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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.10

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §101.10, concerning Emissions Inventory Requirements. The amendment is adopted without changes to the proposed text as published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 7995). The TNRCC also withdraws proposed §101.32, concerning Inspection Requirements.

The revisions to §101.10, concerning Emissions Inventory Requirements, correct a reference to a definition which has been relocated from Chapter 101 to Chapter 116. The purpose of the proposed revisions to §101.32, concerning Inspection Requirements, was to improve recordkeeping requirements for secondary seal gap exceedances and the associated storage tank emissions in order to improve rule effectiveness, resulting in additional emission reduction credits.

Public hearings were held October 31, 1994 in Houston; November 1, 1994 in Beaumont; and November 2, 1994 in Irving. Written comments were initially to be accepted through November 4, 1994; however, the comment period was extended to November 18, 1994.

The Texas Chemical Council (TCC) and the Texas Mid-Continent Oil & Gas Association (TMOGA) submitted joint comments. DuPont, Exxon Company, U.S.A. -Baytown (Exxon Baytown), and Exxon Chemical Americas (Exxon Chemical) fully supported the TCC/TMOGA comments.

No commenters submitted testimony on §101.10, concerning Emissions Inventory Requirements.

Eight commenters submitted testimony on §101.32, concerning Inspection Requirements. Houston Lighting & Power (HL&P) and Star Enterprise (Star) fully supported the proposed changes. Dow Chemical Company (Dow), EPA, Exxon Baytown, Galveston-Houston Association for Smog Prevention (GHASP), TCC, and TMOGA generally opposed the proposed changes.

The TCC, TMOGA, Dow, Exxon Baytown, Monsanto, and DuPont objected to the adoption of the Inspection Preparation Guidelines (IPG) by reference in §101.32 since such adoption would make the IPG an enforceable document for all source categories that it addresses, and stated that TNRCC should limit the adoption of the IPG by reference to source categories for which Texas receives additional rule effectiveness (RE) credits. The TCC, TMOGA, Dow, DuPont, and Monsanto suggested incorporation of the excess emissions calculation methodology directly into §115.116(a)(2)(B), thereby eliminating the need to reference the IPG in §101.32. The TCC and TMOGA further recommended specific changes to the IPG should the TNRCC elect to adopt the IPG by reference. GHASP commented that the requirement in §101.32 to submit additional information relating to inspection preparations is vague and wondered how that could assist the TNRCC in determining compliance. The EPA expressed concerns about adopting the September version of the IPG by reference in §101.32. The EPA indicated that every time TNRCC wishes to update the IPG in the future, it would have to go through rule-making to make the new document enforceable. Dow recommended changing the rule language by making reference to the latest version of the IPG. Furthermore, EPA indicated that the IPG will have to be submitted and reviewed as part of the State Implementation Plan (SIP) revision to be approved.

The TNRCC has deleted §101.32 and included the excess emission calculation methodology in §115.116(a)(2)(B) to obtain the desired RE emission credits for external floating roof storage tanks. No reference is made to the IPG in any of the adopted provisions. The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 4, 1995

TRD-9500224 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date. January 27, 1995

Proposal publication date October 7, 1994

For further information, please call (512) 239-1970

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Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter B. General Volatile Organic Compound Sources

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§115.112, 115.113, 115.115, 115.116, 115.117, and 115.119, concerning Storage of Volatile Organic Compounds, §§115.121, 115.122, 115.123, and 115.127, concerning Vent Gas Control; §§115.143, 115.147, and 115.149, concerning Industrial Wastewater, §115.159, concerning Municipal Solid Waste Landfills; and §115.219, concerning Loading and Unloading of Volatile Organic Compounds

Adopted with changes as published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 7995) are §§115.115, 115.116, and 115.119, concerning Storage of Volatile Organic Compounds; §115.149, concerning Industrial Wastewater; and §115.219, concerning Loading and Unloading of Volatile Organic Compounds.

Adopted without changes as published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 7995) are §§115.112, 115.113, and 115.117, concerning Storage of Volatile Organic Compounds; §§115.121, 115.122, 115.123, and 115.127, concerning Vent Gas Control; §115.143 and §115.147, concerning Industrial Wastewater; and §115.159, concerning Municipal Solid Waste Landfills. These sections will not be republished.

Revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC) and the State Implementation Plan (SIP) are adopted in response to the

1990 Amendments to the Federal Clean Air Act (FCAA) and United States Environmental Protection Agency (EPA) requirements. The FCAA requires states to adopt a SIP which achieves a 15% net-of-growth reduction in the VOC emissions level by November 15, 1996 in the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), El Paso, and Houston/Galveston (HGA) ozone nonattainment areas. The TNRCC submitted this required Rate-of-Progress (ROP) SIP to EPA by May 13, 1994.

