

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 February 23, 1999.

TRD-9901135

Mark A. Moseley
General Counsel

Texas Real Estate Commission

Effective date: March 15, 1999

Proposal publication date: December 25, 1998

For further information, please call: (512) 465-3900



TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

The commission adopts amendments to §§115.122, 115.123, and 115.126, concerning Vent Gas Control; and a new §115.440 and amendments to §§115.443, 115.446, and 115.449, concerning Offset Lithographic Printing. Adopted with changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11273) are §115.122 and §115.126. Sections 115.123, 115.440, 115.443, 115.446, and 115.449 are adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULES The commission adopts these revisions to Chapter 115 and to the State Implementation Plan (SIP) in order to ensure the implementation of reasonably available control technology (RACT) at major volatile organic compound (VOC) sources in ozone nonattainment areas.

The amendments revise the vent gas rule by lowering the applicability threshold from 100 tons per year (TPY) to 50 TPY for bakeries in the Dallas/Fort Worth (DFW) ozone nonattainment area; prohibiting the banking of emission reductions in the 30-90% range for major source bakeries in the Houston/Galveston (HGA), DFW, and El Paso areas; and revising the emission reduction requirement from 30% to 80% for major source bakeries in the DFW area. In addition, the amendments revise the offset lithographic printing rule by implementing the rule requirements for sources with emissions at or above 50 TPY in the DFW area. Finally, the amendments revise terminology in response to revised *Texas Register* rules and for consistency with the commission's style guidelines.

Effective March 20, 1998, DFW was reclassified from a moderate to a serious ozone nonattainment area. As a result, the VOC major source definition for the area is being revised downward from 100 TPY to 50 TPY and larger. Section 182(b)(2) of the Federal Clean Air Act (FCAA) requires that RACT be applied to major sources.

RACT is applicable to existing major stationary VOC sources in ozone nonattainment areas which have been designated "moderate" nonattainment and above. The United States Environmental Protection Agency (EPA) has published guidance docu-

ments for many industrial source categories to provide state and local air pollution control agencies with an information base for their own determination of RACT. EPA recommendations are based on the technical capability and cost of various control techniques to reduce emissions. State and local air pollution control agencies may choose to develop their own RACT requirements on a case-by-case basis, considering the economic and technical circumstances of the individual source category within an area.

EPA published a guidance document detailing appropriate RACT for bakeries. Based on this document, as well as on input from the bakery industry, the commission developed the applicable portion of the vent gas rule pertaining to bakeries. EPA also published a guidance document detailing appropriate RACT for offset lithographic printers. The commission relied on this guidance, as well as input from the printing industry, to develop the offset lithographic printing rule.

DIVISION 2: VENT GAS CONTROL The changes to §115.122, concerning Control Requirements, and to §115.126, concerning Monitoring and Recordkeeping Requirements, will lower the applicability threshold of the vent gas rule from 100 TPY to 50 TPY for bakeries in the DFW area, thereby ensuring that RACT is in place for all DFW area major source bakeries.

In addition, EPA has specified that RACT for bakery ovens is 80-90% control efficiency. The commission rule as negotiated in 1994 only requires a 30% emission reduction. The changes to §115.122 will revise the rule's emission reduction requirement from 30% to 80% for major source bakeries in the DFW area. The single DFW bakery currently subject to the rule (with uncontrolled VOC emissions greater than 100 tons per calendar year) has installed a catalytic incinerator which achieves at least 90% destruction efficiency. The commission has become aware, however, that this bakery currently does not have all oven emissions routed to its catalytic incinerator. This facility is in compliance with the 30% emission reduction requirement, but will have to install a second add-on control device to control the remaining oven emissions. The commission is providing a compliance date of December 31, 2000, to allow adequate time for this facility, as well as the bakeries newly designated as major sources (those with uncontrolled VOC emissions greater than or equal to 50 tons per calendar year, but less than 100 tons per calendar year) to plan for and install the control equipment needed for compliance with the amended rule. The changes to §115.126 require major source bakery owners in DFW to submit an initial control plan by March 31, 2000 and annual reports beginning in the year 2002, which demonstrate the overall facility VOC emission reductions. The vent gas rule's emission reduction requirement will remain at 30% for DFW bakeries with uncontrolled VOC emissions between 25 and 50 tons per calendar year. The rule will remain a contingency rule for these bakeries. The commission may need to propose the 80% emission reduction requirement for major source bakeries in El Paso and HGA in future rulemaking to ensure that RACT is in place for these sources.

