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and TCOMI and representatives of local CSCDs and local MHMR authorities to review the MOU for future revisions.

Concerning §411.62(e)(1), the commenter stated that an individual with mental retardation cannot be discharged from department services because the individual will always have mental retardation and will always require services. The department responds that individuals receiving mental retardation services and supports through local mental retardation authorities can be and are discharged for several reasons, including that services and supports from the local authority are no longer needed, another public or private agency is providing more appropriate services and supports, and the individual has moved, died, or been (in the case of offenders) returned to prison. In any of these instances, the individual will be administratively discharged through the department's CARE system. Therefore, the department declines to make the requested change.

The new subchapter is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the following statutes which require the department to adopt by rule the memoranda referenced in the subchapter: Texas Education Code, §29.011; Texas Family Code, §264.003; Texas Government Code, §501.093; Texas Health and Safety, §§161.133 and 533.044, and 614.013; and Texas Human Resources Code, §§22.011, 22.013, 22.014, and 81.017.

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

Filed with the Office of the Secretary of State on October 26, 1999.

TRD-9907250

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TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

Subchapter B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

Division 2. VENT GAS CONTROL

30 TAC §115.127

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §115.127, concerning Exemptions, and to the State Implementation Plan (SIP), in order to ensure the reasonable and cost-effective reduction of volatile organic compound (VOC) emissions in ozone nonattainment areas. The amendments are adopted with changes to the pro-

posed text as published in the June 11, 1999 issue of the *Texas Register* (24 TexReg 4345).

EXPLANATION OF ADOPTED RULE

The amendments revise the vent gas rule by extending the 30,000 part per million (ppm) concentration limit exemption for three pulp and paper mills until April 15, 2001. The current exemption includes an expiration date of November 15, 1999 for facilities assigned the Standard Industrial Classification number 26 (pulp and paper mills). There are six pulp and paper mills in Texas, but only three are located in ozone nonattainment area counties, and therefore subject to Chapter 115 rules.

The vent gas rule was initially adopted in 1972 to control VOC emissions from various industrial process vents which, at the time, were generally uncontrolled. The rule originally contained an exemption limit of 30,000 ppm, or 3.0% by volume, for all sources, because most vent gas streams containing this concentration level of VOCs will burn without the use of supplemental fuel. Consequently, the installation of a flare or direct-flame incinerator was a highly cost-effective first step in controlling vent gas stream emissions.

In 1992, the Texas Air Control Board (predecessor to the commission) lowered the exemption limit to 612 ppm for all vent gas sources with a compliance date of July 1994. The 612 ppm limit was based on an United States Environmental Protection Agency (EPA) Control Techniques Guideline limit for the control of VOCs in Synthetic Organic Chemical Manufacturing Industry vent gas sources. In November 1993, in response to an industry request, the commission extended the compliance date to May 1995 for all sources. In May 1994, in response to a petition for rulemaking from the Texas Paper Industry Environmental Council, the commission extended the compliance date for pulp and paper mills until November 1998. At the time the extension was approved, the EPA was in the process of developing a multi-media pulp and paper Maximum Achievable Control Technology (MACT) standard with targeted promulgation and compliance dates of 1995 and 1998 respectively. Industry representatives were concerned that the installation of control technology for compliance with the vent gas rule might soon be incompatible with control requirements specified by the forthcoming MACT standard. The commission agreed that controls installed for compliance with the vent gas rule might not be cost-effective if they had to be reworked in the near term. In April 1997, the commission again extended the exemption until November 15, 1999 because of the EPA delay in issuing the MACT. The MACT (40 Code of Federal Regulations (CFR) 63, Subpart S) was promulgated on December 28, 1998, and some control technology conflicts do exist. Both the vent gas rule and the MACT target some of the same processes for control, but with differing compliance deadlines. The industry has asked that the commission once again extend the vent gas rule's November 15, 1999 compliance date to avoid the need to control processes that will be shut down or otherwise controlled by the extension date.

