

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Rulemaking Adoption

**AGENDA REQUESTED:** September 10, 2014

**DATE OF REQUEST:** August 22, 2014

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Derek Baxter, (512) 239-2613

**CAPTION: Docket No. 2013-1392-RUL.** Consideration of the adoption of amended Sections 115.10, 115.221, 115.222, 115.224 – 115.227, and 115.229 of 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds and corresponding revisions to the state implementation plan.

The adoption would revise Chapter 115, Subchapter A and Subchapter C, Division 2, concerning the requirements for Stage I vapor recovery testing to preserve existing Stage I testing requirements in ozone nonattainment counties and to specify Stage I testing requirements for gasoline dispensing facilities located in the 12 ozone nonattainment and four ozone maintenance counties that will be affected by the decommissioning of the Stage II vapor recovery equipment rule revision and in the 95 counties that are subject to the state Stage I rule but not Stage II requirements. The adopted Stage I rule revision would establish testing requirements that are more consistent with federal Stage I testing in 40 Code of Federal Regulations Part 63, Subpart CCCC. The adopted rules were published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2760). (Sarah Thomas, Terry Salem & Becky Petty) (Rule Project No. 2013-022-115-AI)

Jayne Sadlier for Steve Hagle  

---

**Deputy Director**

Joyce Nelson for David Brymer  

---

**Division Director**

Derek Baxter  

---

**Agenda Coordinator**

**Copy to CCC Secretary? NO YES X**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** August 22, 2014

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Steve Hagle, P.E., Deputy Director  
Office of Air

**Docket No.:** 2013-1392-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 115, Control of Air Pollution from Volatile Organic Compounds  
Stage I Testing Requirements Rule Revision  
Rule Project No. 2013-022-115-AI

**Background and reason(s) for the rulemaking:**

Stage I vapor recovery for filling of gasoline storage tanks at gasoline dispensing facilities (GDF) is a reasonably available control technology (RACT) requirement for ozone nonattainment areas, required under §182 of the Federal Clean Air Act (FCAA) and the Control Techniques Guideline documents for RACT issued by the United States Environmental Protection Agency (EPA). The commission's Stage I rules are included in 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) from Motor Vehicle Fuel Dispensing Facilities. In addition to fulfilling FCAA RACT requirements for ozone nonattainment areas, the commission adopted rule revisions to the Chapter 115 Stage I rules in 1999 implementing the Stage I vapor recovery option of the Texas Clean Air Strategy (TCAS) for certain ozone attainment counties. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards and to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

In 2012, the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register* (77 FR 28772)) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle on-board refueling vapor recovery technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying state implementation plan (SIP) revision authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I petroleum storage tank's (PST) vapor recovery system. With the decommissioning of Stage II vapor

Re: Docket No. 2013-1392-RUL

recovery controls, the rules requiring testing the Stage I system on these PSTs would no longer apply. To preserve existing Stage I testing requirements in ozone nonattainment and ozone maintenance counties, the commission proposed revisions to the Stage I testing requirements.

Currently, the Stage I testing requirement will no longer be applicable when Stage II decommissioning occurs at the GDF. The owners or operators of GDFs in the 95 counties, including the ozone nonattainment counties of Ellis, Johnson, Kaufman, Parker, and Rockwall that do not have Stage II but are subject to the state Stage I rule requirements are required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. The remaining 143 counties must comply with the federal Stage I testing requirements and are required to perform the California Air Resource Board (CARB) Vapor Recovery Test Procedures TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP 201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure/vacuum (P/V) valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

The Stage I vapor recovery rule ozone nonattainment area requirements apply to GDFs in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). The Beaumont-Port Arthur area (Hardin, Jefferson, and Orange Counties), and El Paso County, which are under ozone nonattainment maintenance plans as part of the 1997 ozone standard are also subject to the Stage I vapor recovery requirements. Chapter 115 Stage II vapor recovery requirements also apply in 16 (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller) of these 21 counties; Stage II is not required in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties of the DFW area. These rules regulate the filling of gasoline storage tanks at GDFs by tank trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks that would otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank truck, and the vapors are processed by a vapor control system when the tank truck is subsequently refilled at a gasoline terminal or gasoline bulk plant.

Compliance with Stage I vapor recovery rules is currently dependent on the geographical location of the GDF within the state and the volume of fuel dispensed. GDFs within the 95 counties that are located in the eastern part of the state must comply with state requirements found in Chapter 115, Subchapter C, Division 2. GDFs located within any county not covered by the state Stage I requirements are covered under the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Stage I requirements in 40 CFR Part 63, Subpart CCCCC. For both the state and federal Stage I

Re: Docket No. 2013-1392-RUL

regulations, the gallons of gasoline dispensed per month and the county where the GDF is located determines if the owner or operator of a GDF is required to install Stage I equipment. Owners of GDFs with multiple locations throughout an area in the state with similar monthly gasoline throughput amounts could be subject to different equipment and testing requirements depending on their geographical location.

The effectiveness of Stage I vapor recovery rules relies on the captured vapors being: effectively contained within the gasoline tank truck during transit; and controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the GDF will simply be emitted during transit or when the transport vessel is refilled, resulting in no reduction in volatile organic compound (VOC) emissions despite the Stage I requirements.

**Scope of the rulemaking:**

In researching the Stage I testing requirements that facilities in ozone nonattainment areas will have to comply with once Stage II vapor recovery equipment has been decommissioned, the commission determined that additional revisions related to testing requirements were necessary to improve clarity and consistency in compliance and program administration for the affected industry and the agency. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will also eliminate confusion concerning testing requirements within the industry by improving consistency between the state and federal Stage I rules.

The adopted rule revision will revise Chapter 115 to specify Stage I testing requirements for GDFs located in the 16 counties that will be affected by the Stage II rule revision (decommissioning Rule Project Number 2013-001-115-AI), preserve existing Stage I testing requirements in currently affected counties, and establish testing requirements in Chapter 115 that are more consistent with the testing required in the federal Stage I rule in 40 CFR Part 63, Subpart CCCCC.

The adopted rule revision will address issues of Stage I testing requirements not being uniform within the state program areas or between the state and federal programs. Currently, owners or operators of GDFs in the 16 counties that have implemented Stage II are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter.

The adopted rule revision will apply only to the GDFs located in the 16 counties subject to Stage II requirements and in the 95 counties that are only subject to the Stage I rule.

Wise County in the DFW area has been designated as nonattainment for the 2008 eight-hour ozone standard. The executive director has approved initiation of a rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements, including

Re: Docket No. 2013-1392-RUL

Stage I requirements, for Wise County that are necessary as a result of the designation. These rules are tentatively scheduled for proposal in December 2014.

**A.) Summary of what the rulemaking will do:**

The adopted rule revision will revise Chapter 115, Subchapter C, Division 2. The adopted rulemaking will amend §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229.

The adopted rulemaking will:

- add definitions for “dual-point vapor balance system,” “coaxial system,” and “gasoline dispensing facility”;
- remove language regarding Stage II vapor recovery systems, which are required to be decommissioned;
- require owners and operators of affected GDFs to comply with new testing and inspection procedures for their Stage I vapor recovery system that are consistent with the federal Stage I rule;
- require owners and operators of affected GDFs to maintain compliance with the Stage I vapor recovery requirements through annual testing;
- reduce the throughput level for exemption from Stage I in the 95 affected counties from 125,000 gallons per month to 100,000 gallons per month in covered attainment counties to ensure consistency with the NESHAP requirements and provide owners and operators of GDFs with clarity on compliance with equipment and testing requirements; and
- include minor changes to language such as changing “leak” to “liquid leak, visible vapors, and significant odors” to provide more clarity within the rule language.

**B.) Scope required by federal regulations or state statutes:**

None.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

The adopted rulemaking is recommended by staff to ensure Stage I compliance continues at GDFs subject to current Stage II requirements, to provide consistency and clarity, and to help provide administrative consistency throughout the affected industry in areas subject to both the state and federal Stage I rules.

**Statutory authority:**

The revisions are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy

Re: Docket No. 2013-1392-RUL

and purposes of the Texas Clean Air Act. The revisions are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The revisions are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The revisions are also adopted under FCAA, 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The adopted revisions implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401, *et seq.*

**Effect on the:**

**A.) Regulated community:**

The adopted rule revision will have an effect on the current owners of the GDFs and licensed contractors who install, test, and monitor the Stage I equipment. Owners and operators of affected GDFs may experience an increased cost due to testing being required on an annual basis. Testing costs for the Stage I system range from \$250 to \$275 for annual inspections. Contractors who test the Stage I equipment in the affected areas may be impacted by the tests being required on an annual basis.

**B.) Public:**

No direct impact is anticipated.

**C.) Agency programs:**

The TCEQ's Office of Compliance and Enforcement's (OCE) Field Operations Division has investigators that currently monitor and inspect equipment and installations at affected GDFs. The OCE may see its workload change as owners or operators of GDFs make the necessary changes to meet the annual Stage I testing and inspection requirements at facilities that currently are only required to test once every three years.

**Stakeholder meetings:**

Informal stakeholder meetings on potential revisions to the Stage I testing requirements were held on April 24, 2013 in Arlington, April 25, 2013 in Longview, April 29, 2013 in

Re: Docket No. 2013-1392-RUL

Corpus Christi, April 30, 2013 in Houston, May 1, 2013 in Austin, and May 2, 2013 in El Paso. Commenters present agreed that Stage I testing requirements needed to be uniform across the state and that federally required testing procedures and methods were generally accepted by the industry. Commenters also agreed that testing of Stage I equipment should be performed more frequently to better detect potential issues with the system and improve compliance with testing requirements.

**Public comment:**

The commission scheduled public hearings in Austin on May 1, 2014, in Fort Worth on April 29, 2014, and in Houston on May 6, 2014. The hearings were not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the EPA and the Texas Food and Fuels Association (TFFA). The EPA and the TFFA expressed overall support for the proposed rule change, and changes to the rule were suggested by the TFFA. Significant public comments are summarized as follows.