Finally, the changes to §115.122 prohibit the banking of emission reductions in the 30-90% range for major source bakeries in the HGA, DFW, and El Paso ozone nonattainment areas. This provision will become effective approximately March 21, 1999, and will serve as a preliminary step towards ensuring RACT. The language in the proposal was revised to clarify that the provision only applies to major source bakeries in HGA, DFW, and El Paso ozone nonattainment areas.

The change to §115.123, concerning Alternate Control Requirements, revises the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998), and revises a reference to the Code of Federal Regulations (CFR) for consistency with the commission's style guidelines.

The existing §115.126(a)(1)(D) and (b)(1)(D), which concern records associated with control device maintenance activities, are being deleted because maintenance activities are already addressed in 30 TAC §101.7, concerning Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The adoption deletes the proposed changes to §115.126, concerning Monitoring and Recordkeeping Requirements, which would have added a requirement that records must include information on how the design standard or operation of equipment meets the emission specifications and control requirements. The commission believes a more thorough analysis of the impacts on the regulated community is needed.

DIVISION 4: OFFSET LITHOGRAPHIC PRINTING The new §115.440, concerning Offset Printing Definitions, adds definitions of alcohol, alcohol substitutes, batch, cleaning solution, fountain solution, heatset, lithography, non-heatset, and offset lithography. These definitions are currently included in §115.10, concerning Definitions, and are being relocated to the new §115.440. The new §115.440 includes all definitions used exclusively within the Chapter 115 offset printing rules. In separate rulemaking, the commission proposed deleting the definitions of these terms from §115.10. (See the January 1, 1999 issue of the *Texas Register* (24 TexReg 61)).

The change to §115.443, concerning Alternate Control Requirements, revises the term "section" (which should have been "undesignated head") to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The change to §115.446, concerning Monitoring and Recordkeeping Requirements, revises a reference to EPA for consistency with the commission's style guidelines. In addition, the existing §115.446(2)(D), which concerns records associated with control device maintenance activities, is being deleted because maintenance activities are already addressed in 30 TAC §101.7, concerning Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

As noted earlier, effective March 20, 1998, DFW was reclassified from a moderate to a serious ozone nonattainment area, and the major source definition is being revised downward from 100 TPY to VOC sources 50 TPY and higher. Because §182(b)(2) of the FCAA requires that RACT be applied to major sources, the change to §115.449, concerning Counties and Compliance Schedules, implements the offset lithographic printing rule in DFW for sources with VOC emissions equal to or greater than 50 TPY and establishes a compliance date of December 31, 2000. The offset lithographic printing rule is currently a contingency rule for DFW; after the change, the rule will be a contingency rule for offset lithographic printers with VOC emissions below 50 TPY. The changes to §115.449 also delete the wording "affected persons" due to previous confusion concerning this term.

FINAL REGULATORY IMPACT ANALYSIS (RIA) 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 Code. Staff conducted an analysis of the Emissions Inventory for DFW and identified two bakeries with VOC emissions between 50 and 100 TPY, and one with emissions greater than 100 TPY, that will become subject to the vent gas rule's new control requirements. The bakeries may have to install catalytic incinerators. All major source bakeries in the DFW, HGA, and El Paso areas will be prohibited from banking emission reductions in the 30-90% range. Staff could not identify any bakeries that were currently banking or planning to bank these emission reductions. Staff also identified a single offset printer in DFW with VOC emissions above 50 TPY. Discussions with the offset printer company representative indicated that the facility is already in compliance with the offset lithographic printing rule.

