and 30 TAC § 116.610. Projects that result in decreases of emission rates of all air pollutants are deemed to be adequately protective.

(H) Any direct compound substitution shall be demonstrated not to cause additional health impacts. The commission's Effects Screening Level (ESL) for any substituted compound, including resulting emissions of new products and byproducts, which result from the direct compound substitution shall not be less than the ESL value for the currently authorized compound and the emission rate for the substituted compound, including resulting emissions of new products and byproducts, which result from the direct compound substitution shall not be greater than the emission rate for the currently authorized compound.

(I) The facility is required to operate in accordance with all requirements and conditions of the original authorization, except for those conditions identified as being affected in the pollution control standard permit approval, including all representations made in the standard permit registration.

(3) Replacement projects.

(A) The replacement of emissions control equipment or control technique under this standard permit is not limited to the method of control currently in place, provided that the control or control technique is at least as effective as the currently authorized control equipment or control technique and all other requirements of this standard permit are met. The replacement control equipment or control technique shall have the demonstrated ability to meet or exceed the performance level of the equipment or control technique that is being replaced.

(B) The maintenance, startup, and shutdown emissions may be increased above currently authorized emission limits if the increase is necessary to implement the replacement project and maintenance, startup, and

shutdown emissions were authorized by permit, PBR, or standard permit for the existing control equipment or technique and the emissions increases meet the NAAQS and are ~~be~~ protective of public health, as required by this standard permit.

(C) Equipment installed under this section is subject to the following:

(i) testing, monitoring, recordkeeping, and reporting requirements of the original control authorization shall transmit to all in-kind replacement of emissions control equipment; or

(ii) testing, monitoring, recordkeeping, and reporting shall be proposed by the owner or operator for all replacement of emissions control equipment that is different than those in the original authorization sufficient to demonstrate compliance with this permit. Proposed testing, monitoring, recordkeeping, and reporting for replacement emissions control equipment must meet industry or technology-specific standards.

(4) Registration requirements.

(A) A registration shall be submitted in accordance with the following.

(i) Notification is required for the following changes no later than 30 days after construction or implementation begins.

(a) In-kind replacement of emissions control equipment that results in no increase in emissions of any air contaminant. The registration fee shall be accompanied by a $900 fee. No response will be sent from the executive director.

(b) Changes in representations to a previously authorized State Pollution Control Project Standard Permit for which there are no increases in authorized emissions of any air contaminant. No fee applies and no response will be sent from the executive director.

(ii) Notification is required for the following changes no later than 45 days prior to construction or implementation begins. Construction or implementation may begin only after written acceptance of the pollution control project has been issued by

the executive director.

(a) Implementation or change to control technique with a demonstrated and established performance level. The registration shall be accompanied by a $900 fee.

(b) Replacement of existing emissions control equipment with a different type of control equipment or in-kind replacement of emissions control equipment that results in an increase in emissions of any contaminant. The registration shall be accompanied by a $900 fee.

(c) Compound substitution. The registration shall be accompanied by a $900 fee.

(d) Changes in representations to a previously authorized State Pollution Control Project Standard Permit that increase authorized emissions of an authorized air contaminant or cause the emission of an air contaminant not previously authorized. The registration shall be accompanied by a $450 fee unless received within 180 days of the original registration approval.

(B) The registration shall include the following:

(i) a description of process units affected by the project;

(ii) a description of the project;

(iii) identification of existing permits or registrations affected by the project, including any conditions that will be changed or removed as a result of this authorization;

(iv) quantification and basis of increases and/or decreases associated with the project, including identification of affected existing or proposed emission points, all air contaminants, and hourly and annual emissions rates;

(v) a description of proposed initial testing, monitoring, recordkeeping, and reporting that will demonstrate that the project operates as represented;

(vi) a description of how the standard permit will be administratively incorporated into the existing permit(s); and

(vii) a demonstration that the proposed changes will not cause or contribute to an exceedance of the NAAQS or the commission's ESL and that the resulting emissions are protective of human health and the environment.

(5) Operational requirements. Upon installation of the pollution control project, the owner or operator shall comply with the requirements of subsections (A) and (B) of this section.

(A) General duty. The owner or operator shall operate the pollution control project in a manner consistent with good industry and engineering practices and in such a way as to minimize emissions of collateral pollutants, within the physical configuration and operational standards usually associated with the emissions control device, strategy, or control technique.

(B) Recordkeeping. The owner or operator shall maintain copies on site of testing, monitoring, or other emission records sufficient to demonstrate that the pollution control project complies with all of the requirements of this standard permit and final application representations relied upon to register for this standard permit.

(6) Incorporation of the standard permit into the facility authorization.

(A) Any new facilities or changes in method of control or control technique authorized by this standard permit at a previously permitted or standard permitted facility shall be administratively incorporated into the permit for that facility when the permit is amended or renewed.

(B) All increases in previously authorized emissions, new facilities, or changes in method of control or control technique authorized by this standard permit for facilities previously authorized by a PBR shall comply with 30 TAC § 106.4 (Requirements for Permitting by Rule), except 30 TAC § 106.4(a)(1) and 30 TAC § 106.8 (relating to Recordkeeping).