- The EPA expressed concern that the rule revision does not account for the designation of Wise County as nonattainment within the DFW ozone nonattainment area under the 2008 eight-hour ozone standard. The EPA also commented that there is a non-substantive variation between the proposed revisions to the first sentence of §115.10(11) submitted to the EPA in letter form and those posted on the TCEQ website. *Wise County in the DFW area has been designated nonattainment for the 2008 eight-hour ozone standard. The executive director has approved initiation of a separate rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements including Stage I requirements for Wise County that are necessary as a result of the nonattainment designation. The commission has determined that including all applicable RACT requirements for Wise County in one rulemaking would provide the best notice to the public of additional requirements in Wise County due to its inclusion in the DFW nonattainment area for the 2008 eight-hour ozone standard. There is no anticipated impact on the revisions in this current rulemaking as a result of the future Rule Project No. 2013-048-115-AI. In addition, this current rulemaking will be adopted before the DFW RACT Rulemaking, which is tentatively scheduled for proposal in December 2014. No change to the rule has been made in response to this comment.*
- The TFFA commented that it questions the benefits of the change to the federally required test method in §115.225 for testing consistency and ease of compliance issues as outlined in the preamble. *This revision will minimize confusion within the industry regarding the type of test required in different geographical areas of East Texas and the frequency of the tests. The revision would also provide consistency in compliance and enforcement activities by the commission by more clearly defining the testing schedule and testing procedures. The improvement of consistency in compliance requirements is a benefit for the state and affected stakeholders and strengthens the benefits of this clean air strategy included in the*

Re: Docket No. 2013-1392-RUL

*SIP. Without further information regarding the TFFA's specific concerns, the commission cannot address them. No changes to the rule have been made in response to this comment.*

- The TFFA also commented that it does not support the proposed revisions to §115.226 that require records to be kept on site, nor does it support the current requirement to do so found in §115.226(2). The TFFA urges the commission to remove the entire provision of §115.226(1) and requests that the commission not adopt the revision to §115.226(2)(B) requiring records to be immediately available on site. The TFFA commented that the commission has placed an unjustified and expensive recordkeeping provision on the GDF because the same records are being kept by the owner or operator of the tank truck. *The commission acknowledges that the proposed language may be confusing as to the records that shall be kept on site at the affected GDF. The commission did not intend to propose that any additional records be kept on site other than those records already required in current §115.226. Paragraph (1) specifies records that must be maintained at the facility site. Records required under paragraph (2) must be made available at the site during an inspection already applies to all the records required under §115.226(2) via subparagraph (C). The commission's intent with the change was to streamline rule language but retain this requirement because subparagraph (C) was proposed for deletion. The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site but instead clarifying that records must be provided on site during an inspection.*

**Significant changes from proposal:**

The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site but instead clarifying that records must be provided on site during an inspection. The commission has made this change in response to the TFFA's concern regarding recordkeeping requirements found in §115.226.

**Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interests are anticipated.

**Does this rulemaking affect any current policies or require development of new policies?**

This adopted rulemaking is not anticipated to affect any current policies or require development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

Owners or operators of GDFs subject to Stage II will no longer be required to perform the annual inspection procedures after the Stage II equipment has been decommissioned, which may result in decreased effectiveness of the Stage I equipment. Additionally, owners

Commissioners  
Page 8  
August 22, 2014

Re: Docket No. 2013-1392-RUL

or operators of GDFs in counties subject to the Chapter 115 Stage I rule will continue to have requirements that are inconsistent with the federal Stage I rule.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: April 11, 2014

Anticipated *Texas Register* adoption publication date: September 26, 2014

Anticipated effective date: October 2, 2014

Six-month *Texas Register* filing deadline: October 13, 2014

**Agency contacts:**

Sarah Thomas, Rule Project Manager, (512) 239-4939, Air Quality Division

Terry Salem, Staff Attorney, (512) 239-0469

Becky Petty, Staff Attorney, (512) 239-1088

Derek Baxter, Texas Register Coordinator, (512) 239-2613

**Attachments**

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Tucker Royall  
Pattie Burnett  
Office of General Counsel  
Sarah Thomas  
Derek Baxter

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229.

Sections 115.10, 115.226, and 115.227 are adopted *with changes* to the proposed text.

Sections 115.221, 115.222, 115.224, 115.225, and 115.229 are adopted *without changes* to the proposed text and, therefore, will not be republished. The adopted rules were published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2760).

The adopted amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

### **Background and Summary of the Factual Basis for the Adopted Rules**

Stage I vapor recovery for filling of gasoline storage tanks at gasoline dispensing facilities (GDF) is a reasonably available control technology (RACT) requirement for ozone nonattainment areas required under §182 of the Federal Clean Air Act (FCAA) and the Control Techniques Guideline documents for RACT issued by the EPA. The commission's Stage I rules are included in Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities. In addition to fulfilling FCAA RACT requirements for nonattainment areas, the commission adopted rule revisions to the Chapter 115 Stage I

rules in 1999 implementing the Stage I vapor recovery option of the Texas Clean Air Strategy (TCAS) for certain ozone attainment counties. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the National Ambient Air Quality Standard (NAAQS) for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards. It was also to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

The effectiveness of Stage I vapor recovery rules relies on the captured vapors being effectively contained within the gasoline tank truck during transit and controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the GDF will simply be emitted during transit or when the transport vessel is refilled, resulting in no reduction in volatile organic compound (VOC) emissions despite the Stage I requirements.

The Stage I vapor recovery rules apply to GDFs that have installed Stage II vapor recovery equipment in the Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant

Counties). The Beaumont-Port Arthur Area (Hardin, Jefferson, and Orange Counties), and El Paso County, which is under an ozone nonattainment maintenance plan as part of the 1997 eight-hour ozone standard, are also subject to the Stage I vapor recovery requirements. These rules regulate the filling of gasoline storage tanks at GDFs by tank trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks that will otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank truck, and the vapors are processed by a vapor control system when the tank truck is subsequently refilled at a gasoline terminal or gasoline bulk plant.

Initially, the 1999 amendments to Chapter 115 extended the existing Chapter 115 Stage I vapor recovery and gasoline tank truck leak testing requirements to 95 counties in the eastern half of Texas. These counties included: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus,

Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. Ellis, Johnson, Kaufman, Parker, and Rockwall Counties were subsequently designated nonattainment for the 1997 eight-hour ozone standard on June 15, 2004, and the Stage I rules were revised to include these counties under the ozone nonattainment area requirements through rulemaking adopted on April 13, 2005. Wise County in the Dallas-Fort Worth area has been designated as nonattainment for the 2008 eight-hour ozone standard but has not been included in this rule revision as a county in which Stage I applies. The executive director has approved initiation of a future rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements, including Stage I requirements, for Wise County that are necessary as a result of the designation. These rules are tentatively scheduled for proposal in December 2014.

In 2012, the EPA finalized a rulemaking published in the May 16, 2012, issue of the *Federal Register* (77 FR 28772) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle on-board refueling vapor recovery (ORVR) technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, on October 9, 2013, the commission adopted revisions to the Chapter 115 Stage II rules (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project Number 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs no later than

August 31, 2018, in ozone nonattainment areas classified as serious and above. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I petroleum storage tanks' (PST) vapor recovery system. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs will no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment counties from the Stage II rules, the commission is adopting revisions to the Stage I testing requirements.

Upon the adoption of Stage II decommissioning requirements, a review was done on the Stage I testing requirements that facilities in ozone nonattainment areas will have to comply with once Stage II vapor recovery equipment has been decommissioned. The commission determined that additional revisions related to testing requirements were necessary to improve clarity and consistency in compliance and program administration for the affected industry and the agency. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will eliminate confusion concerning testing requirements within the industry by improving consistency between the state Stage I rules in Chapter 115 and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Stage I rules. The commission incorporated the NESHAP Stage I rules by reference in 30 TAC §113.1380 on July 26, 2013. The federal

Stage I rules require GDFs that have a monthly throughput at or above 100,000 gallons to operate a vapor balance system to capture and return vapors to the tank-truck tank so the vapors can be disposed of properly. GDFs subject to the federal Stage I rule must also meet certain testing and recordkeeping requirements.

The commission also held informal stakeholder meetings on potential revisions to the Stage I testing requirements on April 24, 2013 in Arlington, April 25, 2013 in Longview, April 29, 2013 in Corpus Christi, April 30, 2013 in Houston, May 1, 2013 in Austin, and May 2, 2013 in El Paso. Commenters present at these stakeholder meetings agreed that Stage I testing requirements needed to be uniform across the affected East Texas areas in the state and that federally required testing procedures and methods were generally accepted by the industry. Commenters also agreed that testing of Stage I equipment should be performed more frequently than once every three years to better detect potential issues with the system and improve compliance with testing requirements. Counties in West Texas will continue to comply with federal requirements only and will not be affected by this rulemaking.

The commission adopts these revisions to Chapter 115 to specify Stage I testing requirements for GDFs located in the 16 counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) that will be affected by the Stage II

decommissioning rule revision, preserve existing Stage I testing requirements in the currently affected 95 counties, and establish testing requirements in Chapter 115 that are more consistent with the federal Stage I rule for all 254 counties.

Applicability of, and compliance with Stage I vapor recovery rules is dependent on the geographical location of the GDF within the state. GDFs within counties located in the eastern part of the state must comply with state requirements found in Chapter 115, Subchapter C, Division 2. The federal Stage I rule in 40 CFR Part 63, Subpart CCCCCC applies to all 254 counties; therefore, GDFs located within any county not covered by the Stage I requirements documented in Chapter 115, Subchapter C, Division 2 are covered under the federal Stage I requirements. The gallons of gasoline dispensed per month and the county where the GDF is located determines if the owner or operator of a GDF is required to install Stage I equipment and subject to either the state or federal Stage I regulations. Owners of GDFs with multiple locations throughout the state with similar monthly gasoline throughput amounts could be subject to different equipment and testing requirements depending on their geographical location.

Additionally, owners or operators of GDFs that have implemented Stage II in the 16 affected counties are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II

decommissioning occurs at the GDF, which may result in decreased effectiveness of the Stage I equipment installed at these facilities. The owners or operators of GDFs in the remaining 90 counties in the eastern half of Texas and identified under the term covered attainment counties that fall under the state Stage I rule are only required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. All GDFs in the state subject to 40 CFR Part 63, Subpart CCCCCC must comply with the federal Stage I testing requirements and are required to perform the California Air Resource Board (CARB) Vapor Recovery Test Procedures TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure/vacuum (P/V) valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

Additionally, the adopted revisions will reduce the throughput level for exemption from Stage I implementation from 125,000 gallons per month to 100,000 gallons per month for GDFs in the 90 covered attainment counties, except for those covered attainment counties in the Austin/San Antonio area (Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson) that currently have an applicability threshold of 25,000 gallons per month. This adopted change will establish consistency with the NESHAP requirements and provide owners and operators of GDFs with clarity on

compliance with equipment and testing requirements. The lowering of the throughput level is not anticipated to affect owners and operators of GDFs in the covered attainment counties because these facilities have already been subject to NESHAP requirements, which were incorporated by reference by the commission on July 26, 2013, or as is the case for those counties in the Austin/San Antonio area, are already subject to a state-required lower throughput.

The commission has also found that swivel-type of adapters that allows for the connection of hoses from the tank truck to the stationary tank and prevent over-tightening are readily in use by GDFs. These adapters are CARB certified and approved for use through the NESHAP rules. The commission has incorporated the use of approved adapters including swivel adapters in the Emissions Specifications section of the rule.

### **Section by Section Discussion**

In addition to the adopted revisions regarding testing and other Stage I requirements discussed elsewhere in this preamble, various stylistic, non-substantive changes were included to update the rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These minor revisions include updating the formatting of geographic area terms used in the rules to be

consistent with the formatting of the terms as defined in §115.10 (e.g., Beaumont-Port Arthur in lieu of Beaumont/Port Arthur). These changes are non-substantive and generally are not specifically discussed in this preamble.

Additionally, the commission replaces the term "motor vehicle fuel dispensing facility" in multiple portions of the Stage I rules with a new defined term "gasoline dispensing facility" for clarity and consistency with the terminology found in requirements for the Chapter 115 Stage II rules.