Even though this rulemaking may require three DFW bakeries to install controls, it will not have a significant, material, adverse effect on the economy, a sector of the economy, productivity, competition, or jobs, due to the small number of affected facilities. 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. These revisions will result in VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard and reduced public exposure to VOCs. No comments were received during the comment period regarding the draft RIA.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. Promulgation and enforcement of the rule amendments may affect private real property which is the subject of the rules. Staff conducted an analysis of the Emissions Inventory for DFW and identified two bakeries with VOC emissions between 50 and 100 TPY, and one with emissions greater than 100 TPY, that will become subject to the vent gas rule's revised control requirements. The bakeries may have to install catalytic incinerators. A vendor that specializes in the installation of controls for bakeries estimated the installed cost for a catalytic incinerator would range from \$150,000 to \$350,000. The vendor estimated that operational costs would range from \$15,000 to \$35,000 per year. One industry representative has indicated that the costs may be significantly higher. While these costs may constitute a burden, under §2007.003(b)(4) and (b)(13) of the Texas Government Code, Chapter 2007 does not apply to this action. Under §2007.003(b)(4), Chapter 2007 does not apply to a governmental action that is reasonably taken to fulfill an obligation mandated by federal law. Section 2007.003(b)(13) states that Chapter 2007 does not apply to an action that: (1) is taken in response to a real and substantial threat to public health and safety; (2) is designed to significantly advance the health and safety purpose; and (3) does not impose a greater burden than is necessary to achieve the health and safety purpose. The revisions to the vent gas rule pertaining to bakeries and the revision pertaining to the implementation of the offset lithographic printing rule will implement an FCAA requirement for RACT at major sources. These revisions will result in VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard and reduced public exposure to VOCs.

All major source bakeries in the DFW, HGA, and El Paso areas will be prohibited from banking emission reductions in the 30-90% range. Staff could not identify any bakeries that were currently banking or had plans to bank these emission reductions. The rulemaking pertaining to banking, therefore, is not expected to result in a cost to bakeries.

Staff also identified a single offset printer in DFW with VOC emissions at or above 50 TPY. This facility reports it is already in compliance with the rule. Consequently, there should not be any fiscal impact to this facility as a result of this rulemaking.

COASTAL MANAGEMENT PLAN 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 Resource Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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 action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this action 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 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). Adoption of these amendments will result in reductions of ambient VOC and ozone concentrations, and therefore will protect and enhance air quality in the coastal area. Most of the substantive portions of this rulemaking are applicable to the DFW area. The prohibition on banking, applicable to HGA (as well as DFW and El Paso), will not result in an increase in emissions in the coastal area. 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 Irving on December 1, 1998. No oral testimony was submitted on this proposal. Four commenters submitted written comments. Exxon Company, U.S.A. (Exxon) and Chevron Chemical Company (Chevron) submitted comments on §115.126(a) & (b), concerning Monitoring and Recordkeeping Requirements. EPA submitted comments on §115.122, concerning Control Requirements. An individual also submitted comments on §115.122, and §115.126.

EPA expressed support for commission efforts to ensure that VOC RACT is in place on sources with emissions greater than 50 TPY, but questioned whether the agency confined its emission inventory search to only those sources covered by an existing Control Technique Guideline or Alternate Control Technique.

The commission also conducted an emissions inventory search for all 50-100 TPY sources. The commission has confirmed that each of the identified sources has installed RACT level controls through compliance with an existing rule or with permitting requirements. The commission is providing a list of these facilities as Appendix I of the February 1999 DFW Attainment Demonstration SIP.

EPA expressed concern that the revision to §115.122, concerning Control Requirements, which would prohibit the banking of

emission reductions in the 30-90% range for major source bakeries, does not represent RACT. EPA stated that whereas this is a step in the right direction, the rule's control efficiency must be revised from the current 30% to 80-90%. EPA asserted that a 30% control efficiency requirement with a prohibition on banking emissions in the 30-90% range does not ensure that bakeries newly covered by the rule will achieve, or that bakeries currently covered by the rule will maintain, RACT levels of control.

