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gas streams associated with the formation, handling, and storage of solidified product;

(B) a vent gas stream having a combined weight of the VOC or classes of compounds specified in §115.121(c)(1)(B)-(C) of this title equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; and

(C) a vent gas stream having a concentration of the VOC specified in §115.121(c)(1)(B) and (C) of this title less than 0.44 psia true partial pressure (30,000 ppm).

(2) A vent gas stream specified in §115.121(c)(2) of this title which emits less than or equal to five tons (4,536 kg) of total uncontrolled VOC in any one calendar year is exempt from the requirements of §115.121(c)(2) of this title.

(3) A vent gas stream is exempt from this division (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another division within Chapter 115 (for example, Storage of VOC) has established a control requirement(s), emission specification(s), or exemption(s) which applies to that VOC source category in that county.

(4) A combustion unit exhaust stream is exempt from this division (relating to Vent Gas Control) provided that the unit is not being used as a control device for any vent gas stream which is subject to this division and which originates from a non-combustion source.

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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Subchapter C. VOLATILE ORGANIC COM- POUND TRANSFER OPERATIONS

Division 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.211, 115.212, 115.219

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §§115.211, 115.212, and 115.219, concerning Loading and Unloading of Volatile Organic Compounds (VOC), without changes to the proposed text as published in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7144). These sections will not be republished. The commission adopts these revisions to Chapter 115, concerning Control of Air Pollution from VOCs, and to the State Implementation Plan (SIP) in order to delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary.

EXPLANATION OF ADOPTED RULES

A gasoline terminal is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput of at least 20,000 gallons per day, averaged over any consecutive 30-day period. A gasoline bulk plant is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput less than 20,000 gallons per day, averaged over any consecutive 30-day period.

The revisions to §115.211, concerning Emission Specifications, delete the emission specification for gasoline bulk plants in the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), El Paso (ELP), and Houston/Galveston (HGA) ozone nonattainment areas, and in 95 counties in the eastern half of Texas. These 95 counties are: 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 Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

For gasoline bulk plants, §115.211(2) sets an emission limit of 140 milligrams per liter (mg/l) of gasoline transferred. Under §115.212(a)(5)(A), a vapor balance system is required. Alternatively, add-on controls with a control efficiency of at least 90% may be used. Deletion of the 140 mg/l limit would eliminate this difficult-to-quantify/enforce emission limit, but the rules would still require a vapor balance system or a 90% efficient add-on control device. The United States Environmental Protection Agency (EPA) control techniques guideline guidance document upon which the Chapter 115 gasoline bulk plant rules are largely based supports deletion of the emission limit for gasoline bulk plants. Specifically, on page 1-3 of *Control of Volatile Organic Emissions from Bulk Gasoline Plants* (EPA-450/2-77-035, December 1977), the EPA states: "Regulations should be written in terms of operating procedures and equipment specifications rather than emission limits." In addition, the EPA's model reasonably available control technology (RACT) rules do not include an emission limit for gasoline bulk plants. Because the Chapter 115 rules would continue to require a vapor balance system or a 90% efficient add-on control device, the EPA's RACT requirements will continue to be satisfied, and no emission reduction credit will be affected by deletion of the emission limit in §115.211(2). Finally, the revisions to §115.211 renumber the gasoline terminal emission specifications in the current §115.211(1)(A) and (B) as §115.211(1) and (2), respectively.

The revisions to §115.212, concerning Control Requirements, revise the "loading lockout" requirement of §115.212(a)(4)(C) and (D) by deleting the requirement to equip gasoline terminals in the DFW, ELP, and HGA ozone nonattainment areas with sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. The affected

counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller. In addition, the existing §115.212(a)(4)(E) is being deleted because it is unnecessary due to the revisions to §115.212(a)(4)(C) and (D) described earlier.

The "loading lockout" rule was initially adopted by the commission on May 4, 1994, and included a requirement for instrumentation which prevents gasoline transfer if the vapor line is not connected between the transport vessel and the terminal's vapor collection system. The specific intent of this requirement was for gasoline terminals to be equipped with sensors and other equipment which is designed and connected to monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. Further, the intent was that if the system detects that the vapor return line is not connected during gasoline transfer, then the system automatically stops the transfer of gasoline to the transport vessel in the affected loading bay. These requirements have applied to gasoline terminals in the DFW, ELP, and HGA ozone nonattainment areas since the November 15, 1996 compliance date.

The commission is deleting this "loading lockout" requirement because instrumentation will not prevent the vapor hose from being improperly connected, and can allow loading to continue if the hose is damaged or only partially connected. Loading lockout instrumentation would prevent completely uncontrolled gasoline loading from occurring. However, based on staff's personal observations at numerous gasoline terminals, it is far more likely that tank-truck drivers and/or gasoline terminal operators would fail to take corrective action when vapor and/or liquid gasoline leaks occur than it is for completely uncontrolled loading to occur. Inspection for leaks and correction of leaks are specifically addressed by §115.212(a)(3) and §115.214(a)(1). Because the "loading lockout" instrumentation would not prevent such leaks, the commission believes that this instrumentation is unnecessary. However, the commission intends to vigorously enforce the requirements of §115.212(a)(3) and §115.214(a)(1) to ensure that when vapor and/or liquid gasoline leaks do occur at gasoline terminals, corrective action is taken in a timely manner.