***§115.10, Definitions***

The commission adopts revisions to §115.10 by adding the definitions for "dual-point vapor balance system," "coaxial system," and "gasoline dispensing facility." The term "dual-point vapor balance system" is incorporated from 40 CFR §63.11132 to describe a type of system that should be installed at a facility. A dual-point vapor balance system allows for separate connections for the loading of gasoline and the transfer of gasoline vapors to a tank-truck tank. The term "coaxial system" is added to describe a type of vapor control system consisting of a tube within a tube that requires only one tank opening allowing fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes. This type of system is often found at GDFs. The term "gasoline dispensing facility" is added to replace the term "motor vehicle fuel dispensing facility" used in the Stage I rules for consistency with recent

revisions to the Chapter 115 Stage II rules and defined for clarification. The definition for "pressure relief valve" is updated to also apply to "pressure-vacuum relief valves" to keep the wording within the rule consistent and with the general use of the term to cover relief valves by the industry. The other definitions in this section are re-numbered as needed.

Additionally, the commission had proposed to make a non-substantive revision to the definition of highly-reactive volatile organic compounds (HRVOC) by adding the word "emissions" in subparagraph (B). However, when used in Chapter 115, Subchapter H, the term HRVOC is not used exclusively in the context of emissions. The term HRVOC is also used in certain contexts concerning process fluids in vessels and piping, e.g., HRVOC content levels in process fluids for meeting exemption criteria. Including the word "emissions" in the definition in §115.10 could inadvertently create confusion in such contexts. Therefore, the commission is not adopting this proposed change.

***§115.221, Emission Specifications***

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.221 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

***§115.222, Control Requirements***

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.222 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

The adopted revisions to §115.222 also delete the language allowing facilities with a Stage II vapor recovery system to establish a pressure rate at which a pressure-vacuum relief valve is set that meets CARB requirements or has a third-party certification because the Stage II requirements will no longer be required due to the commission's adoption of the decommissioning of Stage II equipment. The adopted language incorporates the use of "dual-point vapor balance system" as defined in §115.10 and removes the language for non-coaxial Stage I connections. Dual-point vapor balance systems are more effective than single-point coaxial systems in controlling vapors during the loading of gasoline because two separate hoses for loading the fuel and recovering fuel vapors are connected to the delivery truck and storage tank which allow less back pressure and higher flow rates. Dual-point vapor balance systems are the only non-coaxial Stage I connection used in Texas and have been required at all applicable facilities since January 10, 2011.

Additionally, the information in paragraph (6) is incorporated into paragraph (5). After

removal of the provision regarding Stage II, the requirements for covered attainment counties in paragraph (6) are identical to the requirements for ozone nonattainment areas under paragraph (5). Therefore, combining the two paragraphs will eliminate redundant rule language. The other paragraphs in this section are re-numbered as appropriate.

***§115.224, Inspection Requirements***

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.224 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, paragraph (1) is revised to specify that gasoline transfer must be discontinued immediately when any liquid leak, visible vapor, or significant odor is observed to prevent further potential discharges. This adopted revision will provide additional clarity within the rule language by providing more descriptive terms for the types of potential discharges that would result in a discontinuation of the transfer of gasoline.

***§115.225, Testing Requirements***

The commission adopts the amendment to §115.225 to remove the current test procedures and require all affected GDFs to comply with the requirements of 40 CFR §63.11120. All affected GDFs will be required to annually comply with the CARB Vapor Recovery Test Procedures, TP-201.1E and TP-201.3, found in 40 CFR §63.11120.

Additionally, use of alternative test methods and procedures shall be allowed in accordance with the alternative test method requirements found in 40 CFR §63.7(f). These adopted revisions will make the testing requirements for affected East Texas facilities under Chapter 115 consistent with the federal Stage I rule except for the annual inspection requirement. This revision will minimize confusion within the industry of which test is required in which area in East Texas, the frequency of the tests, and will provide for improved consistency in compliance and enforcement by the commission due to a more defined testing schedule and testing procedures. Owners and operators of GDFs in West Texas will continue to comply with federal requirements and would not be affected by this rulemaking. The CARB Vapor Recovery Test Procedure-201.1E will be required for GDFs to demonstrate compliance with the leak rate and cracking pressure requirements for pressure-vacuum vent valves installed on the gasoline tanks at the facility. The CARB Vapor Recovery Test Procedure-201.3 will be required to demonstrate compliance with the static pressure performance requirement for a vapor balance system by conducting a static pressure test on the gasoline tanks at the facility. Annual testing of Stage I systems will provide additional benefit to the industry by identifying issues sooner and addressing expensive repair costs experienced by systems that are not tested annually where faulty equipment and parts are allowed to operate for longer periods of time. Affected areas will also benefit by having emissions issues at these facilities addressed earlier resulting in minimal impact to the environment.

***§115.226, Recordkeeping Requirements***

As discussed elsewhere in this Section by Section Discussion, the commission adopts revisions to §115.226 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the adopted revisions revise the provision in the introduction of §115.226 to clarify the records that shall be maintained and to specify that all records must be made available at the site during an investigation upon request.

The adopted revisions to §115.226(2)(B) also delete the language requiring facilities with Stage II vapor recovery systems to perform Stage I testing because the requirements would no longer be necessary due to the commission's adoption of the decommissioning of Stage II equipment as previously discussed in this preamble. The commission combines subparagraphs (B) and (C) to reflect that the recordkeeping requirements will become uniform in the counties listed as the Stage II vapor control requirements are repealed. The requirement to keep the records for gasoline throughput for each calendar month is updated to clarify that the records shall be kept for the previous 24 months.

***§115.227, Exemptions***

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.227 to update the formatting of the geographic areas listed and

replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. Additionally, the adopted revisions reorder provisions that cross-reference to §115.222 to reflect the proper order of the provisions in that section and update the cross-references to reflect changes to §§115.222, 115.224, and 115.226 adopted in this rulemaking.

The adopted revisions to §115.227 reduce the throughput level for exemption from Stage I vapor control requirements from 125,000 gallons per month to 100,000 gallons per month in paragraph (3) to provide GDF owners and operators with clearer applicability requirements and ensure consistency with throughput limits between the state and the federal Stage I requirements. The lowering of the throughput limit in this adopted rulemaking will provide owners and operators with one standard of throughput for both state and federal Stage I requirements in the majority of the covered attainment counties. The adopted revision will also provide the commission with one throughput standard for assessing applicability and compliance of GDFs in the covered attainment counties that currently have an applicability threshold of 125,000 gallons per month under the Chapter 115 rule. The adopted revisions to §115.227 also update the date in paragraph (3) to reflect that the exemption from the requirements of this division begin after October 31, 2014.

***§115.229, Counties and Compliance Schedules***

As discussed elsewhere in this Section by Section Discussion, the commission adopts minor revisions to §115.229 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the commission adopts the revisions to the list of counties in subsection (a) using the geographic area terms for the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas to be consistent with the other sections of the Stage I rules.

**Final Regulatory Impact Determination**

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rules do not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, 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." Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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.

The adopted rulemaking amends §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229. The revisions to Chapter 115 will facilitate compliance with agency rules and testing requirements that have changed due to changes to the Stage II vapor recovery program. These changes occurred after the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register*, 77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the vapor recovery Stage I PSTs. With the decommissioning of Stage II vapor recovery controls, the requirement

for testing the Stage I system on these PSTs would no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment and ozone maintenance counties, the commission is adopting revisions to the Stage I testing requirements. The revisions to Chapter 115 will facilitate compliance with these testing requirements by making the requirements consistent across this sector of the industry. As a result, compliance with the rules will be easier and more consistent. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will also eliminate confusion with testing requirements by members of the industry by improving consistency between the state and federal Stage I rules.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to

determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The purpose of this rulemaking is to increase protection of the environment and reduce risk to human health; it is not expected that this adopted rulemaking would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state.

Therefore, no regulatory impact analysis is required.

This rulemaking will allow the commission to make uniform Stage I testing requirements within the state program areas or between the state and federal program. Currently, owners or operators of GDFs in the 16 counties that have implemented Stage II are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II decommissioning

occurs at GDFs, which may result in decreased effectiveness of the Stage I equipment installed at these facilities. The owners or operators of GDFs in the 95 counties that do not have Stage II, but fall under the state Stage I rule, are required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. The remaining 143 counties must comply with the federal Stage I testing requirements and are required to perform the CARB Vapor Recovery Test Procedures, TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the P/V valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules 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 concluding that "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 proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP revision would require the full regulatory impact analysis 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 (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP revision will have a broad impact, the impact is

no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has 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 regulatory impact analysis 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." The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment on the draft regulatory impact analysis determination. The Texas Food and Fuels Association (TFFA) indicated that they have no comment on the regulatory impact analysis determination.

### **Takings Impact Assessment**

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of

the adopted rulemaking is to specify Stage I testing requirements for GDFs located in the 16 counties that will be affected by the Stage II rule revision (decommissioning Rule Project Number 2013-001-115-AI), preserve existing Stage I testing requirements in currently affected counties, and establish testing requirements that are uniform throughout the state.

As mentioned previously in the preamble, in 1999 the commission adopted rule revisions to Chapter 115 implementing the Stage I vapor recovery option of the TCAS. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the NAAQS for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards and to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

On May 16, 2012, the EPA finalized a rulemaking for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment

areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I PST vapor recovery. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply due to these testing requirements residing within the Stage II control regulations. In order to preserve existing Stage I testing requirements in ozone nonattainment counties, the commission is adopting revisions to the Stage I testing requirements.

This rulemaking is necessary to ensure that Stage I equipment is functioning properly and to be consistent with the federal rule revision authorizing the decommissioning of Stage II requirements. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to rulemakings that are actions reasonably taken to fulfill an obligation mandated by federal law. Since this rulemaking is such an action, Texas Government Code, Chapter 2007 does not apply.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these adopted rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is

exempt under Texas Government Code, §2007.003(b)(13). Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking.

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. Therefore, Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (or §505.11(b)(4), whichever is applicable) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. Section 505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

No comments were received regarding the consistency with the CMP during the public comment period.

### **Effect on Sites Subject to the Federal Operating Permits Program**

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the adopted Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

### **Public Comment**

The commission scheduled public hearings in Fort Worth on April 29, 2014, in Austin on May 1, 2014, and in Houston on May 6, 2014. The hearings were not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the EPA and the TFFA.

The EPA and the TFFA expressed overall support for the proposed rulemaking change. Changes to the rule were suggested by the TFFA.

### **Response to Comments**

#### *Comment*

The EPA expressed appreciation of the rule revision for re-establishing and strengthening the test procedures for petroleum storage tanks and for making the Texas rules consistent with the NESHAP for Stage I in 40 CFR Part 63, Subpart CCCCCC.

#### *Response*

**The commission appreciates the EPA's support and will continue to work with the EPA in the future. No change to the rule has been made in response to this comment.**

#### *Comment*

The EPA expressed concern that the rule revision does not account for the designation of Wise County as nonattainment within the Dallas-Fort Worth ozone nonattainment area under the 2008 eight-hour ozone standard.