The FCAA further requires states to develop, adopt, and submit a Post-1996 ROP SIP and accompanying rules to EPA by November 15, 1994. This submittal must demonstrate how the BPA and HGA ozone nonattainment areas will achieve continuing reductions in VOC and/or nitrogen oxide (NO_x) emissions of 3.0% per year until 1999 for BPA and 2007 for HGA, or until attainment status is reached. The plan must also include an additional 3.0% of contingency measures to be implemented if the nonattainment area fails to meet a deadline.

The new and revised rules comprise the first three years' reductions (or 9 0% net-of-growth). This "down payment" approach is designed to meet the requirements for the years 1997-1999. The final SIP will be based on Urban Airshed Modeling (UAM) using the Coastal Oxidant Assessment for Southeast Texas (COAST) data. The TNRCC plans to complete this modeling and develop any further rules necessary to reach attainment as evidenced by the model in 1996.

The revisions to §§115 112, 115.113, 115.115, 115.116, 115.117, and 115 119, concerning Storage of Volatile Organic Compounds delete obsolete language, update a rule reference, update the test methods for determining true vapor pressure, and add recordkeeping requirements for seal failures and the associated emissions. The purpose of the recordkeeping changes is to improve recordkeeping requirements for secondary seal gap exceedances and the associated emissions in order to improve rule effectiveness, resulting in additional emission reduction credits.

The revisions to §§115.121, 115.122, 115.123, and 115.127, concerning Vent Gas Control, correct rule references, correct typographical errors, and clarify the Once-In-Always-In (OIAI) language. OIAI is an EPA concept which means that once emissions from a source exceed the applicability cutoff for a particular VOC regulation in the SIP, that source is always subject to the control requirements of the regulation

The revisions to §§115.143, 115.147, and 115.149, concerning Industrial Wastewater, update rule references and extend the industrial wastewater requirements to BPA as a contingency rule.

The revisions to §115.159, concerning Municipal Solid Waste Landfills, extend the compliance date from May 31, 1995 to May 31, 1996 for municipal solid waste landfills required to install gas collection and control systems in the DFW ozone nonattainment area.

The revisions to §115.219, concerning Loading and Unloading of Volatile Organic Compounds, establish marine vessel loading control requirements as a contingency measure for the BPA area.

Public hearings were held October 31, 1994 in Houston; November 1, 1994 in Beaumont; and November 2 , 1994 in Irving. Written comments were initially to be accepted through November 4, 1994; however, the comment period was extended to November 18, 1994.

Texas Chemical Council (TCC) and Texas Mid-Continent Oil & Gas Association (TMOGA) submitted joint comments. DuPont, Exxon Company, U.S.A.-Baytown (Exxon Baytown), and Exxon Chemical Americas (Exxon Chemical) fully supported the TCC/TMOGA comments. Houston Lighting & Power (HL&P) fully supported all rule proposals. Star Enterprise (Star) fully supported all rules pertaining to BPA.

Ten commenters submitted testimony on §§115.112, 115.113, 115.115, 115. 116, 115.117, and 115.119, concerning Storage of Volatile Organic Compounds. Dow Chemical Company (Dow), DuPont, EPA, Exxon Baytown, Exxon Company, U.S.A. -Houston (Exxon Houston), Monsanto, Phillips 66 Company (Phillips), TCC, and TMOGA generally supported the proposed revisions, but suggested changes. Galveston-Houston Association for Smog Prevention (GHASP) generally opposed the proposed changes.

Four commenters submitted testimony on §§115.121, 115.122, 115 123, and 115.127, concerning Vent Gas Control. Exxon Baytown, TCC, and TMOGA generally supported the proposed revisions but suggested changes or clarifications, while GHASP generally opposed the proposed changes.

Six commenters submitted testimony on §§115.143, 115.147, and 115.149, concerning Industrial Wastewater. DuPont, Exxon Baytown, TCC, and TMOGA generally supported the proposed revisions but suggested changes or clarifications, while EPA and GHASP generally opposed the proposed changes

Two commenters submitted testimony on §115 159, concerning Municipal Solid Waste Landfills. No commenters opposed the proposed changes, while the North Central Texas Council of Governments (NCTCOG) and the City of Grand Prairie (Grand Prairie) supported the proposed changes.

Five commenters submitted testimony on §115.219, concerning Loading and Unloading of Volatile Organic Compounds. DuPont, Exxon Baytown, TCC, and TMOGA generally supported the proposed revisions but suggested changes or clarifications, while GHASP generally opposed the proposed changes.