The commission agrees and has revised §115.122 to require an 80% emission reduction for major source bakeries in the DFW ozone nonattainment area. This emission reduction requirement is based on an assumed 90% efficiency of the control equipment and 90% efficiency of the vapor capture system. While control equipment may have control efficiencies substantially greater than 90%, vapor capture systems at some facilities cannot always be expected to achieve the assumed efficiency. The rule provides for a balance between capture efficiency and control efficiency.

The commission had originally proposed prohibiting the banking of emission reductions in the 30-90% range, and not revising the rule's 30% emission reduction requirement, because the major source bakeries had already installed catalytic incinerators which were achieving at least a 90% destruction efficiency. The commission agrees that the revision to the emission reduction requirement is a more direct and permanent method of ensuring that RACT is in place. Because a revision to the 30% emission reduction requirement was not proposed for bakeries in El Paso and HGA, the commission is retaining the prohibition on banking in the 30-90% range. The commission may need to propose an 80% emission reduction requirement for major source bakeries in El Paso and HGA in future rulemaking in order to ensure RACT is in place for all major source bakeries in ozone nonattainment areas.

An individual expressed support for §115.122, concerning control requirements, which would prohibit the banking of emission reductions in the 30-90% range for major source bakeries.

The commission appreciates the support.

EPA noted that the proposed VOC revisions have a compliance date of December 31, 2000, which is beyond the November 15, 1999 DFW attainment date. EPA requested documentation that compliance with RACT is being achieved as expeditiously as practicable.

The commission believes a two-year compliance date is necessary to provide a reasonable amount of time for the bakeries to plan and acquire the control technology needed for compliance with this rule. However, the commission will provide any necessary documentation to demonstrate to EPA that compliance with RACT is being achieved as expeditiously as practicable.

Exxon and Chevron commented on the proposed revision to §115.126, concerning monitoring and recordkeeping, which would have added a requirement that records must include information on how the design standard or operation of equipment meets the emission specifications and control requirements. Both Exxon and Chevron suggested language clarifications.

The commission deleted the proposed language from this rulemaking because a more thorough analysis of the impacts on the regulated community is needed. The commission appreciates the comments, and will consider them if the change is proposed in a future rulemaking.

An individual commented on §115.126 (a)(1)(D), §115.126 (b)(1)(D), and §115.446(2)(D), concerning the deletion of the recordkeeping requirement associated with control device maintenance and repair. The individual opposed the deletion of this requirement from Chapter 115, asserting that maintenance activities are only required to be recorded under 30 TAC §101.7 if they are associated with reportable quantities of unauthorized emissions.

The commission, under 30 TAC §101.7, requires recordkeeping of maintenance activities associated with all unauthorized emissions, not just those associated with reportable quantities of unauthorized emissions. The commission does not believe that records are necessary if the maintenance does not result in unauthorized emissions.

No comments were received regarding §§115.123, 115.440, 115.443, 115.446, and 115.449. These sections are adopted without changes.

Subchapter B. General Volatile Organic Compound Sources

Division 2. Vent Gas Control

30 TAC §§115.122, 115.123, 115.126

STATUTORY AUTHORITY The amendments are 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; §382.016, concerning monitoring requirements and examination of records; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA, and §382.051(d), which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under this Chapter 382.

§115.122. Control Requirements.

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

(1) - (2) (No change.)

(3) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from each bakery with a bakery oven vent gas stream(s) affected by §115.121(a)(3) of this title shall be reduced as follows.

(A) (No change.)

(B) Each bakery in the Dallas/Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall reduce total VOC emissions by at least 80% from the bakery's 1990 baseline emissions inventory by December 31, 2000.

(C) Each bakery in the Dallas/Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, but less than 50 tons per calendar year, shall reduce total VOC emissions by at least 30% from the bakery's 1990 baseline emissions inventory in accordance with the schedule specified in §115.129(a)(4) of this title (relating to Counties and Compliance Schedules).

(D) (No change.)

(E) Emission reductions in the 30% to 90% range are not creditable under §101.29 of this title (relating to Emissions Credit Banking and Trading), for the following bakeries:

(i) each bakery in the Houston/Galveston area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year;

(ii) each bakery in the Dallas/Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year;

(iii) each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year.