*Response*

**The commission appreciates the EPA's concern that the changes proposed for this revised rule did not include applicability in Wise County. As stated in the proposal preamble of this rulemaking and reiterated in this adoption preamble, Wise County in the Dallas-Fort Worth area has been designated nonattainment for the 2008 eight-hour ozone standard. The Executive Director has approved initiation of a separate rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements including Stage I requirements for Wise County that are necessary as a result of the nonattainment designation. The commission has determined that including all applicable RACT requirements for Wise County in one rulemaking would provide the best notice to the public of additional requirements in Wise County due to its inclusion in the Dallas-Fort Worth nonattainment area for the 2008 eight-hour ozone standard. There is no anticipated impact on the proposed revisions in this current rulemaking as a result of the future Rule Project No. 2013-048-115-AI. In addition, this current rulemaking will be adopted before the Dallas-Fort Worth RACT rulemaking, which is tentatively scheduled for proposal in December 2014. No change to the rule has been made in response to this comment.**

*Comment*

The EPA commented that there is a non-substantive variation between the proposed revisions to the first sentence of §115.10(11) submitted to the EPA in letter form and those posted on the TCEQ website.

*Response*

**The commission appreciates the EPA's mention of the non-substantive difference between the versions regarding proposed revisions to §115.10(11). To comply with *Texas Register* formatting, a non-substantive editorial change was made to ensure that the correct citation was referenced before publication. This change did not modify the applicability of the definition. No change to the rule has been made in response to this comment.**

*Comment*

The TFFA expressed support for most aspects of the rule revisions, specifically §§115.10, 115.221, 115.222, and 115.224.

*Response*

**The commission appreciates the TFFA's support and will continue to work with all stakeholders to ensure successful implementation. No change to**

**the rule has been made in response to this comment.**

*Comment*

The TFFA commented that it is generally supportive of the change to the federally required test method in §115.225 for testing consistency and ease of compliance issues; however, it questions the benefits as outlined in the preamble. The TFFA's historic concerns have centered on the SIP benefit and the credit the state or nonattainment counties are receiving by expanding the control measure outside of the nonattainment areas. The TFFA expressed that its concern was more about what is not being said in the preamble than the characterization of the benefit to the industry.

*Response*

**The commission appreciates the TFFA's concern regarding testing requirements found in §115.225. As stated in the preamble, this revision will minimize confusion within the industry regarding the type of test required in different geographical areas of East Texas and the frequency of the tests. The revision would also provide consistency in compliance and enforcement activities by the commission by more clearly defining the testing schedule and testing procedures. The improvement of consistency in compliance requirements is a benefit for the state and affected stakeholders and strengthens the benefits of this clean air strategy included in the SIP.**

**While TFFA did not specifically identify its concern regarding the benefits in the preamble beyond those associated with harmonizing testing requirements with the federal requirements, the air quality benefits discussed in the preamble were provided for historical reference only. The scope of this rulemaking is to address testing issues resulting from the decommissioning of Stage II and to establish testing requirements that are more consistent with federal Stage I testing in 40 CFR Part 63, Subpart CCCCC. The commission will continue to work with stakeholders to ensure successful implementation of Stage I testing requirements. No changes to the rule have been made in response to this comment.**

*Comment*

The TFFA commented that it does not support the proposed revisions to §115.226 that require records to be kept on site, nor does it support the current requirement to do so found in §115.226(2). The TFFA urged the commission to remove the entire provision of §115.226(1) and requested that the commission not adopt the revision to §115.226(2)(B) requiring records to be immediately available on site. The TFFA stated that the commission has already adopted recordkeeping requirements that recognize that large volumes of records cannot be kept on site and that records must be made available upon request within 72 hours. The TFFA suggested that the commission follow the recordkeeping protocol established in 30 TAC §334.10. The TFFA also commented that

the commission has placed an unjustified and expensive recordkeeping provision on the GDF because the same records are being kept by the owner or operator of the tank truck.

*Response*

**The commission appreciates the TFFA's concern regarding recordkeeping requirements found in §115.226. Paragraph (1) specifies records that must be maintained at the facility site. Records required under paragraph (2) must be made available at the site during an inspection already applies to all the records required under §115.226(2) via subparagraph (C). The commission's intent with the change was to streamline rule language but retain this requirement because subparagraph (C) was proposed for deletion. The commission acknowledges that the proposed language may be confusing as to the records that shall be kept on site at the affected GDF. The commission did not intend to propose that any additional records be kept on site other than those records already required in current §115.226. The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site, instead clarifying that records must be provided on site during an inspection. The commission will continue to work with stakeholders to ensure successful implementation of Stage I recordkeeping requirements.**

*Comment*

The TFAA indicated it has no comment on the Regulatory Impact Analysis (RIA). No other comments were received regarding the RIA.

*Response*

**The commission acknowledges TFFA's mention of the RIA. No changes to the rule have been made in response to this comment.**

## **SUBCHAPTER A: DEFINITIONS**

### **§115.10**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The

amendment is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendment is also adopted under FCAA, 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

#### **§115.10. Definitions.**

Unless specifically defined in Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (~~relating to Control of Air Pollution from Volatile Organic Compounds~~), have the following meanings, unless the context clearly

indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) **Background**--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) **Beaumont-Port Arthur** [Beaumont/Port Arthur] area--Hardin, Jefferson, and Orange Counties.

(3) **Capture efficiency**--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) **Carbon adsorption system**--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) **Closed-vent system**--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Coaxial system--A type of system consisting of a tube within a tube that requires only one tank opening. The tank opening allows fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes.

(7) [(6)] Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(8) [(7)] Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(9) [(8)] Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(10) [(9)] Covered ozone attainment counties--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(11) [(10)] Dallas-Fort Worth [Dallas/Fort Worth] area--For purposes of Subchapter B, Division 5 of this chapter (relating to Municipal Solid Waste Landfills) [of this chapter, General Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills,] Collin, Dallas, Denton, and Tarrant Counties. For all other divisions,

Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(12) Dual-point vapor balance system--A type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for vapor connection.

(13) [(11)] El Paso [area]--El Paso County.

(14) [(12)] Emergency flare--A flare that only receives emissions during an upset event.

(15) [(13)] External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(16) [(14)] Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(17) [(15)] Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(18) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(19) [(16)] Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(20) [(17)] Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(21) [(18)] Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOC) [(VOCs)]: 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOC emissions [VOCs]: ethylene and propylene.

(22) [(19)] Houston-Galveston [Houston/Galveston] or Houston-Galveston-Brazoria [Houston/Galveston/Brazoria] area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(23) [(20)] Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(24) [(21)] Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a

self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(25) [(22)] Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(26) [(23)] Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(27) [(24)] Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(28) [(25)] Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(29) [(26)] Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(30) [(27)] Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(31) [(28)] Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(32) [(29)] Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(33) [(30)] Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied [liquified] natural gas units, and field gas gathering systems.

(34) [(31)] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(35) [(32)] Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(36) [(33)] Pressure relief valve or pressure-vacuum relief valve--A safety device used to prevent operating pressures from exceeding the maximum and minimum allowable working pressure of the process equipment. A pressure relief valve or pressure-vacuum relief valve is automatically actuated by the static pressure upstream of the valve[,] but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(37) [(34)] Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(38) [(35)] Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(39) [(36)] Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(40) [(37)] Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(41) [(38)] Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(42) [(39)] Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(43) [(40)] Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(44) [(41)] Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(45) [(42)] Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(46) [(43)] Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(47) [(44)] True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(48) [(45)] Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(49) [(46)] Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(50) [(47)] Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(51) [(48)] Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

**SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER  
OPERATIONS**

**DIVISION 2: FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR  
MOTOR VEHICLE FUEL DISPENSING FACILITIES**

**§§115.221, 115.222, 115.224 - 115.227, 115.229**

**Statutory Authority**

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for

the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The amendments are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendments are also adopted 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 NAAQS will be achieved and maintained within each air quality control region of the state.

The adopted amendments implement THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

**§115.221. Emission Specifications.**

No person in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-

Brazoria [Houston/Galveston] areas or in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall transfer, or allow the transfer of, gasoline from any tank-truck tank into a stationary storage container which is located at a gasoline [motor vehicle fuel] dispensing facility, unless the displaced vapors from the gasoline storage container are controlled by one of the following:

(1) a vapor control system which reduces the emissions of VOC to the atmosphere to not more than 0.8 pound per 1,000 gallons (93 mg/liter) of gasoline transferred; or

(2) a vapor balance system which is operated and maintained in accordance with the provisions of §115.222 of this title (relating to Control Requirements).

**§115.222. Control Requirements.**

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank must not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

(2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;

(3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;

(4) the vapor return line's cross-sectional area is at least one-half of the product drop line's cross-sectional area;

(5) in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than

eight ounces per square inch (3.4 kilopascals (kPa) [kPa]) [or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) or third-party certification for the facility];

(6) in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);]

(6) [(7)] after unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck tank are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation;

(7) [(8)] the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(8) [(9)] no leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a hydrocarbon gas analyzer;

(9) [(10)] in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, any storage tank installed after November 15, 1993, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title. [non-coaxial Stage I connection.] In addition, any modification to a storage tank existing prior to November 15, 1993, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system [non-coaxial Stage I connection], even if the original installation utilized coaxial Stage I connections[. At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility];

(10) [(11)] in the covered attainment counties, any storage tank installed after December 22, 1998, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title [non-coaxial Stage I connection]. In addition, any modification to a storage tank existing prior to December 22, 1998, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system [non-coaxial Stage I connection], even if the original installation utilized coaxial Stage I connections; and

(11) [(12)] any gasoline [motor vehicle fuel] dispensing facility that no longer meets an exemption in §115.227 of this title (relating to Exemptions) because of an increase in throughput shall have 120 days to come into compliance with the provisions of this section [subsection] and will remain subject to the provisions of this section, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

**§115.224. Inspection Requirements.**

In the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the following inspection requirements shall apply.

(1) Inspections for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted at gasoline [motor vehicle fuel] dispensing facilities. Gasoline transfer shall be discontinued immediately when any liquid leaks, visible vapors, or significant odors are [a leak is] observed and shall not be resumed until the observed issue [leak] is repaired.

(2) The gasoline tank-truck tank must have been inspected for leaks within one year in accordance with the requirements of §§115.234 - 115.237 of this title (relating to Inspection Requirements; Approved Test Methods; Recordkeeping Requirements; and Exemptions, respectively [Control of Volatile Organic Compound Leaks from Transport Vessels]), as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate.

**§115.225. Testing Requirements.**

Compliance with the emission specification and certain control requirements and inspection requirements of §§115.221, 115.222 and 115.224 of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) shall be determined according to the requirements of 40 Code of Federal Regulations (CFR) §63.11120 [by applying one or more of the following test methods, as appropriate]. Additionally, all affected gasoline dispensing facilities are required to annually comply with the following testing requirements found in 40 CFR §63.11120:

(1) California Air Resources Board Vapor Recovery Test Procedure TP 201.1E - Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves.

(2) California Air Resources Board Vapor Recovery Test Procedure TP-201.3 - Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

(3) Alternate test methods other than those specified in paragraphs (1) - (2) of this section may be used if validated by 40 CFR §63.7(f).

[(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) are used for determining flow rate, as necessary.]

[(2) Concentration of volatile organic compounds.]

[(A) Test Method 18 (40 CFR 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.]

[(B) Test Method 25 (40 CFR 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.]

