The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §116.615.

If approved, the amendment to §116.615 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The TCEQ is seeking to amend Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to ensure that owners or operators of concrete batch plants authorized under TCEQ's Air Quality Standard Permit for Concrete Batch Plants (CBPSP) comply with certain public notice and hearing requirements if they propose to move the registered concrete batch plant to a new location on the site. The proposed rulemaking is intended to address the possibility of situations where an applicant initially represents that a concrete batch plant will be located greater than 440 yards from a potentially affected person, but subsequently moves the plant to within 440 yards of a potentially affected person after the registration is issued.

Hearing requests on a CBPSP are subject to the requirements in Texas Health and Safety Code (THSC) §382.058(c), which states that "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing…as a person who may be affected." Executive Director staff have historically measured the 440 yards from the outline or footprint of the proposed plant (i.e., the

individual facilities that constitute the plant, such as the batch plant, stockpiles, etc.).

The proposed location of the plant is a representation, made by an applicant, in their application to register under the CBPSP. Recently, hearing requestors have argued that the 440-yard limitation should be measured from the setbacks contained in the CBPSP because an applicant could update its representations after the permit is issued without notice to the public. Thus, in certain cases, an applicant could propose to locate the plant greater than 440 yards from a hearing requestor and subsequently move a plant within 440 yards of that hearing requestor after the registration is issued and the hearing request has been denied by the commission.

Section by Section Discussion

The commission proposes amendments to §116.615. The commission proposes to amend this section by revising language to clarify the requirements applicable to the holder of a registration under the CBPSP when the permit holder proposes to move a concrete batch plant on-site.

§116.615(2), General Conditions

The commission proposes to amend §116.615(2) by adding language under a new paragraph (2)(B) to require that, to authorize the movement of any concrete batch plant authorized by the CBPSP to a different location on the site, the owner or operator shall submit a new or amended registration and fee and comply with the public notice

requirements, including the opportunity to request a contested case hearing, unless the new location is greater than 440 yards from any property line. The existing language and remaining paragraphs under §116.615(2) would be re-lettered or re-numbered as needed for administrative consistency.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency.

Within the proposed §116.615(2), the authorized movement of any concrete batch plant to a different location on the site would require the owner or operator to submit a new or amended registration and fee. The current fee for an amendment to a Standard Permit is $900, and the agency estimates the change in revenue could range from an increase of $4,500 to $13,500 per year. This revenue from this fee is deposited into the General Revenue Account 0151–Clean Air.

The proposed rulemaking is anticipated to result in fiscal implications for units of local government if they own or operate a concrete batch plant and plan to move the facility within 440 yards of a property line. The local governmental entity would be required to submit a new or amended registration and fee of $900 and comply with public notice and hearing requirements in the standard permit. Affected applicants

would be required to publish a public notice in a local newspaper. This cost varies greatly depending on the location of the facility and the rates of the applicable newspaper. The agency estimates that publication costs range from $600 to $9,800, depending on the newspaper.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be increased public notice and public participation in the permitting process in situations where an existing, permitted concrete batch plant plans to move within 440 yards of a property line.

The proposed rulemaking is anticipated to result in fiscal implications for businesses or individuals if they own or operate a concrete batch plant and plan to move the facility within 440 yards of a property line. The owner or operator would be required to submit a new or amended registration and fee of $900 and comply with public notice and hearing requirements in the standard permit. Affected applicants would be required to publish a public notice in a local newspaper. This cost varies greatly depending on the location of the facility and the rates of the applicable newspaper. The agency estimates that publication costs range from $600 to $9,800, depending on the newspaper.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years

the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions nor eliminate current employee positions. The proposed rulemaking does not change the fee amount for a Standard Permit amendment but may result in an increase in the overall fees collected by the agency. The proposed rulemaking alters an existing rule to ensure that existing, permitted concrete batch plants are not moved to within 440 yards of a property line without public notice and participation in the permitting process. It does not significantly increase the people subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the

requirements to prepare a Regulatory Impact Analysis.

A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to Chapter 116 is procedural in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather the amendment would address situations where the owner or operator of an existing concrete batch plant seeks to move the plant to within 440 yards of any property line.

The primary purpose of the rulemaking is to revise Chapter 116 to ensure that owners or operators of concrete batch plants authorized under TCEQ's CBPSP comply with certain public notice requirements if they propose to move the location of the concrete batch plant to within 440 yards of any property line. The existing language and remaining paragraphs will be re-lettered or re-numbered as needed for administrative consistency.