Three commenters submitted testimony on the preliminary UAM documentation contained in the ozone SIP revision entitled "Post-1996 Rate-of-Progress for Beaumont/Port Arthur and Houston/ Galveston." This SIP revision was the subject of hearings in Beaumont on September 1, 1994 and Houston on September 2, 1994. Because additional, much more detailed UAM modeling documentation was made the subject of subsequent hearings in Houston and Beaumont (October 31, 1994 and November 1, 1994, respectively), TNRCC staff decided to delay responses to the testimony on the preliminary modeling until after the hearings on the more detailed modeling. In such a manner, responses to issues raised in the testimony from the initial hearings could be combined with responses to any issues raised in the later hearings. EPA and an individual generally supported the preliminary UAM modeling documentation with changes, while GHASP generally opposed the preliminary UAM documentation. During the comment period for the hearings held in Houston and Beaumont on October 31, 1994 and November 1, 1994, respectively, five commenters submitted testimony on the UAM modeling documentation. TCC, TMOGA, Exxon Baytown, HL&P, and Star supported the UAM modeling documentation, while no commenters were opposed.

GHASP requested that these rule proposals be withdrawn and that TNRCC start all over again.

The regulation development process is intensive and time-consuming. It involves extensive research, coordination with different internal departments, and coordination with external actors such as EPA, the regulated community, the public, and local government. A significant portion of the time built into the rulewriting timetable is devoted to activities such as *Texas Register* publication, public hearings, workgroups, and public comment periods; all of which are designed to foster public participation in the regulatory process. Withdrawing all of the proposed rules at this point will not allow the TNRCC to meet EPA's January 15, 1995 deadline for the ROP completeness determination. Severe sanctions may attach to any state which does not meet its completeness determination by January 15, 1995. These sanctions include the loss of millions of dollars in federal highway funds and EPA grants for pollution control programs.

Additionally, it is necessary to give affected industry, small business and the public sufficient time to implement the requirements of any proposed rule. When rulemaking is unduly delayed, it has the potential to delay rule implementation, which is unacceptable to staff, EPA, and many environmental groups.

Texas has made an exceptional commitment to meeting FCAA deadlines and milestones, and TNRCC intends to continue with effective and timely rulemaking.

TCC, TMOGA, Exxon Baytown, HL&P, and Star supported the TNRCC's approach in delaying the HGA and BPA attainment SIPs until the COAST data can be evaluated.

The TNRCC appreciates the support.

EPA stated that the modeling discussion in the SIP is very general. It does not contain detailed information on how the modeling was carried out, and results are not provided. In addition, no attainment demonstration is included. A complete modeling attainment demonstration SIP will need to include technical reports documenting the State's application of the UAM and modeling that documents

attainment, consistent with the EPA's "Guidance on UAM Reporting Requirements for Attainment Demonstration," (March, 1994).

Detailed technical reports documenting the State's application of the UAM for the HGA and BPA ozone nonattainment areas were the subject of public hearings held on October 31, 1994 in Houston and November 1, 1994 in Beaumont. The reports documented modeling procedures as well as results demonstrating progress toward attainment. The reports were consistent with the EPA's "Guidance on UAM Reporting Requirements for Attainment Demonstrations" (March 1994). Report titles are "Houston/Galveston Beaumont/Port Arthur Base Case Report Modeling Domain/Episode Selection Meteorology/Air Quality," "Houston/Galveston Beaumont/Port Arthur Base Case Report Emissions," "Houston/Galveston Beaumont/Port Arthur Ozone Nonattainment Areas Base Case Report Performance Evaluation," and "Houston/Galveston Beaumont/Port Arthur Nonattainment Areas Progress Toward Attainment."

There was no testimony given on the detailed reports. However, by phone, EPA staff requested clarification on several technical issues. TNRCC staff believes these issues were clarified to EPA's satisfaction.

EPA stated that the last sentence on page 25 specified episode dates that are different from the dates contained in Table 4. They believe that the correct dates are May 16-19, 1988, July 27-August 1, 1990, and October 10-13, 1991.

The dates specified on page 25 of the SIP document are correct (May 15-19, 1988; July 26-31, 1990; and October 9-13, 1991). The modeling episodes began on the day preceding the first ozone exceedance day so that the effect of initial conditions would be minimized. Episode selection is discussed in detail in the detailed meteorology report.

An individual suggested the use of artificial neural network modeling to alleviate the perceived weaknesses in the UAM. She also requested that TNRCC support the effort of Lamar University to perform this analysis by sharing data from the COAST study.

EPA requires that the UAM be used for photochemical modeling of ozone nonattainment areas in support of SIP development. However, TNRCC staff encourages studies which could result in improvements to photochemical models, including the UAM. Staff will be available to discuss UAM procedures and results with all interested parties. Model input and output data, including that from the COAST study, is available upon request. Requests for these data should be made to Mr. Cyril Durrenberger, P.E. at (512) 239-1482. GHASP stated that one of the problems with the COAST project is that TNRCC waited too long to start it. The COAST project should have been done a year earlier.