[(C) Test Method 25A or 25B (40 CFR 60, Appendix A) is used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.]

[(3) Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining volatile organic compound leaks.]

[(4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.]

#### **§115.226. Recordkeeping Requirements.**

The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall maintain the following records and **during an inspection** make **the records** ~~them~~ available at the site during inspection upon request to representatives of the executive director, the United States Environmental Protection Agency [EPA], or any local air pollution control program with jurisdiction. The owner or operator shall:

(1) maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility and the identification number and date of the last leak testing, required by §115.224(2) of this title (relating to Inspection Requirements),

of each tank-truck tank from which gasoline was transferred to the facility. The records shall be kept for a period of two years; and

(2) maintain for a period of two years:

(A) a record of the results of any testing conducted at the gasoline [motor vehicle fuel] dispensing facility in accordance with the provisions specified in §115.225 of this title (relating to Testing Requirements); and

(B) ~~in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston]-areas, a record of the gasoline throughput for a 24-month rolling calendar period beginning January 1, 1991. each calendar month for the previous 24 months since January 1, 1991 [until such time as the facility installs a Stage II vapor recovery system as required by §§115.241-249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities).] In addition, in the covered attainment counties, a record of gasoline throughput for each calendar month for the previous 24 months beginning January 1, 1999 should be maintained at the facility, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The~~

records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month. [; and]

[(C) in the covered attainment counties, a record of gasoline throughput for each calendar month beginning January 1, 1999, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month. These records must be made available at the site during inspection by representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.]

**§115.227. Exemptions.**

The following exemptions apply:

(1) In the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of

this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)], except for:

(A) §115.222(3) [§115.222(7)] of this title (relating to Control Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) of this title (relating to Recordkeeping Requirements).

(2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at gasoline [motor vehicle fuel] dispensing facilities are exempt from the requirements of this division, except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks]; and

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors.

(3) In the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed less than 100,000 [125,000] gallons of gasoline in any calendar month after **October 31, 2014** ~~October 2, 2014~~ [January 1, 1999] are exempt from the requirements of this division, except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) [§115.226(2)(C)] of this title.

(4) In Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)], except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) [§115.226(2)(C)] of this title.

(5) Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

**§115.229. Counties and Compliance Schedules.**

(a) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas and in Collin, Dallas, Denton, and Tarrant Counties [Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties] shall continue to comply with this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel

Dispensing Facilities)] as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties that has dispensed at least 25,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after December 31, 2004 shall comply with this division as soon as practicable, but no later than December 31, 2005.

(d) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that has dispensed at least 10,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after April 30, 2005, shall comply with this division as soon as practicable, but no later than June 15, 2007.

## CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229.

If adopted, the commission will submit the amendments to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

### Background and Summary of the Factual Basis for the Proposed Rules

Stage I vapor recovery for filling of gasoline storage tanks at gasoline dispensing facilities (GDF) is a reasonably available control technology (RACT) requirement for ozone nonattainment areas required under §182 of the Federal Clean Air Act (CAA) and the Control Techniques Guideline documents for RACT issued by the EPA. The commission's Stage I rules are included in Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities. In addition to fulfilling CAA RACT requirements for nonattainment areas, the commission adopted rule revisions to the Chapter 115 Stage I rules in 1999 implementing the Stage I vapor recovery option of the Texas Clean Air Strategy (TCAS) for certain ozone attainment counties. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet the National Ambient Air Quality Standard (NAAQS) for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards. It was also to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

The effectiveness of Stage I vapor recovery rules relies on the captured vapors being: 1) effectively contained within the gasoline tank truck during transit; and 2) controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the GDF will simply be emitted at a location other than the gasoline station resulting in no reductions in volatile organic compounds (VOC) despite the Stage I requirements.

The Stage I vapor recovery rules apply to GDFs that have installed Stage II vapor recovery equipment in the Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). The Beaumont-Port Arthur (Hardin, Jefferson, and Orange Counties), and El Paso county, which is under an ozone nonattainment maintenance plan as part of the 1997 ozone standard are also subject to the Stage I vapor recovery requirements. These rules regulate the filling of gasoline storage tanks at GDFs by tank trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks that would otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank truck, and the vapors are processed by a vapor control system when the tank truck is subsequently refilled at a gasoline terminal or gasoline bulk plant.

Initially, the 1999 amendments to Chapter 115 extended the existing Chapter 115 Stage I vapor recovery and gasoline tank truck leak testing requirements to 95 counties in the eastern half of Texas. These counties included: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. Ellis, Johnson, Kaufman, Parker, and Rockwall Counties were subsequently designated nonattainment for the 1997 eight-hour ozone standard on June 15, 2004, and the Stage I rules were revised to include these counties under the ozone nonattainment area requirements through rulemaking adopted on April 13, 2005. Wise County in the Dallas-Fort Worth area has been designated as nonattainment for the 2008 eight-hour ozone standard. The executive director has approved a rulemaking project (Rule Project No. 2013-048-115-AI) that will address applicable RACT requirements, including Stage I requirements, for Wise County that are necessary as a result of the designation. These rules will be proposed at a date determined by the rulemaking project schedule.

In 2012, the EPA finalized a rulemaking (published in the May 16, 2012, issue of the *Federal Register* (77 FR 28772)) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle on-board refueling vapor recovery (ORVR) technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, on October 9, 2013, the commission adopted revisions to the Chapter 115 Stage II rules (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project Number 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs no later than August 31, 2018, in ozone nonattainment areas classified as serious and above. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I petroleum storage tanks' (PST) vapor recovery system. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment counties from the Stage II rules, the commission is proposing revisions to the Stage I testing requirements.

Research was done on the Stage I testing requirements that facilities in ozone nonattainment areas would have to comply with once Stage II vapor recovery equipment has been decommissioned. The commission determined that additional revisions related to testing requirements were necessary to improve clarity and consistency in compliance and program administration for the affected industry and the agency. The proposed revisions would improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These proposed revisions would

eliminate confusion concerning testing requirements within the industry by improving consistency between the state Stage I rules in Chapter 115 and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Stage I rules. The commission incorporated the NESHAP Stage I rules by reference in 30 TAC §113.1380 on July 26, 2013. The federal Stage I rules require GDFs that have a monthly throughput at or above 100,000 gallons to operate a vapor balance system to capture and return vapors to the tank-truck tank so the vapors can be disposed of properly. GDFs subject to the federal Stage I rule must also meet certain testing and recordkeeping requirements.

The commission also held informal stakeholder meetings on potential revisions to the Stage I testing requirements on April 24, 2013, in Arlington, April 25, 2013, in Longview, April 29, 2013, in Corpus Christi, April 30, 2013, in Houston, May 1, 2013, in Austin, and May 2, 2013, in El Paso. Commenters present agreed that Stage I testing requirements needed to be uniform across the affected East Texas areas in the state and that federally required testing procedures and methods were generally accepted by the industry. Commenters also agreed that testing of Stage I equipment should be performed more frequently than once every three years to better detect potential issues with the system and improve compliance with testing requirements. Counties in West Texas would continue to comply with federal requirements and would not be affected by this rulemaking.

The commission proposes these revisions to Chapter 115 to specify Stage I testing requirements for GDFs located in the 16 counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties) that will be affected by the Stage II decommissioning rule revision, preserve existing Stage I testing requirements in the currently affected 95 counties, and establish testing requirements in Chapter 115 that are more consistent with the federal Stage I rule for all 254 counties.

Compliance with Stage I vapor recovery rules is dependent on the geographical location of the GDF within the state. GDFs within counties located in the eastern part of the state must comply with state requirements found in Chapter 115, Subchapter C, Division 2. The federal Stage I rule in 40 CFR Part 63, Subpart CCCCCC applies to all 254 counties; therefore, GDFs located within any county not covered by the state Stage I requirements are covered under the federal Stage I requirements. The gallons of gasoline dispensed per month and the county where the GDF is located determines if the owner or operator of a GDF is required to install Stage I equipment and subject to either the state or federal Stage I regulations. Owners of GDFs with multiple locations throughout the state with similar monthly gasoline throughput amounts could be subject to different equipment and testing requirements depending on their geographical location.

Additionally, owners or operators of GDFs that have implemented Stage II in the 16 affected counties are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II decommissioning occurs at the GDF, which may result in decreased effectiveness of the Stage I equipment installed at these facilities. The owners or operators of GDFs in the remaining 90 counties in the eastern half of Texas and identified under the term covered attainment counties that fall under the state Stage I rule are only required

to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. All GDFs in the state subject to 40 CFR Part 63, Subpart CCCCCC must comply with the federal Stage I testing requirements and are required to perform the California Air Resource Board (CARB) Vapor Recovery Test Procedures TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure-vacuum relief valve while the TXP-102 only requires testing the pressure threshold of the pressure-vacuum relief valve.

Additionally, the proposed revisions would reduce the throughput level for exemption from Stage I implementation from 125,000 gallons per month to 100,000 gallons per month for GDFs in the 90 covered attainment counties, except for those covered attainment counties in the Austin/San Antonio area (Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson) that currently have an applicability threshold of 25,000 gallons per month. This proposed change would establish consistency with the NESHAP requirements and provide owners and operators of GDFs with clarity on compliance with equipment and testing requirements. The lowering of the throughput level is not anticipated to affect owners and operators of GDFs in the covered attainment counties because these facilities have already been subject to NESHAP requirements, which were incorporated by reference by the commission on July 26, 2013, or as is the case for those counties in the Austin/San Antonio area, are already subject to a state-required lower throughput.

#### Section by Section Discussion

In addition to the proposed revisions regarding testing and other Stage I requirements discussed elsewhere in this preamble, various stylistic, non-substantive changes are included to update the rule language to current Texas Register style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These minor revisions include updating the formatting of geographic area terms used in the rules to be consistent with the formatting of the terms as defined in §115.10 (e.g., Beaumont-Port Arthur in lieu of Beaumont/Port Arthur). These changes are non-substantive and generally are not specifically discussed in this preamble.

Additionally, the commission proposes to replace the term "motor vehicle fuel dispensing facility" in multiple portions of the Stage I rules with a new defined term "gasoline dispensing facility" for clarity and consistency with the terminology found in requirements for the Chapter 115 Stage II rules.

#### §115.10, Definitions

The commission proposes revisions to §115.10 by adding the definitions for "Dual-point vapor balance system," "Coaxial system," and "Gasoline dispensing facility." The term "Dual-point vapor balance system" would be incorporated from 40 CFR §63.11132 to describe a type of system that should be installed at a facility. A dual-point vapor balance system allows for separate connections for the loading of gasoline and the transfer of gasoline vapors to a tank-truck tank. The term "Coaxial system" would be added to describe a type of vapor control system consisting of a tube within a tube that requires only one tank opening allowing fuel to flow through the inner tube while vapors are displaced through the annular space between the

inner and outer tubes. This type of system is often found at GDFs. The term "Gasoline dispensing facility" would be added to replace the term "Motor vehicle fuel dispensing facility" used in the Stage I rules for consistency with recent revisions to the Chapter 115 Stage II rules and defined for clarification. The definition for "Pressure relief valve" would be updated to also apply to "Pressure-vacuum relief valves" to keep the wording within the rule consistent and with the general use of the term to cover relief valves by the industry. The other definitions in this section would be re-numbered as needed.