The Chapter 115 vent gas rule applies to three ozone nonattainment area mills: Pasadena Paper and Donahue located in Houston/Galveston (HGA), and Inland located in Beaumont/Port Arthur (BPA). Pasadena Paper has no vents that would have to be controlled under the 612 ppm limit, but it will be subject to recordkeeping requirements. Donahue has a 53-ton per year (tpy) vent that is subject to the vent gas rule 612 ppm limit, which is also required to be controlled by April 2006, under the

MACT. Donahue representatives, however, have recently committed to plans to permanently shut down the kraft mill, the only unit affected by the exemption, by August 2000. Therefore, the current issue for Donahue is the cost of installing new controls to address a total of approximately 40 tons of VOC over a nine-month period. Inland has a 25-tpy vent that is subject to the vent gas rule 612 ppm limit, but is not subject to the MACT. However, this vent will be controlled by April 15, 2001 as part of a larger project to reduce emissions from other sources which are subject to MACT.

Meeting the November 1999 deadline would require the purchase and installation of controls that would either not be needed beyond August 2000 (in the case of Donahue), or might need to be reworked or removed when the mill renovates for compliance with the MACT by April 2001 (in the case of Inland).

Lowering the Chapter 115 vent gas rule exemption to 612 ppm for the pulp and paper industry before April 15, 2001 is unnecessary because: 1) the amount of uncontrolled emissions between the current expiration date of November 1999 and the proposed expiration date of April 2001 is 75 tons over the 17-month period; 2) these emission points are either going to be shut down and demolished by August 2000, or controlled by April 15, 2001, as part of a larger MACT compliance project; 3) the mills have already accomplished 800 tpy in reductions; and 4) the vent gas rule implements Reasonably Available Control Technology (RACT) and it is not economically reasonable to require this level of control on an interim basis.

This rule change to extend the exemption until April 15, 2001 is also being submitted as a SIP revision; however, the uncontrolled 75 tons that will occur over the 17-month period will not affect any SIP emission reduction obligations relating to attainment demonstrations. Reductions totaling 800 tpy, relating to attainment demonstrations, have already occurred, or will occur, as a result of permit conditions, existing Chapter 115 vent gas rule requirements, or controls already installed to comply with MACT. These reductions are the approximately 600 tpy from Donahue's incineration of thermomechanical pulping and tall oil plant emissions, and Pasadena Paper's approximately 200 tpy from control of brown stock washer emissions.

It should be noted that while the commission believes it is reasonable to extend the exemption from November 15, 1999 until April 15, 2001, the commission cannot foresee a circumstance where an additional extension will be necessary or granted. The commission expects the affected mills to be in compliance with the rule by April 15, 2001 to forestall any enforcement action.

In addition, the changes to §115.127, concerning Exemptions, revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Code. The revision adopted in this rulemaking will extend the 30,000 ppm concentration limit exemption for the pulp and paper industry until April 15, 2001. This revision does not meet the definition

of a major environmental rule, as it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. This rule will result in a cost savings to the industry. Furthermore, this rulemaking will not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Adoption of this amendment will not adversely affect any SIP emission reduction obligations relating to attainment demonstrations, because of the limited duration and amount of uncontrolled emissions. The extension of the 30,000 ppm concentration limit exemption for the pulp and paper industry until April 15, 2001 will mean that 40 tons from HGA mill remains uncontrolled from November 15, 1999 until August 2000, and another 35 tons in BPA remains uncontrolled from November 15, 1999 until April 15, 2001. Continuation of the exemption is possible because the required reductions are occurring, in part, due to industry compliance with the MACT standard, which the pulp and paper mills are also required by the FCAA (§7412) to implement for their industry. The MACT requirements are more stringent than the RACT requirements, therefore, the extension of the pulp and paper exemption in Chapter 115 is consistent with but does not exceed a standard set by federal law. Finally, the amendments are not a "major environment rule" because they do not meet any of the four applicability requirements of a "major environmental rule." Specifically, the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor are being adopted solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule in accordance with the Code, §2007.043. The following is a summary of that assessment. The extension of the vent gas rule exemption until April 15, 2001 will relieve two pulp and paper mills from installing controls which would either not be needed beyond August 2000 (in the case of Donahue), or might need to be reworked or removed when the mill renovates for compliance with the MACT by April 15, 2001 (in the case of Inland). This rule will result in a cost savings to the industry. Therefore, this revision will not constitute a takings under Chapter 2007 of the the Code.

