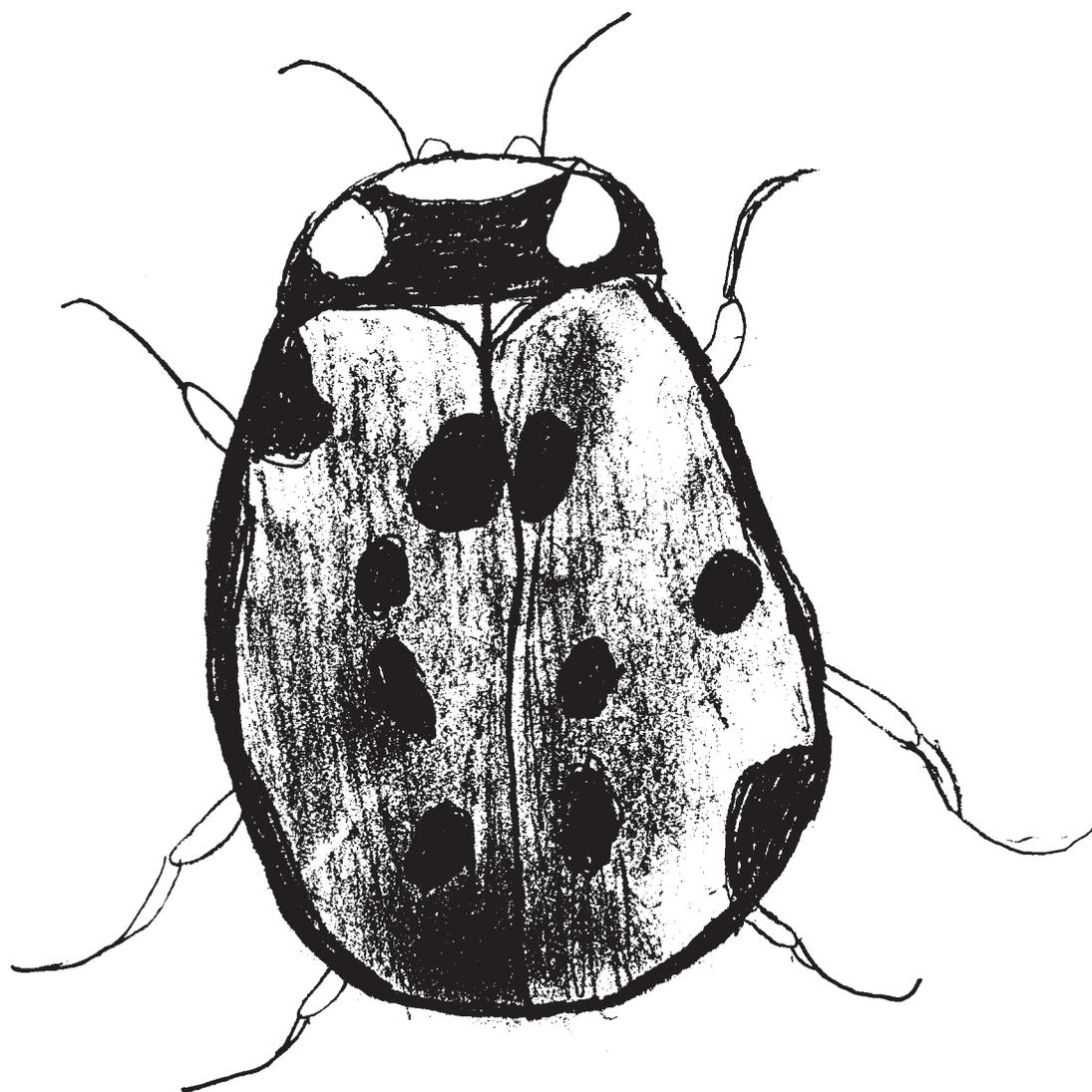

TEXAS REGISTER

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Code, §531.021(a), and the Texas Human Resources Code §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has designated TDMHMR as the operating agency for the Medicaid service coordination program.

The sections affect the Health and Safety Code, §532.015, Human Resources Code, §32.021, and Government Code, §531.021.

§412.456. *Evaluation for Service Coordination.*

§412.463. *Documentation of Service Coordination.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 24, 1999.

TRD-9903047

Charles Cooper
Chairman

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 11, 1999

For further information, please call: (512) 206-4516

TITLE 30. ENVIRONMENTAL QUALITY

Part I. 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) proposes an amendment 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.

EXPLANATION OF PROPOSED RULE

The proposed amendment would revise the vent gas rule by extending the 30,000 parts 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 are 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, the commission extended the compliance date to May 1995, for all sources, in response to an industry request. In May 1994, the commission extended the compliance date until November 1998, for pulp and paper mills, in response to a petition for rulemaking from the Texas Paper Industry Environmental Council. 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 1995, promulgation and 1998, compliance dates. Industry representatives were concerned that the installation of controls 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 has been promulgated and some conflicts still 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's 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 shutdown 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 VOCs over a nine-month period. Inland has a 25-TPY vent that is subject to the vent gas rule's 612 ppm limit, and 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 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, will be 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 to 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 proposed 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).

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the revisions as proposed are in effect, there will be no significant fiscal implications for state or local governments as a result of administration or enforcement of the section. Enforcement of the rule will not result in an increase in workload for commission staff.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed revisions are in effect, the public benefit anticipated from enforcement of and compliance with the rule will be a more cost-effective rule. 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 2001 (in the case of Inland). This revision is not applicable to any small businesses.

SMALL BUSINESS ANALYSIS

As identified in the public benefit/cost note, the rule is not anticipated to impose any costs on persons or small businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposed 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 proposed 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.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule pursuant to 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 Code.

TEXAS COASTAL MANAGEMENT PLAN

The commission has determined that the proposed 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 proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed 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 Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). Adoption of this proposed 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. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held on July 8, 1999 at 10:00 a.m. in Building F, Room 5108 of the commission's central office, located at 12100 North IH-35, Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98057-115-AI. Comments must be received by 5:00 p.m., July 12, 1999. For further information or questions concerning this proposal, contact Ann Hammer, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6255.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements Health and Safety Code, §382.017.

§115.127. Exemptions.

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

(1) (No change.)

(2) The following vent gas streams are exempt from the requirements of §115.121(a)(1) of this title:

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

(C) until April 15, 2001 [~~November 15, 1999~~], for facilities which have been assigned the code number 26 as described in the document Standard Industrial Classification (SIC) Manual, 1972, as amended by the 1977 Supplement, a vent gas stream specified in §115.121(a)(1) of this title with a concentration of VOC less than 0.44 psia true partial pressure (30,000 ppm);

(D)-(E) (No change.)

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

(6) A vent gas stream is exempt from this division [~~undesignated head~~] (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another division [~~undesignated head~~] 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.

(7) A combustion unit exhaust stream is exempt from this division [~~undesignated head~~] (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 [~~undesignated head~~] and which originates from a non-combustion source.

(b) For all persons in Nueces and Victoria Counties, the following exemptions apply.

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

(3) A vent gas stream is exempt from this division [~~undesignated head~~] (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another division [~~undesignated head~~] 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 [~~undesignated head~~] (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 [~~undesignated head~~] and which originates from a non-combustion source.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply.

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

(3) A vent gas stream is exempt from this division [~~undesignated head~~] (relating to Vent Gas Control) if all of the VOCs in the vent gas stream originate from a source(s) for which another division [~~undesignated head~~] 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) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on May 28, 1999.

TRD-9903196

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: September 8, 1999

For further information, please call: (512) 239-1966

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVII. Texas State Soil and Water Conservation Board