#### *§115.221, Emission Specifications*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.221 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

#### *§115.222, Control Requirements*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.222 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules.

The proposed revisions to §115.222 would also delete the language allowing facilities with a Stage II vapor recovery system to establish a pressure rate at which a pressure-vacuum relief valve is set that meets CARB requirements or has a third-party certification because the Stage II requirements will no longer be required due to the commission's adoption of the decommissioning of Stage II equipment. The proposed language would incorporate the use of "Dual-point vapor balance system" as defined in §115.10 and would remove the language for non-coaxial Stage I connections. Dual-point vapor balance systems are more effective than single-point coaxial systems in controlling vapors during the loading of gasoline because two separate hoses for loading the fuel and recovering fuel vapors are connected to the delivery truck and storage tank which allow less back pressure and higher flow rates. Dual-point vapor balance systems are the only non-coaxial Stage I connection used in Texas and have been required at all applicable facilities since January 10, 2011.

Additionally, the information in paragraph (6) would be incorporated into paragraph (5). After removal of the provision regarding Stage II, the requirements for covered attainment counties in paragraph (6) would be identical to the requirements for ozone nonattainment areas under paragraph (5). Therefore, combining the two paragraphs would eliminate redundant rule language. The other paragraphs in this section would be re-numbered as appropriate.

#### *§115.224, Inspection Requirements*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.224 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, paragraph (1) would be revised to specify that gasoline transfer must be discontinued immediately when any liquid leak, visible vapor, or significant odor is observed to prevent further potential discharges. This proposed revision would provide additional clarity within the rule language by providing more descriptive terms for the types of potential discharges that would result in a discontinuation of the transfer of gasoline.

#### *§115.225, Testing Requirements*

The commission proposes to amend §115.225 to remove the current test procedures and require all affected GDFs to comply with the requirements of 40 CFR §63.11120. All affected GDFs will be required to annually comply with the CARB Vapor Recovery Test Procedures, TP-201.1E and TP-201.3, found in 40 CFR §63.11120. Additionally, use of alternative test methods and procedures shall be allowed in accordance with the alternative test method requirements found in 40 CFR §63.7(f). These proposed revisions would make the testing requirements for affected East Texas facilities under Chapter 115 consistent with the federal Stage I rule except for the annual inspection requirement. This revision would minimize confusion within the industry of which test is required in which area in East Texas, the frequency of the tests, and would provide for improved consistency in compliance and enforcement by the commission due to a more defined testing schedule and testing procedures. Owners and operators of GDFs in West Texas would continue to comply with federal requirements and would not be affected by this rulemaking. The CARB Vapor Recovery Test Procedure TP-201.1E would be required for GDFs to demonstrate compliance with the leak rate and cracking pressure requirements for pressure-vacuum vent valves installed on the gasoline tanks at the facility. The CARB Vapor Recovery Test Procedure TP-201.3 would be required to demonstrate compliance with the static pressure performance requirement for a vapor balance system by conducting a static pressure test on the gasoline tanks at the facility. Annual testing of Stage I systems would provide additional benefit to the industry by identifying issues sooner and addressing expensive repair costs experienced by systems that are not tested annually where faulty equipment and parts are allowed to operate for longer periods of time. Affected areas could also benefit by having emissions issues at these facilities addressed earlier resulting in minimal impact to the environment.

#### *§115.226, Recordkeeping Requirements*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.226 to update the formatting of the geographic areas listed and replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the proposed revisions would revise the provision in the introduction of §115.226 that all records must be made available upon request to also specify that the records must be made available at the site during inspection. The recordkeeping requirements under paragraphs (1) and (2) include similar language; therefore, this revision does not substantively change the requirements.

The proposed revisions to §115.226(2)(B) would also delete the language requiring facilities with Stage II vapor recovery systems to perform Stage I testing because the requirements would no longer be necessary due to the commission's adoption of the decommissioning of Stage II equipment as previously discussed in this preamble. The commission proposes to combine subparagraphs (B) and (C) to reflect that the recordkeeping requirements would become uniform in the counties listed as the Stage II vapor control requirements are repealed. The requirement to keep the records for gasoline throughput for each calendar month would be updated to clarify that the records shall be kept for the previous 24 months.

#### *§115.227, Exemptions*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.227 to update the formatting of the geographic areas listed and replace

the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. Additionally, the proposed revisions would reorder provisions that cross-reference to §115.222 to reflect the proper order of the provisions in that section and update the cross-references to reflect changes to §§115.222, 115.224, and 115.226 proposed in this rulemaking.

The proposed revisions to §115.227 would reduce the throughput level for exemption from Stage I vapor control requirements from 125,000 gallons per month to 100,000 gallons per month in paragraph (3) to provide GDF owners and operators with clearer applicability requirements and ensure consistency with throughput limits between the state and the federal Stage I requirements. The lowering of the throughput limit in this proposed rulemaking would provide owners and operators with one standard of throughput for both state and federal Stage I requirements in the majority of the covered attainment counties. The proposed revision would also provide the commission with one throughput standard for assessing applicability and compliance of GDFs in the covered attainment counties that currently have an applicability threshold of 125,000 gallons per month under the Chapter 115 rule. The proposed revisions to §115.227 would also update the date in paragraph (3) to October 2, 2014, to reflect the expected effective date of this rulemaking.

#### *§115.229, Counties and Compliance Schedules*

As discussed elsewhere in this Section by Section Discussion, the commission proposes minor revisions to §115.229 to replace the term "motor vehicle fuel dispensing facility" with "gasoline dispensing facility" for consistency with Chapter 115 Stage II rules. In addition, the commission proposes to update the list of ozone nonattainment counties in subsection (a) using the geographic area terms for the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas to be consistent with the other sections of the Stage I rule.

#### *Fiscal Note: Costs to State and Local Government*

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, Texas Commission on Environmental Quality, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rules. The proposed rules relate to the Stage I vapor recovery requirements for GDF owners and operators which is, in part, necessary to fulfill FCAA RACT requirements.

The proposed rules would revise the Chapter 115 Stage I rules to specify Stage I testing requirements for GDF owners and operators and the minimum gasoline throughput level for exemption from Stage I requirements. Stage I vapor recovery is a control strategy to capture gasoline vapors that are released when gasoline is delivered to a storage tank. The proposed rules would preserve existing Stage I testing requirements in the 21 counties (Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Orange, Parker, Rockwall, Tarrant, and Waller) that are no longer required by the EPA to have Stage II vapor recovery rules. The proposed rules would also establish testing requirements in Chapter 115 that are more consistent with the federal Stage I testing requirements.

Because the EPA no longer requires Stage II vapor recovery controls, certain testing requirements for Stage I systems on affected facilities will no longer apply. The commission is proposing this

rulemaking in order to preserve existing Stage I testing requirements in ozone nonattainment counties. In addition, the rules are intended to improve the uniformity of testing requirements for GDF equipment in different areas of the state as well as improve the uniformity between the state and federal Stage I rules.

The proposed rules would affect the 90 counties in the eastern half of Texas that fall under the current state Stage I rule. The remaining 143 counties in the western half of Texas are currently subject to the federal Stage I rules, and the proposed rules would not affect facilities in these counties. There is no anticipated impact on the 21 nonattainment counties in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas. These counties currently have annual testing requirements at a comparable cost to the proposed testing requirements.

The proposed rules would require all affected owners and operators of GDFs to comply with the CARB Vapor Recovery Test Procedures TP-201.1E and TP-201.3 found in 40 CFR, with the exception that all tests would be required on an annual basis for the eastern counties. These proposed testing requirements would make the testing requirements uniform across the state for all affected facilities except for the fact that the eastern counties would have to conduct their testing on an annual basis and the western counties would maintain the current testing every three years. The annual testing requirements may result in additional costs for facilities in the 90 eastern covered attainment counties, though additional costs are not anticipated to be significant.

The proposed rules would reduce the throughput level for exemption from the Stage I requirements from 125,000 gallons per month to 100,000 gallons per month in covered attainment counties throughout the state. This proposed change is expected to provide consistency with NESHAP requirements as well as provide owners and operators of GDFs with clarity on compliance with equipment and testing requirements. The lowering of the throughput level is not anticipated to affect owners and operators of GDFs that have already been subject to federal requirements. The 90 covered attainment counties with facilities in East Texas currently are subject to the state Stage I requirements of 125,000 gallons per month. The proposed rules would lower that throughput level to 100,000 gallons per month and could bring additional GDFs under the Chapter 115 Stage I rules. Owner or operators of GDFs that meet the monthly dispensing requirements must install a vapor balance system that captures vapors from PSTs that would otherwise be displaced to the atmosphere when these tanks are filled with gasoline. The captured vapors are routed back to the transport vessel and processed by a vapor control system when the transport vessel is subsequently refilled at a gasoline terminal or gasoline bulk plant. Agency staff does not expect an increase in the number of GDFs subject to Stage I requirements due to the reduced throughput requirements because most GDFs should be complying with the lower throughput limit as required by the NESHAP regulations.

Even though the proposed rules would require annual testing at Stage I facilities currently conducting inspections once every three years, the rules are not anticipated to result in a significant increase in workload for agency inspectors. The additional duties would be included in current inspection activities conducted at GDFs.

As of December 19, 2013, agency staff estimates that there are currently 5,925 facilities that have active underground storage tanks at GDFs in the 90 eastern covered attainment counties. According to the TCEQ's PST Registration information, approx-

imately 1,793 governmental entities own or operate facilities included in this amount and may be affected by the rulemaking. It is not known how many state agencies or units of local government may be affected by the proposed rules, but if there are any that own or operate GDFs that exceed the proposed throughput levels, they may be required to install a vapor-balance system. This equipment may have an average cost of up to \$490 per tank for a total cost of approximately \$980 for a station with an average of two tanks. In general, however, agency staff does not expect an increase in the number of GDFs subject to Stage I requirements, as most GDFs are required to meet the lower throughput limit as required by the NESHAP regulations. State agencies or local governments that currently have Stage I at their GDFs would be affected by the proposed annual testing requirements and would have to perform annual system tests estimated to cost approximately \$250 to \$275 a year.

#### Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be the continued protection of public health and safety through control of air pollution with anticipated ozone reductions in much of east and central Texas.

The proposed rules are not expected to have significant fiscal implications for individuals and businesses during the first five years the proposed rules are implemented. According to agency staff, there are currently 5,925 facilities that have active underground storage tanks at GDFs in the 90 eastern covered attainment counties. It is not known how many businesses may be affected by the proposed rules, but if there are any that own or operate GDFs that exceed the proposed throughput levels, they may be required to install a vapor-balance system that captures vapors from PSTs. This equipment may have an average cost of up to \$490 per tank for a total cost of approximately \$980 for a station with an average of two tanks. In general, however, agency staff does not expect an increase in the number of GDFs subject to Stage I requirements due to the reduced throughput limit, as most GDFs are required to meet the lower throughput limit required by the NESHAP regulations. Businesses that currently have Stage I at their GDFs would be affected by the proposed annual testing requirements and would have to perform annual system tests estimated to cost approximately \$250 to \$275 a year.