The COAST study was conducted during the summer of 1993 to coincide with an intensive field study conducted by the Minerals Management Service (MMS) of the Department of Interior. The MMS collected emissions data from offshore oil and gas production, and air quality and meteorological data in the coastal area (including data from aircraft sampling). TNRCC staff believes that supplementing the COAST data with the MMS data is critical for the development of effective control strategies for HGA and BPA.

GHASP stated that they are concerned about the combining of the HGA area with the BPA area for modeling purposes. Star encouraged TNRCC to include at least one episode that demonstrates transport from HGA to BPA during the BPA attainment SIP development.

During the ozone episode selection process, TNRCC staff noted that elevated ozone levels, and in some cases ozone exceedances, tended to occur in HGA and BPA on the same days. It was therefore prudent to combine the modeling domains so that any transport of ozone or ozone precursors between the two areas would be addressed by the model. It should be noted that, even in the case where there is no interaction between adjacent domains, there are no negative effects from combining domains for modeling purposes.

GHASP commented that they are concerned that the model is thought to be accurate enough for only one ozone episode for SIP modeling. GHASP is concerned about underprediction and over-prediction of ozone by the UAM.

Three ozone episodes were modeled for the HGA and BPA non-attainment areas (May 15-19, 1988; July 26-August 1, 1990; and October 9-13, 1991). As discussed in the detailed modeling reports which were subjected to hearing, model performance for the 1988 and 1990 episodes was deemed sufficient for determining directional guidance on the effectiveness of VOC, NO_x, or VOC/NO_x controls (e.g., whether NO_x RACT would be beneficial). Model performance for the 1991 episode was deemed inadequate for further analysis.

It is normal for models, including the UAM, to underpredict or overpredict. Models are not expected to predict monitored levels exactly. However, there are ranges of accuracy, based on statistical measures, within which model performance is judged. There are also other criteria (e.g., behavior of ozone predictions over time and space, as indicated by graphical procedures) used for judging model performance. Report #3, which was subjected to hearing, provides more detailed information on methods of assessing UAM performance, and presents the performance results.

GHASP commented that it is not known whether the ROP SIP reductions will be enough to keep up with the reductions needed to reach attainment.

The modeling documented in the detailed reports which were subjected to hearing shows that the 15% net of growth ROP SIP reductions, coupled with the additional 9.0% net of growth reductions by 1999, will not be sufficient to demonstrate attainment by the attainment dates for HGA and BPA. This conclusion is based on the modeling of specific VOC reductions in the 15% ROP SIP as well as additional information provided by UAM "VOC/-NO_x response surfaces," which are developed from projected across-the-board emissions reductions. A projected 1999 inventory was used for this modeling.

GHASP commented that they are concerned with the dates proposed to complete the UAM modeling and turn in the Attainment Demonstration. GHASP is concerned about the TNRCC's contention that the timeline for submittal of the attainment demonstration to EPA is predicated on the availability of data by certain dates.

Table 5 in the originally proposed SIP presented a schedule for completing a UAM attainment demonstration, using COAST data, by April 30, 1996. The currently proposed schedule (see Table 4 in the revised SIP) likewise projects completion of the attainment demonstration by April 30, 1996, although some of the projected milestone dates have been revised. The TNRCC believes that such an attainment demonstration cannot be completed sooner, considering the time required for completing the processing of the COAST data, as well as the time required for conducting the modeling and development of control strategies.

The TNRCC maintains that the attainment demonstration schedule is predicated on the timely availability of quality assured data from the COAST study. It will be the TNRCC's responsibility to ensure that the data is available and in model-ready format in time to meet the schedule.

Exxon Houston objected to limiting the accumulated area of secondary seal gaps that exceed 1/8 inch to 1.0 inch per foot of tank diameter, as specified in §115.112(a)(2)(F). Exxon Houston recommended that the allowable be changed to ten inches per foot of tank diameter in §§115.112(a)(2)(F), 115. 116(a)(2)(A), 115.116(a)(2)(B), and 115.116(a)(6) for consistency with the federal recommendation.

Rule 115.112(a)(2)(F) was not proposed for amendment, and consequently Exxon Houston's comments on this rule are not within the scope of the proposed revisions. However, the secondary seal gap allowable specified in §115.112(a) (2)(F) is based upon EPA's recommended RACT requirements as published in Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047). Consequently, the TNRCC has no plans to change the existing secondary seal gap allowable. Rule 115.116(a) (2) has been revised to include the secondary seal gap allowable of §115. 112(a)(2)(F), and §115.116(a)(6) has been deleted.

GHASP requested the TNRCC define "substantially equivalent" and "continuous compliance" in §115.113, regarding Alternative Control Requirements.

The TNRCC position remains that these terms have the meaning commonly ascribed to them in the field of air pollution control, and the TNRCC does not believe that further definition is necessary.

Phillips commented on §115.115(a)(7) and (b)(7) and expressed concern that American Society for Testing and Materials (ASTM) Test Method D2879 was expensive and time-

consuming, with few contract laboratories available to perform ASTM D2879 analyses in the HGA area Phillips suggested that language allowing the use of the vapor pressures given in EPA's AP-42 Table 4 3-2 be added.