Because these proposed rules would amend the administrative procedures applicable

to proposed relocations of concrete batch plants authorized under the CBPSP, the amendment does not add significant permitting requirements. Therefore, the proposed amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not proposed solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB or bill) 633 during the 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct an RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in

its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rule may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the Federal Clean Air Act (FCAA) and, in fact, creates no additional impacts since the proposed rule does not exceed the requirement to attain and maintain the National Ambient Air Quality Standards (NAAQS). For these reasons, the proposed rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The primary purpose of the proposed amendment is to provide public notice, including the opportunity to request a contested case hearing, prior to moving a concrete batch plant to within 440 yards of any property line. The proposed amendment was not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382, and the Texas Water Code (TWC), that are cited in the Statutory Authority sections of this preamble. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the

Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to ensure that owners or operators of concrete batch plants authorized under TCEQ's CBPSP comply with certain public notice requirements if they propose to move the location of the concrete batch plant to within 440 yards of any property line. The proposed rulemaking action will not affect private real property in a manner that would require

compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking is to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The proposed amendment would update TCEQ rules to address situations where an applicant initially represents that a concrete batch plant will be located greater than 440 yards from any property line, but subsequently moves the facility to within 440 yards of any property line after the registration is issued. The

CMP policy applicable to this rulemaking is that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

The proposed amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program. Facilities that operate under a registered standard permit and have a Site Operating Permit (SOP) should evaluate the revised applicable requirements of §116.615 to determine if an update to their SOP is necessary.

Announcement of Hearing

The commission will hold a hybrid in-person and virtual public hearing on this proposal in Austin on Thursday, April 6, 2023, at 10:00 A.M. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Monday, April 3, 2023. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Wednesday, April 5, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_N2I1ODU0ZDAtNzJmNC00NzQ0LWFjMmEtMmNiNTQwMGQyMWU

x%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). The hearing will be conducted in English. Language interpretation services may be requested. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted through the TCEQ Public Comments system at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted electronically. **All comments should reference Rule Project Number 2022-034-116-AI**. The comment period opens on March 10, 2023, and closes on April 10, 2023. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact David Munzenmaier, Air Permits Division, (512) 239-6092.

SUBCHAPTER F: STANDARD PERMITS

§116.615

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. The rule is also proposed under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules as necessary to comply with changes in

federal law or regulations applicable to permits issued under the TCAA; THSC, §382.0513, concerning Permit Conditions, which authorizes the commission to establish and enforce permit conditions; THSC, §382.0515, concerning Application for Permit, which specifies permit application requirements; THSC, §382.0518, concerning Preconstruction Permits, which authorizes the commission to grant a permit before work is begun on the construction of a new facility or a modification of an existing facility; THSC §382.05195, concerning Standard Permits, which authorizes the commission to develop and issue standard permits for similar facilities; and THSC, §382.056, concerning Notice of Intent to Obtain Permit or Permit Review; Hearing, which authorizes the commission to provide notice of permit applications.

In addition, the rule is proposed under Federal Clean Air Act, 42 United States Code, §§7401, *et seq.*, which requires states to submit State Implementation Plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

§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, including dockside vessel emissions, must comply with all applicable rules and

regulations of the commission adopted under Texas Health and Safety Code, Chapter 382, and with the 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, pollution control methods, 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). Any changes in representations are subject to the following requirements:

(A) For the addition of a new facility, the owner or operator shall submit a new registration incorporating existing facilities with a fee, in accordance with §116.611 and §116.614 of this title, (relating to Registration to use a Standard Permit and Standard Permit Fees) prior to commencing construction. If the applicable standard permit requires public notice, construction of the new facility or facilities may not commence until the new registration has been issued by the executive director.

(B) For any request to move a concrete batch plant authorized by the Air Quality Standard Permit for Concrete Batch Plants to a new location on the site, the owner or operator shall submit a new or amended registration and fee and comply with the public notice and hearing requirements in the standard permit, unless the new location is more than 440 yards from any property line.

(C) [B] For any 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, the owner or operator shall submit written notification to the executive director describing the change(s), along with the designated fee, no later than 30 days after the change.

(D) [C] For any other change to the representations, the owner or operator shall submit written notification to the executive director describing the change(s) no later than 30 days after the change.

(E) [D] Any facility registered under a standard permit which contains conditions or procedures for addressing changes to the registered facility which differ from subparagraphs (A) - (D) [~~(C)~~] of this paragraph shall comply with the applicable requirements of the standard permit in place of subparagraphs (A) - (D) [~~(C)~~] of this paragraph.

(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under §116.110 of this title shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.

(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.

(A) The appropriate air program regional office of the commission and any other air pollution control agency having jurisdiction shall be notified prior to the commencement of operations of the facilities authorized by a standard permit in such a manner that a representative of the executive director may be present.

(B) 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.

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

(D) 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 commission's appropriate regional office and any other air pollution control agency 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, the United States Environmental Protection Agency, 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. 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 emissions events and scheduled maintenance shall be made in accordance with §101.201 and §101.211 of this title (relating to Emissions

Event Reporting and Recordkeeping Requirements; and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(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 shall govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any air pollution control agency 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.

(11) Distance limitations, setbacks, and buffer zones. Notwithstanding any requirement in any standard permit, if a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(A) the date new construction, expansion, or modification of a facility begins; or

(B) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.