(4) (No change.)

(b) - (c) (No change.)

§115.126. Monitoring and Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area upon request. These records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of §115.121(a)(1)-(3) of this title (relating to Emission Specifications) shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

(A) - (B) (No change.)

(C) continuous monitoring of the exhaust gas VOC concentration of any carbon adsorption system, as defined in §101.1 of this title (relating to Definitions);

(D) the results of any testing of any vent conducted at an affected facility in accordance with the provisions specified in §115.125(a) of this title (relating to Testing Requirements).

(2) - (3) (No change.)

(4) For bakeries affected by §115.122(a)(3)(A)-(B) of this title (relating to Control Requirements), the following additional requirements apply.

(A) The owner or operator of each bakery in the Dallas/Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall submit an initial control plan no later than March 31, 2000, to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory will be at least 80% by December 31, 2000. At a minimum, the control plan shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory). The projected 2000 VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(B) In order to document continued compliance with §115.122(a)(3) of this title, the owner or operator of each bakery

specified in clauses (i) and (ii) of this subparagraph shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year. At a minimum, the report shall include the EPN and FIN of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the VOC emission rates. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 emissions inventory.

(i) The owner or operator of each bakery in the Houston/Galveston area with VOC emissions, when uncontrolled, equal to or greater than 25 tons per calendar year, shall submit an annual report which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year is at least 30% after May 31, 1996.

(ii) Beginning in 2002, the owner or operator of each bakery in the Dallas/Fort Worth area with VOC emissions, when uncontrolled, equal to or greater than 50 tons per calendar year, shall submit an annual report which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year is at least 80% after December 31, 2000.

(C) (No change.)

(5) - (6) (No change.)

(b) For Victoria County, the owner or operator of any facility which emits VOC through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area upon request. These records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of §115.121(b) of this title shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

(A) - (B) (No change.)

(C) continuous monitoring of the exhaust gas VOC concentration of any carbon adsorption system, as defined in §101.1 of this title;

(D) the results of any testing of any vent conducted at an affected facility in accordance with the provisions specified in §115.125(b) of this title.

(2) - (3) (No change.)

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 March 1, 1999.

TRD-9901254

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: March 21, 1999

Proposal publication date: November 6, 1998

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

◆ ◆ ◆
Subchapter E. Solvent-Using Processes

Division 4. Offset Lithographic Printing

30 TAC §§115.440, 115.443, 115.446, 115.449

STATUTORY AUTHORITY The new section and amendments are 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; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA, and §382.051(d), which provides for the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under this Chapter 382.

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 March 1, 1999.

TRD-9901255

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: March 21, 1999

Proposal publication date: November 6, 1998

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

◆ ◆ ◆
Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §116.12, concerning Nonattainment Review Definitions, and §116.150, concerning New Major Source or Major Modification in Ozone Nonattainment Areas. Section 116.12 is adopted with changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11278). Section 116.150 is adopted without changes and will not be republished.

EXPLANATION OF THE ADOPTED RULES

The commission adopts these revisions to Chapter 116 and to the State Implementation Plan (SIP) in order to reinstate nonattainment new source review (NNSR) for nitrogen oxides (NO_x) in the Dallas/Fort Worth (DFW) ozone nonattainment area, an area defined by Collin, Dallas, Denton, and Tarrant Counties. NNSR is a federal air quality permit requirement consisting of four elements: alternative site analysis, compliance certification, lowest achievable emission rate, and offsets.

The 1990 Federal Clean Air Act (FCAA), §172(c)(5) and §173, establishes the permitting requirements for new or modified major stationary sources in nonattainment areas. In addition, the FCAA requires NO_x NNSR. Specifically, the FCAA, §182(f) specifies that required measures for volatile organic compounds (VOC) must also be applied for NO_x in ozone nonattainment areas, unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The United States Environmental Protection Agency's (EPA) interpretation of §182(f) allows the following federal NO_x measures