The purpose of the test methods enumerated in §115 115 is simply to list the various acceptable methods available for determining compliance with the specific requirements in §§115.112-115.119 when testing is conducted. Nothing in §115.115 precludes the use of standard engineering calculations or methods, including the use of accepted published chemical and physical properties, such as the ones referenced in Table 4.3-2 in AP-42, as a method of establishing the vapor pressure of a known substance The purpose of the test method is to establish that a supposed "known" compound indeed has the characteristic vapor pressure listed in a table, or to establish the vapor pressure of other compounds The title has been changed from Testing Requirements to Approved Test Methods for clarity.

TCC, TMOGA, Dow, DuPont, Exxon Baytown, and Monsanto suggested incorporation of the emissions calculation methodology directly into §115 116(a)(2)(B), thereby eliminating the need to reference the Inspection Preparation Guidelines (IPG) TCC and TMOGA further recommended specific changes to the IPG should the TNRCC elect to adopt the IPG by reference

TNRCC agrees with TCC and TMOGA to incorporate the emissions calculation methodology directly into §115 116(a)(2)(B) and has made the recommended change. Upon this change, no reference is made to the IPG in any of the adopted provisions.

EPA expressed concerns about adopting the September version of the IPG by reference in §115.116(a)(2)(B) and §115 116(a)(6). EPA indicated that every time TNRCC wishes to update the IPG in the future, it would have to go through rulemaking to make the new document enforceable. Dow recommended changing the rule language by making reference to the latest version of the IPG. Furthermore, EPA indicated that the IPG will have to be submitted and reviewed as part of the SIP revision to be approved

The Texas Register Rules, 1 Texas Administrative Code Chapter 91, §91 41(c), require agencies which adopt documents by reference to give notice of revisions to the referenced document by amending, through rulemaking, the rule in which it is referenced. This point is now moot since the TNRCC has deleted §115 116(a)(6) and included the emission calculation methodology in §115. 116(a)(2)(B) to obtain the desired RE emission credits. No reference is made to the IPG in any of the adopted provisions

EPA recommended revising §115 116(a)(2)(B) to include language stating that "these calculated emissions shall be reported in the annual emissions inventory submittal" in order to avoid confusion over whether these calculated emissions are a violation.

TNRCC agrees with EPA and has made the recommended change.

TCC and TMOGA commented that calculation of emissions resulting from secondary seal gap exceedances should be limited to tanks with secondary seals required to be physically measured during inspection.

TNRCC agrees and has made the recommended change.

TCC, TMOGA, and Exxon Baytown expressed concerns about the characterization of the calculated emissions under §115 116(a)(2)(B) as "excess emissions" that must be reported as "upsets."

TNRCC agrees with the commenters and deleted the phrases "excess emissions" and "upset emissions."

GHASP questioned whether fugitive emissions should be counted as upsets since TNRCC is treating emissions resulting from seal gap failures as upsets.

Fugitive emissions from leaking components such as valves and pump seals are not normally considered to be upset emissions. These fugitive emissions are specifically calculated in the emissions inventory. The TNRCC has clarified §115.116(a)(2)(B) by deleting the phrase "upset emissions." The purpose of including the emissions calculation methodology in §115.116(a)(2) (B) is to insure that all emissions associated with external floating roof storage tanks are accounted for and included in the annual emissions inventory submittal.

GHASP questioned whether TNRCC is trying to reassign emissions from one category to another by requiring sources to report upset emissions.

Emissions resulting from seal gap exceedances are not currently required to be reported as part of the annual emissions inventory. The inclusion of a requirement to calculate reportable emissions during seal gap exceedances and report them to the TNRCC would result in a better account of what is actually being emitted to the atmosphere from this source category. These reportable emissions are not a subset of the inventory They are to be reported in addition to what is currently being reported.

TCC, TMOGA, Dow, DuPont, Exxon Baytown, and Monsanto objected to the adoption of the IPG by reference in §115.116(a)(6). TCC, TMOGA, and Exxon Baytown commented that the owner and/or operator of any storage tank would be legally bound to every line of the IPG, not just its tank-related provisions

TNRCC agrees that the adoption of the IPG by reference in this paragraph is unnecessary. The rule effectiveness (RE) emission reductions for which the TNRCC has taken credit are a result of an inclusion of a procedure in the IPG that calculates emissions during periods of secondary seal gap exceedances on external floating roof tanks. The proposed §115.116(a)(2)(B) requires that emissions be calculated in accordance with the methodology specified in the IPG and be reported annually. TNRCC agrees that the calculation methodology should be included in §115.116(a)(2) to obtain the desired RE emission reduction credits. TNRCC has therefore deleted §115.116(a)(6) in its entirety.