There is no anticipated fiscal impact on the 21 affected counties in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso county, and Houston-Galveston-Brazoria areas. These counties currently have annual testing requirements at a comparable cost to the proposed testing requirements. The proposed rules are not expected to impact the counties of Bastrop, Bexar, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson because these counties are already subject to Stage I testing requirements if a GDF's throughput is 25,000 gallons or more per month. This throughput requirement is different than the requirements of other areas in the state and those counties identified as covered attainment counties.

#### Small Business and Micro-Business Assessment

No significant adverse fiscal implications are anticipated for small or micro-businesses as a result of the administration or enforcement of the proposed rules. The proposed rules would make the testing requirements uniform across the state for all affected GDFs except for the fact that the eastern counties

would have to conduct their testing on an annual basis. The annual testing requirements may result in additional costs for facilities in the 90 eastern covered attainment counties. Small or micro-businesses would have to perform annual system tests estimated to be approximately \$250 to \$275 a year. It is not known how many affected GDFs are small or micro-businesses. Small or micro-businesses that do not have a throughput level of 100,000 gallons per month would not be affected by the proposed rules.

#### Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a significant material way for the first five years that the proposed rules are in effect and are necessary for the continued protection of public health and safety through improved control of air pollution in Texas.

#### Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rules do not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, 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." Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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.

The proposed rulemaking would amend §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229. The revisions to Chapter 115 would facilitate compliance with agency rules and testing requirements that have changed due to changes to the Stage II vapor recovery program. These changes occurred after the EPA finalized a rulemaking (published in the May 16, 2012, issue of the *Federal Register* (77 FR 28772)) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-A1) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of

Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the vapor recovery Stage I PSTs. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment and ozone maintenance counties, the commission is proposing revisions to the Stage I testing requirements. The revisions to Chapter 115 would facilitate compliance with these testing requirements by making the requirements consistent across this sector of the industry. As a result, compliance with the rules would be easier and more consistent. The proposed revisions would improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These proposed revisions would also eliminate confusion with testing requirements by members of the industry by improving consistency between the state and federal Stage I rules.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The purpose of this rulemaking is to increase protection of the environment and reduce risk to human health; it is not expected that this proposed rulemaking would adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

This rulemaking would allow the commission to make uniform Stage I testing requirements within the state program areas or between the state and federal program. Currently, owners or operators of GDFs that have implemented Stage II in the 16 participating counties are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter. This testing requirement will no longer be applicable when Stage II decommissioning occurs at GDFs, which may result in decreased effectiveness of the Stage I equipment installed at these

facilities. The owners or operators of GDFs in the 95 counties that do not have Stage II, but fall under the state Stage I rule, are required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. The remaining 143 counties must comply with the federal Stage I testing requirements and are required to perform the CARB Vapor Recovery Test Procedures, TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP-201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure-vacuum relief valve while the TXP-102 only requires testing the pressure threshold of the pressure-vacuum relief valve.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These rules 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 concluding that "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 proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP revision would require the full regulatory impact analysis 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 (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP revision will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has 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 regulatory impact analysis 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." The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment on the draft regulatory impact analysis determination. 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

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 is applicable. The specific purpose of the proposed rulemaking is to specify Stage I testing requirements for GDFs located in the 16 counties that will be affected by the Stage II rule revision (decommissioning Rule Project Number 2013-001-115-AI), preserve existing Stage I testing requirements in currently affected counties, and establish testing requirements that are uniform throughout the state.

As mentioned previously in the preamble, in 1999 the commission adopted rule revisions to Chapter 115 implementing the Stage I vapor recovery option of the TCAS. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet the NAAQS for ground level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards and to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

On May 16, 2012, the EPA finalized a rulemaking for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread

use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying SIP revision (Project No. 2013-002-SIP-NR) authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I PST vapor recovery. With the decommissioning of Stage II vapor recovery controls, the requirement for testing the Stage I system on these PSTs would no longer apply. In order to preserve existing Stage I testing requirements in ozone nonattainment counties, the commission is proposing revisions to the Stage I testing requirements.

This rulemaking is necessary to ensure that Stage I equipment is functioning properly and to be consistent with the federal rule revision authorizing the decommissioning of Stage II requirements. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to rulemakings that are actions reasonably taken to fulfill an obligation mandated by federal law. Since this rulemaking is such an action, Texas Government Code, Chapter 2007 does not apply.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this rulemaking.

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. Therefore, Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) (or §505.11(b)(4), whichever is applicable) relating to rules subject to the Coastal Management Program (CMP), and will, therefore, require that goals and policies of the Texas CMP be considered during the rulemaking process. Section 505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Section 505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

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

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

Announcement of Hearings

The commission will hold public hearings on this proposal in Fort Worth at 2:00 p.m. on April 29, 2014, at the TCEQ Region 4 Office, 2309 Gravel Road; in Austin at 2:00 p.m. on May 1, 2014, at the commission's central office located at 12100 Park 35 Circle, Building E, Room 201S; and in Houston at 2:00 p.m. on May 6, 2014, at the TCEQ Region 12 Office, Conference Room 3C-3F, 5425 Polk Street. The hearings are 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 hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Mr. Michael Parish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2013-022-115-AI. The comment period closes May 12, 2014. Copies of the proposed rulemaking can be obtained from the commission's Web site at [http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html). For further information, please contact Sarah Davis, Air Quality Planning Section, (512) 239-4939.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §115.10

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The amendment is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendment is also 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.

The proposed amendment implements THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

#### §115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Background--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) Beaumont-Port Arthur [~~Beaumont/Port Arthur~~] area--Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Closed-vent system--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Coaxial system--A type of system consisting of a tube within a tube that requires only one tank opening. The tank opening allows fuel to flow through the inner tube while vapors are displaced through the annular space between the inner and outer tubes.

(7) [(6)] Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(8) [(7)] Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(9) [(8)] Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(10) [(9)] Covered ozone attainment counties--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(11) [(10)] Dallas-Fort Worth [Dallas/Fort Worth] area--For purposes of Subchapter B, Division 5 of this chapter (relating to Municipal Solid Waste Landfills) [of this chapter, General Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills,] Collin, Dallas, Denton, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(12) Dual-point vapor balance system--A type of vapor balance system in which the storage tank is equipped with an entry port for a gasoline fill pipe and a separate exit port for vapor connection.

(13) [(11)] El Paso [area]--El Paso County.

(14) [(12)] Emergency flare--A flare that only receives emissions during an upset event.

(15) [(13)] External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(16) [(14)] Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(17) [(15)] Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged

over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(18) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(19) [(16)] Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(20) [(17)] Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(21) [(18)] Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOC) [(VOCs)]: 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOC emissions [VOCs]: ethylene and propylene.

(22) [(19)] Houston-Galveston [Houston/Galveston] or Houston-Galveston-Brazoria [Houston/Galveston/Brazoria] area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(23) [(20)] Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(24) [(21)] Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(25) [(22)] Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(26) [(23)] Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(27) [(24)] Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(28) [(25)] Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(29) [(26)] Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(30) [(27)] Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(31) [(28)] Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(32) [(29)] Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(33) [(30)] Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquefied [H<sub>2</sub> gas] natural gas units, and field gas gathering systems.

(34) [(31)] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(35) [(32)] Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(36) [(33)] Pressure relief valve or pressure-vacuum relief valve--A safety device used to prevent operating pressures from exceeding the maximum and minimum allowable working pressure of the process equipment. A pressure relief valve or pressure-vacuum relief valve is automatically actuated by the static pressure upstream of the valve[.] but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(37) [(34)] Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(38) [(35)] Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(39) [(36)] Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(40) [(37)] Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(41) [(38)] Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(42) [(39)] Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(43) [(40)] Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(44) [(41)] Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(45) [(42)] Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(46) [(43)] Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(47) [(44)] True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(48) [(45)] Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(49) [(46)] Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(50) [(47)] Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(51) [(48)] Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2014.

TRD-201401396

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 11, 2014

For further information, please call: (512) 239-2548



SUBCHAPTER C. VOLATILE ORGANIC  
COMPOUND TRANSFER OPERATIONS  
DIVISION 2. FILLING OF GASOLINE  
STORAGE VESSELS (STAGE I) FOR MOTOR  
VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.221, 115.222, 115.224 - 115.227, 115.229

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles. The amendments are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The amendments are also 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.

The proposed amendments implement THSC, §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other

measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§115.221. *Emission Specifications.*

No person in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas or in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall transfer, or allow the transfer of, gasoline from any tank-truck tank into a stationary storage container which is located at a gasoline [motor vehicle fuel] dispensing facility, unless the displaced vapors from the gasoline storage container are controlled by one of the following:

(1) a vapor control system which reduces the emissions of VOC to the atmosphere to not more than 0.8 pound per 1,000 gallons (93 mg/liter) of gasoline transferred; or

(2) a vapor balance system which is operated and maintained in accordance with the provisions of §115.222 of this title (relating to Control Requirements).

§115.222. *Control Requirements.*

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank must not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

(2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;

(3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;

(4) the vapor return line's cross-sectional area is at least one-half of the product drop line's cross-sectional area;

(5) in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kilopascals (kPa) [kPa]) [or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) or third-party certification for the facility];

[(6) in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);]

(6) [(7)] after unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck tank are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation;

(7) [(8)] the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(8) [(9)] no leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a hydrocarbon gas analyzer;

(9) [(10)] in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, any storage tank installed after November 15, 1993, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title [non-coaxial Stage I connection]. In addition, any modification to a storage tank existing prior to November 15, 1993, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system [non-coaxial Stage I connection], even if the original installation utilized coaxial Stage I connections[- At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility];

(10) [(11)] in the covered attainment counties, any storage tank installed after December 22, 1998, which is required to install Stage I control equipment must be equipped with a dual-point vapor balance system, as defined in §115.10 of this title [non-coaxial Stage I connection]. In addition, any modification to a storage tank existing prior to December 22, 1998, requiring excavation of the top of the storage tank must be equipped with a dual-point vapor balance system [non-coaxial Stage I connection], even if the original installation utilized coaxial Stage I connections; and

(11) [(12)] any gasoline [motor vehicle fuel] dispensing facility that no longer meets an exemption in §115.227 of this title (relating to Exemptions) because of an increase in throughput shall have 120 days to come into compliance with the provisions of this section [subsection] and will remain subject to the provisions of this section, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

#### §115.224. *Inspection Requirements.*

In the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the following inspection requirements shall apply.

(1) Inspections for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted at gasoline [motor vehicle fuel] dispensing facilities. Gasoline transfer shall be discontinued immediately when any liquid leaks, visible vapors, or significant odors are [a leak is] observed and shall not be resumed until the observed issue [leak] is repaired.

(2) The gasoline tank-truck tank must have been inspected for leaks within one year in accordance with the requirements of §§115.234 - 115.237 of this title (relating to Inspection Requirements; Approved Test Methods; Recordkeeping Requirements; and Exemptions, respectively [Control of Volatile Organic Compound Leaks from Transport Vessels]), as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate.