For the DFW, ELP, and HGA ozone nonattainment areas, gasoline terminal emission reduction estimates of 2.17, 0.77, and 0.63 tons per day, respectively, were given in the 1996 *Fix-Ups to the 15% Rate-of-Progress SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas*. Deletion of the requirement for instrumentation which prevents gasoline transfer if the vapor line is not connected between the transport vessel and the terminal's vapor collection system will not have an impact on emission reduction credits already taken because that credit was based on tightening the stringency of the gasoline terminal emission specification from 40 to 10.8 mg/l of gasoline loaded. Because the loading lockout requirement was only used as additional substantiation for the commission's estimate of gasoline terminal emission reductions associated with implementation of the 10.8 mg/l emission specification, deletion of this requirement will not affect the emission reduction credit.

The revisions to §115.219, concerning Counties and Compliance Schedules, eliminate references to the gasoline bulk plant emission specification of §115.211(2) and update rule references to the gasoline terminal emission specification from the

current §115.211(1)(A) and (B) to §115.211(1) and (2), respectively. These changes are necessary due to the changes to §115.211 and §115.212 described earlier.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government 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 Texas Government Code. This rulemaking will delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary for the reasons stated earlier in this preamble. 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 rulemaking 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. This revision will not adversely affect any SIP emission reduction obligations relating to attainment demonstrations, because deletion of the loading lockout provisions described earlier is not expected to increase the duration or amount of emissions. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, this rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and was not developed solely under the general powers of the agency. No comments were received during the comment period regarding the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to delete requirements for gasoline terminals and gasoline bulk plants which the commission has determined are unnecessary. The revisions will relieve gasoline terminals that are not already complying with the loading lockout requirements of §115.212(a)(4)(C)-(D) from the cost of installing sensors and other equipment which monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. In addition, the revisions will relieve gasoline bulk plants from the cost of conducting performance testing to demonstrate compliance with the 140 mg/l emission limit of §115.211(2). This rulemaking will result in a cost savings to the industry. Therefore, this revision will not constitute a takings under Chapter 2007 of the Texas Government Code.

COASTAL MANAGEMENT PROGRAM 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 for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking is the policy that commission rules comply with regulations in Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking will not have a significant adverse effect on air quality in the coastal area, because it will not affect any SIP emission reduction obligations relating to attainment demonstrations, and because deletion of the loading lockout and gasoline bulk plant emission limit described earlier is not expected to increase the duration or amount of emissions. No comments were received during the comment period regarding the consistency of the proposed rules with the CMP.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on October 4, 1999 at 2:00 p.m. in Building F, Room 5108 at the Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. The comment period closed on October 11, 1999. No commenters submitted oral testimony on the proposal. Six commenters submitted written testimony on the proposal. Citgo Petroleum Corporation, Coastal Refining & Marketing, Inc., EPA, Exxon Company U.S.A., Mobil Business Resources Corporation, and the Texas Oil and Gas Association supported the proposed revisions. No commenters opposed the proposed revisions.

ANALYSIS OF TESTIMONY

The EPA stated that the commission needs to show that the revisions will not weaken or relax the approved SIP, and that potential impacts, if any, on the emission reduction credits for the 15% Rate-of- Progress SIP are properly addressed.

The discussion of the revisions to §115.211 and §115.212 in the EXPLANATION OF ADOPTED RULES section explains in detail why the revisions will not weaken or relax the SIP, and why the revisions will not affect emission reduction credits for the SIP. The commission has made no changes in response to the comment.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.012, which requires the commission to develop plans for protection of the state's air.

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 November 12, 1999.

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Chapter 305. CONSOLIDATED PERMITS

Subchapter C. APPLICATION FOR PERMIT

30 TAC 305.51

Texas Natural Resource Conservation Commission (commission) adopts amendments to §305.51, concerning consolidated permits. The amendment is adopted without changes to the proposed text as published in the June 18, 1999, issue of the *Texas Register* (24 TexReg 4530) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted amendments is to revise the state rules to conform to a certain federal regulation with regard to changes during interim status necessary to comply with certain national air emission standards. The amendments include conforming changes that are needed to establish equivalency with the federal regulations, which will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program. The federal regulation to which this adopted rule is being conformed was promulgated by the U.S. Environmental Protection Agency (EPA) on June 19, 1998 at 63 FedReg 33782. Under adopted §305.51(c)(8), the following phrase is added as a new paragraph (8): "changes necessary to comply with standards under 40 CFR Part 63, Subpart EEE--National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors," so that these changes would be allowed under interim status, if all other requirements are met, even if the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility.

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government 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 act. "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. Specifically, the exclusion contained in the amendments is voluntary and is not anticipated to 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. Because the specific intent of the rulemaking is to revise current rules to conform with federal regulations, the rulemaking is procedural in nature and does not meet the definition of a "major environmental rule." In addition, the amendments do not meet the applicability criteria of a "major environmental rule." Section 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;