TCC, TMOGA, and Exxon Baytown suggested changing the compliance date in §115.119 from December 31, 1995 to January 1, 1996. This change allows owners and/operator to begin their appropriate recordkeeping at the beginning of the calendar year.

TNRCC has made the recommended change.

Exxon Baytown recommended that the specific counties affected by the storage tank rule not be listed in §115.119, but rather that the nonattainment areas be listed since the areas are defined in §115.10.

In general, the TNRCC has endeavored to list the specific counties in the Counties and Compliance Schedules section of each undesignated head in Chapter 115 for the convenience of the reader and believes that it is appropriate to continue to do so. The intent is to insure that there is no confusion about which counties are affected by changes to various undesignated heads in Chapter 115.

GHASP and Exxon Baytown commented on §115.122(a)(4). GHASP objected to language which allows companies that exceed the provisions of this subsection to not control their emissions once they fall below the exemption limit that they exceeded. Exxon Baytown requested that additional discussion about the intent of the change to OIAI be provided.

The Once-In-Always-In (OIAI) concept is an EPA requirement. There are methods available to remove a source from the OIAI requirements; for example, a federally enforceable permit or the Alternative Means of Control (AMOC) process. On August 11, 1993, the staff met with members of the TCC and EPA Region 6 to discuss this and other issues. EPA stood firmly by its policy, which was first stated in the November 1987 SIP call and which the former Texas Air Control Board was required to include in the Reasonably Available Control Technology (RACT) fixups. EPA indicated the intent was to provide for federal enforcement of sources, not to allow for an exceedance of the exemption level, and to prevent the dismantling of the control device which would result in a significant increase in the emissions inventory (i.e., a through-put reduction of 5.0% could result in an emissions increase of 90% if the control device were removed). A policy memo from G.T. Helms dated August 23, 1990 states that the purpose of this requirement is to discourage a source already subject to the regulation from installing minimal ("less than RACT") controls to circumvent RACT requirements, and to improve the clarity of VOC regulations by minimizing confusion over whether variations in production cause a particular source to be covered by a regulation. The language is the result of negotiations with EPA and the affected industries to maintain the OIAI concept while allowing an incentive for cost effective and innovative approaches to pollution prevention and waste minimization which would reduce emissions at or below the controlled levels prior to removal of control devices.

The proposed changes to §115.122(a)(4)(B) were recommended by the TNRCC legal staff prior to the adoption of identical changes to the OIAI rules in most of the undesignated heads in Chapter 115 on May 4, 1994. Unfortunately, the recommended changes to §§115.122(a)(4)(B) and 115.212(a)(12)(B) could not be made at that time since these sections had not been proposed for change. The current changes to §115.122(a)(4)(B) do not affect the intent of the OIAI rules; they simply make §115.122(a)(4)(B) consistent with other OIAI rules. An identical change to §115.212(a)(12)(B) will likewise be initiated in the near future.

GHASP requested the TNRCC define "substantially equivalent" and "continuous compliance" in §115.123, regarding Alternative Control Requirements.

The TNRCC position remains that these terms have the meaning commonly ascribed to them in the field of air pollution control, and the TNRCC does not believe that further definition is necessary.

Exxon Baytown, TCC, and TMOGA supported the proposed amendments to §115. 127(a)(5)(C).

The revisions to §115.127(a)(5)(c) are adopted without change.

GHASP requested the TNRCC define "substantially equivalent" in §115.143, regarding Alternative Control Requirements.

The TNRCC position remains that this term has the meaning commonly ascribed to it in the field of air pollution control, and the TNRCC does not believe that further definition is necessary.

GHASP also questioned why the term "compliance" was used rather than "continuous compliance."

The word "continuous" was inadvertently left out in the original proposal, and the TNRCC has corrected this language.

GHASP commented on §115.147 and objected to any allowance of 80% control efficiency in §115.147(6).

The 80% control efficiency is only allowed after demonstration to the Executive Director of some very stringent criteria. It is not a blanket exemption and is only allowed under specific circumstances.

Exxon Baytown recommended that the specific counties affected by the wastewater rule not be listed in §115.149, but rather that the nonattainment areas be listed since the areas are defined in §115.10.

In general, the TNRCC has endeavored to list the specific counties in the Counties and Compliance Schedules section of each undesignated head in Chapter 115 for the convenience of the reader and believes that it is appropriate to continue to do so.

EPA and GHASP stated that the control of wastewater emissions in BPA must be mandatory, rather than a contingency measure.

In order to fulfill FCAA requirements for adoption of RACT, wastewater rules will eventually be mandatory in BPA. The purpose of the current rulemaking, however, is simply to satisfy ROP SIP requirements and not to implement RACT.

DuPont, TCC, and TMOGA did not support the automatic implementation of the wastewater contingency rule in BPA in 1999 and stated that the one-year compliance schedule for this contingency measure is too short.