#### §115.225. *Testing Requirements.*

Compliance with the emission specification and certain control requirements and inspection requirements of §§115.221, 115.222 and 115.224 of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) shall be determined according to the requirements of 40 Code of Federal Regulations (CFR) §63.11120 [by applying one or more of the following test methods, as appropriate]. Additionally, all affected gasoline dispensing facilities are required to annually comply with the following testing requirements found in 40 CFR §63.11120:

(1) California Air Resources Board Vapor Recovery Test Procedure TP 201.1E - Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves.

(2) California Air Resources Board Vapor Recovery Test Procedure TP-201.3 - Determination of 2-Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities.

(3) Alternate test methods other than those specified in paragraphs (1) - (2) of this section may be used if validated by 40 CFR §63.7(f).

[(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) are used for determining flow rate, as necessary.]

[(2) Concentration of volatile organic compounds.]

[(A) Test Method 18 (40 CFR 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.]

[(B) Test Method 25 (40 CFR 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.]

[(C) Test Method 25A or 25B (40 CFR 60, Appendix A) is used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.]

[(3) Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining volatile organic compound leaks.]

[(4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.]

#### §115.226. *Recordkeeping Requirements.*

The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas and in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall maintain the following records and make them available at the site during inspection upon request to representatives of the executive director, the United States Environmental Protection Agency [EPA], or any local air pollution control program with jurisdiction. The owner or operator shall:

(1) maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility and the identification number and date of the last leak testing, required by §115.224(2) of this title (relating to Inspection Requirements), of each tank-truck tank from which gasoline was transferred to the facility. The records shall be kept for a period of two years; and

(2) maintain for a period of two years:

(A) a record of the results of any testing conducted at the gasoline [motor vehicle fuel] dispensing facility in accordance with

the provisions specified in §115.225 of this title (relating to Testing Requirements); and

(B) in the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, a record of the gasoline throughput for each calendar month for the previous 24 months since January 1, 1991 [until such time as the facility installs a Stage II vapor recovery system as required by §§115.241 - 249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities)]. In addition, in the covered attainment counties, a record of gasoline throughput for each calendar month for the previous 24 months beginning January 1, 1999 should be maintained at the facility, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month.]; and

[(C) in the covered attainment counties, a record of gasoline throughput for each calendar month beginning January 1, 1999, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month. These records must be made available at the site during inspection by representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.]

#### §115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont-Port Arthur [Beaumont/Port Arthur], Dallas-Fort Worth [Dallas/Fort Worth], El Paso, and Houston-Galveston-Brazoria [Houston/Galveston] areas, transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)], except for:

(A) §115.222(3) [§115.222(7)] of this title (relating to Control Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) of this title (relating to Record-keeping Requirements).

(2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at gasoline [motor vehicle fuel] dispensing facilities are exempt from the requirements of this division, except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks]; and

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors.

(3) In the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed less than 100,000 [125,000] gallons of gasoline in any calendar month after October 2, 2014 [January 1, 1999] are exempt from the requirements of this division, except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) [§115.226(2)(C)] of this title.

(4) In Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties transfers to stationary storage tanks located at a gasoline [motor vehicle fuel] dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)], except for:

(A) §115.222(3) [§115.222(7)] of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors;

(B) §115.222(6) [§115.222(3)] of this title [as it applies to liquid gasoline leaks];

(C) §115.224(1) of this title as it applies to liquid gasoline leaks, visible vapors, or significant odors; and

(D) §115.226(2)(B) [§115.226(2)(C)] of this title.

(5) Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

#### §115.229. Counties and Compliance Schedules.

(a) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas and in Collin, Dallas, Denton, and Tarrant Counties [Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties] shall continue to comply with this division [(relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities)] as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties that has dispensed at least 25,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after December 31, 2004 shall comply with this division as soon as practicable, but no later than December 31, 2005.

(d) The owner or operator of each gasoline [motor vehicle fuel] dispensing facility in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that has dispensed at least 10,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after April 30, 2005, shall comply with this division as soon as practicable, but no later than June 15, 2007.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 28, 2014.

TRD-201401397

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: May 11, 2014

For further information, please call: (512) 239-2548



## CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) is proposing to amend §§312.4, 312.8, 312.10 - 312.13, 312.41, 312.42, 312.44, 312.45, 312.47, 312.50, 312.65, and 312.81 - 312.83.

### Background and Summary of the Factual Basis for the Proposed Rules

On May 13, 2013, the TCEQ received a petition from Mr. Cole Turner (petitioner), on behalf of the landowners and citizens of Ellis County (Project Number 2013-033-PET-NR).

The petitioner requested that TCEQ amend Chapter 312 in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

On June 18, 2013, the commission instructed the executive director to examine the issues raised in the petition and to initiate a rulemaking proceeding to address nuisance odor issues at bulk sewage sludge land application sites on a statewide basis. As part of this rulemaking proceeding, the commission instructed the executive director to engage stakeholders and to report back to the commission with findings and recommended actions, if any, within five months.

The Water Quality Division and Regional office staff conducted site visits at various wastewater treatment plants (WWTPs), sewage sludge processing facilities and bulk sewage sludge land application sites throughout the state. The objective was to evaluate different types of bulk sewage sludge treatment processes and evaluate odors at several sewage sludge processing and land application sites. Staff concluded that sewage sludge facilities that use more advanced treatment processes such as heat drying or composting tend to have more typical odors than those that do not.

The executive director held stakeholder meetings in Parker, Ellis, Waller, and Travis Counties. The comments received at the stakeholder meetings and in writing included support for and against the petition.

At the November 20, 2013, Commissioners Agenda, the executive director recommended initiating a state-wide rulemaking rather than the three-mile prohibition requested in the petition. This recommendation to move forward with the rulemaking process was based upon stakeholder comments requesting relief from odors, vectors, unauthorized discharges from land application sites, tracking of material on roadways and staff observations during site visits. The commissioners instructed the executive director to proceed with releasing draft rule concepts and draft rule language to stakeholders.

The executive director's concept for rulemaking includes separating existing Class A into two categories, Class A and Class AB, and including additional management provisions to address odor. The management provisions for each category become more stringent as the treatment processes used for pathogen reduction used are less advanced. This approach provides additional incentives for permittees to select more advanced pathogen treatment processes which tend to reduce odors (composting, heat drying, pasteurization, and other equivalent processes) and to promote land application through incorporation into the soil, when feasible.

A concern provided during the stakeholder meetings was TCEQ's inability to respond quickly to odor complaints and prevent recurrences. Therefore, in addition to the changes to sludge classification, the rules would clarify the executive director's existing ability to include additional, more stringent requirements to any Class A, AB, or B site such as requiring an Odor Control Plan with measurable goals, as needed. This would allow TCEQ investigators to determine compliance with specific permit conditions designed to address odor and other compliance issues at a specific site and aid in addressing recurrent issues. In addition, staff evaluated existing requirements within Chapter 312 for Class B sites, which could be applied to all sites to address odor.

On January 7, 2014, the Water Quality Division conducted its final stakeholder meeting to present concepts and draft rule language for informal comment.

### Section by Section Discussion

The commission is proposing to add new Class AB where appropriate throughout the entire rulemaking. Exceptions to this are in §312.4(a)(1), since Class AB is a new category, and is not currently an existing type of registration and in instances where the Class A and Class AB pathogen requirements are described in §312.82(a), Pathogen Reduction.

Additionally, throughout this rulemaking proposal the commission is proposing to add the word "sewage" before the word "sludge" to be consistent with the definitions since the current rules only state "sludge" after Class A or Class B in certain sections of the rule. Since the definitions of Class A, proposed Class AB and Class B include the word "sewage" before "sludge" it is appropriate to be consistent with each term. Instances where sewage sludge is already mentioned in the same sentence do not include sewage or sludge after the Class A, Class AB or Class B again.

### §312.4, Required Authorizations or Notifications

The commission is proposing to amend §312.4(b), (b)(1) and (4) to include "Class AB" due to its applicability to notice and reporting requirements.

The commission is proposing to amend §312.4(b)(2) to replace "Land Application Team" with "Water Quality Division" for

**ORDER ADOPTING AMENDED RULES AND  
REVISIONS TO THE STATE IMPLEMENTATION PLAN**

**Docket No. 2013-1392-RUL  
Rule Project No. 2013-022-115-AI**

On September 10, 2014, the Texas Commission on Environmental Quality (Commission), during a public meeting, considered adoption of amended Sections 115.10, 115.221, 115.222, 115.224 – 115.227, and 115.229 of 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds and corresponding revisions to the state implementation plan (SIP). The Commission adopts these amendments in Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter A, Definitions and Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; and corresponding revisions to the SIP. The amendments preserve existing Stage I testing requirements in ozone nonattainment counties and specify Stage I testing requirements for gasoline dispensing facilities located in the 12 ozone nonattainment and four ozone maintenance counties that will be affected by the decommissioning of the Stage II vapor recovery equipment rule revision and in the 95 counties that are subject to the state Stage I rule but not Stage II requirements. The adopted revisions also establish testing requirements that are more consistent with federal Stage I testing in 40 Code of Federal Regulations Part 63, Subpart CCCCCC.

Under Tex. Health & Safety Code Ann. §§ 382.011, 382.012, and 382.023 (Vernon 2010), the Commission has the authority to control the quality of the state's air and to issue orders consistent with the policies and purposes of the Texas Clean Air Act, Chapter 382 of the Tex. Health & Safety Code. The proposed rules were published for comment in the April 11, 2014 issue of the *Texas Register* (39 TexReg 2760).

Pursuant to Tex. Health & Safety Code Ann. § 382.017 (Vernon 2010), Tex. Gov't Code Chapter 2001 (Vernon 2008), and 40 Code of Federal Regulations § 51.102, and after proper notice, the Commission conducted a public hearing to consider the amended rules and revisions to the SIP. Proper notice included prominent advertisement in the areas affected at least 30 days prior to the dates of the hearings. Public hearings were offered in Austin on May 1, 2014, in Fort Worth on April 29, 2014, and in Houston on May 6, 2014. The hearings were not officially opened because no one registered to provide oral comments.

The Commission circulated hearing notices of its intended action to the public, including interested persons, the Regional Administrator of the EPA, and all applicable local air pollution control agencies. The public was invited to submit data, views, and

recommendations on the proposed amended rules and SIP revisions, either orally or in writing, at the hearings or during the comment period. Prior to the scheduled hearings, copies of the proposed amended rules and SIP revisions were available for public inspection at the Commission's central office and on the Commission's Web site.

Data, views, and recommendations of interested persons regarding the proposed amended rules and SIP revisions were submitted to the Commission during the comment period, and were considered by the Commission as reflected in the analysis of testimony incorporated by reference to this Order. The Commission finds that the analysis of testimony includes the names of all interested groups or associations offering comment on the proposed amended rules and the SIP revisions and their position concerning the same.

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules and revisions to the SIP incorporated by reference to this Order are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules and the revisions to the SIP are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that on behalf of the Commission, the Chairman should transmit a copy of this Order, together with the adopted rules and revisions to the SIP, to the Regional Administrator of EPA as a proposed revision to the Texas SIP pursuant to the Federal Clean Air Act, codified at 42 U.S. Code Ann. §§ 7401 - 7671q, as amended.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code, § 2001.033 (Vernon 2008).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

Bryan W. Shaw, Ph.D., P.E., Chairman