COASTAL MANAGEMENT PLAN CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the revision is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). Adoption of this amendment will not have a significant adverse affect on any SIP emission reduction

obligations relating to attainment demonstrations, because of the limited duration and amount of uncontrolled emissions. The extension of the 30,000 ppm concentration limit exemption for the pulp and paper industry until April 15, 2001 will mean that 40 tons from HGA mill remains uncontrolled from November 15, 1999 until August 2000, and another 35 tons in BPA remains uncontrolled from November 15, 1999 until April 15, 2001. No comments were received during the comment period regarding the consistency of the rules with the CMP.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on July 8, 1999, and the comment period closed on July 12, 1999. There were two written comment letters received, one from EPA generally supporting the amendments, and one from an individual opposing the amendments. There were no commenters at the public hearing.

ANALYSIS OF TESTIMONY

EPA stated that the proposed revisions were intended to make the state's vent gas control rules more consistent with the federal MACT rules for the control of emissions from the pulp and paper industry, and that they had reviewed the proposed changes and did not have any specific comments.

An individual stated that he was opposed to this proposal because the commission had delayed the implementation of vent gas standards for these companies for five years. He stated that this five-year delay has caused the citizens in the vicinity of the companies to unnecessarily breathe an additional 390 tons of emissions, and the citizens will breathe an additional 156 tons of emissions during the next two years, the majority of which should have been controlled. The individual further stated that it is unfair for the commission to point to reductions required by MACT rules and try to hide the fact that emissions reductions have not occurred because the commission has not required compliance with the vent gas rules.

Lowering the Chapter 115 vent gas rule exemption at this time to from 30,000 ppm to 612 ppm for the pulp and paper industry would require two of the affected mills to install control technology that might have to be removed or reworked for compliance with the MACT standard. One mill has a 53 tpy vent that is subject to the 612 ppm limit, however, the representatives of the mill have committed to permanently shut down the kraft mill by August 2000. Therefore, the issue for this mill is the cost effectiveness of installing new controls to address a total reduction of approximately 40 tpy (53 tpy times 0.75 year = 39.75 tons) over a nine-month period. The second mill has a 25 tpy vent that is subject to the vent gas rule limit of 612 ppm, but is not subject to the MACT. This vent will be controlled by April 15, 2001, however, as part of a larger project to reduce emissions from other sources which are subject to the MACT. The third affected mill has no vents that would have to be controlled under the 612 ppm limit, but will be subject to recordkeeping requirements.

For these reasons, the commission believes the emission reductions which would result from compliance in November 1999 with the 612 ppm limit are small. The limit would yield only 25 tpy over and above the emission reductions that are already required from the MACT standard, New Source Review permitting, and existing Chapter 115 requirements. These other required emission reductions total 1,482 tpy. Because the emission reductions from the 612 ppm limit are so small and

because the controls may have to be removed or reworked soon after installation to comply with the MACT standard, implementing the current rule requirement of 612 ppm would result in additional costs for a small benefit.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Filed with the Office of the Secretary of State on October 27, 1999.

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Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-0348



Subchapter B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §§115.140, 115.142-115.149, concerning Industrial Wastewater, and new §§115.160-115.167 and 115.169, concerning Batch Processes. Adopted with changes to the proposed text as published in the July 16, 1999 issue of the *Texas Register* (24 TexReg 5413) are §§115.140, 115.142, 115.143, 115.147, 115.149, 115.160, 115.162, and 115.164-115.167. Sections 115.144-115.146, 115.148, 115.161, 115.163, and 115.169 are adopted without changes and will not be republished.

The commission adopts these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, and to the state implementation plan (SIP) in order to conform with the United States Environmental Protection Agency's (EPA's) revised ozone transport policy and allow the Beaumont/Port Arthur (BPA) ozone nonattainment area's attainment date to be extended. The revisions to the existing Chapter 115 industrial wastewater rules (IWW) also incorporate a variety of corrections to ensure the implementation of reasonably available control technology (RACT) in the Houston/ Galveston (HGA) ozone nonattainment area. Finally, in an effort to improve implementation of the existing Chapter 115 IWW rules which apply in the Dallas/Fort Worth, El Paso, and HGA ozone nonattainment areas, the commission has clarified a variety of requirements and rule references.

BACKGROUND

Under §183 of the 1990 Amendments to the Federal Clean Air Act (FCAA), the EPA is required to issue Control Techniques Guideline (CTG) guidance documents for the purpose of assisting states in developing RACT controls for sources of volatile