The specific contingency measures, if any, to be implemented will be selected from all available contingency measures. The TNRCC's decision as to which contingency rules to implement will be based on the overall evaluation of the emission reduction credits that are generated from these rules and the cost effectiveness and economic impacts. The TNRCC agrees that a longer compliance schedule is reasonable and has changed the compliance schedule to three years.

Grand Prairie and NCTCOG supported extending the compliance date in §115. 159 for municipal solid waste landfills located in DFW from May 31, 1995 to May 31, 1996.

TNRCC appreciates the support and has adopted this subsection without change.

Grand Prairie commented that TNRCC should allow flexibility for site-specific conditions in implementing the landfills rule.

Section 115.153, concerning Alternate Means of Control, which is not the subject of the current rulemaking, already allows for flexibility in complying with the rule.

GHASP, DuPont, and Exxon Baytown commented on §115.219, concerning Counties and Compliance Schedules. GHASP stated that the control of marine vessel loading emissions in BPA must be mandatory, rather than a contingency measure.

Marine vessel loading rules will eventually be mandatory in BPA due to Title III air toxics and RACT requirements. The purpose of the current rulemaking, however, is simply to satisfy ROP SIP requirements.

DuPont, TCC, and TMOGA did not support the automatic implementation of the marine vessel loading contingency rule in BPA in 1999 and stated that the one-year compliance schedule for this contingency measure is too short.

The specific contingency measures, if any, to be implemented will be selected from all available contingency measures. The TNRCC's decision as to which contingency rules to implement will be based on the overall evaluation of the emission reduction credits that are generated from these rules and the cost effectiveness and economic impacts. The TNRCC agrees that a longer compliance schedule is reasonable and has changed the compliance schedule to three years.

Exxon Baytown recommended that the specific counties affected by the marine vessel loading contingency rule not be listed, but rather that the nonattainment areas be listed since the areas are defined in §115.10. Exxon Baytown also stated that the abbreviation "FCAA" is unnecessary.

Storage of Volatile Organic Compounds

• 30 TAC §§115.112, 115.113, 115.115-115.117, 115.119

In general, the TNRCC has endeavored to list the specific counties in the Counties and Compliance Schedules section of each undesignated head in Chapter 115 for the convenience of the reader and believes that it is appropriate to continue to do so. The TNRCC agrees that it is unnecessary to abbreviate the 1990 Amendments to the Federal Clean Air Act as "FCAA" in §115.219(c) and has deleted this abbreviation. The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382. 017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.115. Approved Test Methods.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.112(a) of this title (concerning Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) -(6) (No change.)

(7) determination of true vapor pressure using American Society for Testing and Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure; or

(8) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, compliance with §115.112(b) of this title shall be determined by applying the following test methods, as appropriate:

(1)-(6) (No change.)

(7) determination of true vapor pressure using ASTM Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure; or

(8) (No change.)

§115.116. Monitoring and Recordkeeping Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following recordkeeping requirements shall apply.

(1) (No change.)

(2) The results of inspections required by §115.114(a) of this title (relating to Inspection Requirements) shall be recorded. For secondary seal gaps that are required to be physically measured during inspection, these records shall include a cal-

culation of emissions for all secondary seal gaps that exceed 1/8 inch (0.32 cm) where the accumulated area of such gaps is greater than 1.0 square inch per foot (21 square centimeters per meter) of tank diameter. These calculated emissions (Tr) shall be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements). The emissions shall be calculated using the following methodology:

Figure 1: 30 TAC §115.116(a)(2)

(3)-(5) (No change.)

(b) (No change.)

§115.119. Counties and Compliance Schedules. All persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties affected by the requirement to calculate and report emissions resulting from secondary seal gaps that exceed 1/8 inch (0.32 cm) where the accumulated area of such gaps is greater than 1.0 square inch per foot (21 square centimeters per meter) of tank diameter as specified in §115.116(a)(2) of this title (relating to Monitoring and Recordkeeping Requirements) shall be in compliance with these calculation and emission reporting requirements beginning with the calendar year that starts on January 1, 1996.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 4, 1995.

TRD-9500226 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 27, 1995

Proposal publication date: October 7, 1994

For further information, please call: (512) 239-1970

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Vent Gas Control

• 30 TAC §§115.121-115.123, 115.127

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9500227 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970

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Industrial Wastewater

• 30 TAC §§115.143, 115.147, 115.149

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

§115.149. Counties and Compliance Schedules.

(a) For Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this undesignated head (relating to Industrial Wastewater) as soon as practicable, but no later than November 15, 1996.

(b) For Hardin, Jefferson, and Orange Counties, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this undesignated head (relating to Industrial Wastewater) as soon as practicable, but no later than three years, after the Texas Natural Resource Conservation Commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the November 15, 1999 attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act §172(c)(9).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 4, 1995.

TRD-9500228 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

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Proposal publication date: October 7, 1994

For further information, please call: (512) 239-1970

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Municipal Solid Waste Landfills

• 30 TAC §115.159

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9500229 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 27, 1995

Proposal publication date: October 7, 1994

For further information, please call: (512) 239-1970

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Subchapter C. Volatile Organic Compound Transfer Operations

Loading and Unloading of Volatile Organic Compounds

• 30 TAC §115.219

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

§115.219. Counties and Compliance Schedules.

(a)-(b) (No change.)

(c) All affected marine terminals in Hardin, Jefferson, and Orange Counties shall be in compliance with §115.211(a), §115.212(a), §115.213(a), §115.214(a), §115.215(a), §115.216(a), and §115.217(a) of this title as soon as practicable, but no later than three years after the Texas Natural Resource Conservation Commission (TNRCC) publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the November 15, 1999 attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 4, 1995.

TRD-9500230 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 27, 1995

Proposal publication date: October 7, 1994

For further information, please call: (512) 239-1970

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Chapter 330. Municipal Solid Waste

Subchapter Q. Memoranda of Agreement and Joint Rules with Other Agencies

• 30 TAC §330.733

(Editor's Note: The following adopted rule is being published in its entirety due to an error that occurred when it was proposed in the July 19, 1994, issue of the Texas Register (19 TexReg 5605). The graphic material contained in this rule was inadvertently omitted from the July 19, 1994 publication. This new rule is being adopted without changes to the proposed text. However, due to the error that occurred in the July 19, 1994 issue, the rule is being published for clarification.

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §330.733, concerning the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 Code of Federal Regulations (CFR) Part 61, Subpart M, §61.154, for the Texas Department of Health (TDH), without changes to the proposed text as published in the July 19, 1994, issue of the *Texas Register* (19 TexReg 5605).

The Texas Air Control Board formerly regulated air emissions of asbestos from demolition and renovation activities. By amending Article 4477-3a of Vernon's Texas Civil Statutes, Subsections (k)-(n), House Bill (HB) 1680 of the 73rd Legislature transferred this regulatory responsibility to the TDH. As a result, the TDH will be implementing the Environmental Protection Agency's (EPA's) 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos, as it pertains to demolitions and renovations involving potential asbestos emissions, beginning September 1, 1994. HB 1680 also requires the TDH and the TNRCC to develop a Memorandum of Understanding (MOU) on inspection of asbestos disposal sites under the TNRCC jurisdiction and to adopt the MOU by rule.

Section 330.733 is added to Chapter 330, Subchapter Q, to adopt the TNRCC/TDH MOU on inspection of asbestos disposal sites by rule and to state where a copy of the MOU can be obtained. The MOU is published as a Figure 1: 30 TAC §330.773 (a) in the Appendix Section of this issue of the *Texas Register.*

Copies of the MOU are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

The effective date of the MOU is the same as the effective date of this rule amendment.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Water Code, §§5.103, 5.105, and 26. 011, which provides the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new section is also adopted under the Health and Safety Code, §361.011 and §361.024, which provides the TNRCC the authority to adopt rules necessary to manage municipal sold waste.

§330.733. Adoption of Memorandum of Understanding by Figure.

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC).
Figure 1: 30 TAC §330.733(a).
The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of Activities per 40 CFR Part 61, Subpart M.

(b) Copies of the MOU are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

(c) The effective date of the MOU is the same as the effective date of the rule amendment adding this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 5, 1995.

TRD-9500174 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 26, 1995

Proposal publication date: July 19, 1994

For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing–Purchase Vouchers

• 34 TAC §5.54

The Comptroller of Public Accounts adopts the repeal of §5.54, concerning consulting services contracts, without changes to the proposed text as published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 8002).

The section is being repealed so that a substantially revised section may be adopted.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Government Code, §2254.039(a), which authorizes the comptroller to adopt rules relating to the purchase of consulting services by state agencies

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 5, 1995

TRD-9500145 Martin E Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 26, 1995

Proposal publication date. October 7, 1994

For further information, please call: (512) 463-4028

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The Comptroller of Public Accounts adopts new §5.54, concerning consulting services contracts, to replace §5.54 that is being repealed, without changes to the proposed text as published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 8002)

The new section covers the procedures that state agencies must follow when entering into consulting services contracts or amending, renewing, or extending those contracts. The new section also specifies the requirements that state agencies must satisfy when submitting purchase documents to the comptroller to make payments under consulting services contracts.

The new section is necessary because of legislative action during the 73rd Legislature, 1993. Senate Bill 248 transferred the consulting services statute from the Texas Civil Statutes to the Government Code. The bill also made numerous non-substantive changes to the statute. Senate Bill 381 and House Bill 2626 substantively changed the definition of "state agency" in the consulting services stat-