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Thomas Estrada

RESPONSE

These adopted rules will implement idling limits for heavy-duty motor vehicles within the jurisdiction of any local government that has signed a Memorandum of Agreement with the commission to delegate enforcement. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of heavy-duty vehicles and will help to ensure the reductions in NO_x and VOC emissions, that are needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. A local jurisdiction that has the authority to enforce these state rules may enforce the rules against a federal entity such as the United States Postal Service. Given a valid exercise of authority by the local jurisdiction, a federal entity is not exempt from these rules, with the exception of the exemptions provided in §115.517. No changes were made in response to this comment.

One individual questioned the basis and need for the SIP.

RESPONSE

The commission, the local authorities, and EPA have agreed under the EAC that a SIP would be developed. The commission concludes that the proposed control measures will produce emission reductions necessary to address exceedances of the ozone standards.

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, 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. The new sections are also adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

§114.512. *Control Requirements for Motor Vehicle Idling.*

No person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle, as defined in §114.510 of this title (relating to Definitions), is not in motion during the period of April 1 through October 31 of each calendar year.

§114.517. *Exemptions.*

The provisions of §114.512 of this title (relating to Control Requirements for Motor Vehicle Idling) do not apply to:

- (1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less;
- (2) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;
- (3) a motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;

(4) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, not including propulsion, and/or passenger compartment heating, or air conditioning;

(5) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;

(6) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;

(7) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort/safety in those vehicles intended for commercial passenger transportation or school buses in which case idling up to a maximum of 30 minutes is allowed;

(8) the primary propulsion engine of a motor vehicle used for passenger transit operations in which case idling up to a maximum of 30 minutes is allowed;

(9) the primary propulsion engine of a motor vehicle being used as airport ground support equipment; or

(10) the owner of a motor vehicle rented or leased to a person who operates the vehicle and is not employed by the owner.

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 19, 2004.

TRD-200406899

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: December 9, 2004

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

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.227, 115.229, 115.412, 115.413, 115.415 - 115.417, 115.419, 115.512, 115.516, 115.517, and 115.519. Section 115.229 is adopted *with change* to the proposed text as published in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7272). Sections 115.227, 115.412, 115.413, 115.415 - 115.417, 115.419, 115.512, 115.516, 115.517, and 115.519 are adopted *without changes* to the proposed text and will not be republished.

These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

The commission adopts these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, in order to reduce ozone precursors in the four counties in the San Antonio Early Action Compact (EAC) area (Bexar, Comal, Guadalupe, and Wilson Counties) and the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and

Williamson Counties). The reduction of ozone precursors in these counties will enable the EAC areas to attain and maintain the eight-hour ozone national ambient air quality standards by the agreed upon deadline of 2007.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas has a history of proactive air quality initiatives. Since 1996, the Texas Legislature has provided funding to the near-nonattainment areas (San Antonio, Austin, Northeast Texas, Corpus Christi, and Victoria) for use in performing planning functions related to the reduction of ozone concentrations in each area. The areas have conducted ambient air monitoring, following EPA guidelines, that is beyond that performed by the commission, including installing and maintaining supplementary monitors. The areas developed emissions inventories and photochemical modeling episodes, and the modeling episode results have been used for air quality planning and to develop clean air action plans. In response to the promulgation of the new eight-hour ozone national ambient air quality standard, the local elected officials and air quality planners in central Texas proposed an "accelerated attainment area" concept to the commission and to the EPA. This concept, which was designed to help voluntarily achieve the eight-hour ozone standard, eventually developed into an "early implementation plan." Neither concept was endorsed by EPA, although in 2001, EPA proposed an "ozone flex" program to allow areas to create voluntary plans to address the one-hour ozone standard. The state was among the first in the nation to adopt an "ozone flex agreement." A precursor to the EAC program, "ozone flex agreements" were designed to help maintain compliance with the one-hour ozone standard.

The commission continued to be committed to the concept of voluntary, early action toward the eight-hour standard, however, and continued to work with EPA and members of the environmental community toward that end. In March 2002, the commission approached EPA for approval of the concept of an "early action plan" to be established through a compact between local, state, and EPA officials for areas that are in attainment (including no monitored violations) of the one-hour ozone standard, but that are approaching or monitoring exceedances of the eight-hour standard.

This concept of an early, voluntary eight-hour air quality plan, or EAC, was endorsed by EPA Region 6 in June 2002, then slightly modified and made available nationally in November. The EACs include all the necessary elements of a comprehensive air quality plan, but are tailored to local needs and driven by local decisions. An EAC is designed to develop and implement control strategies, account for growth, and achieve and maintain the eight-hour ozone standard. This approach offers a more expeditious time line to achieve emission reductions earlier than the EPA's eight-hour implementation rulemaking, while providing "fail-safe" provisions for the area to revert to the traditional SIP process if specific milestones are not met.

The principles of a tri-party EAC, to be executed by local, state, and EPA officials, are: 1) early planning, implementation, and emission reductions leading to expeditious attainment and maintenance of the eight-hour ozone standard; 2) local control of the measures to be employed, with broad based public input; 3) state support to ensure technical integrity of the EAC; 4) formal incorporation of the EAC into the SIP; 5) deferral of the effective date of nonattainment designation and related requirements, provided all EAC terms and milestones are met; and 6) safeguards to return areas to traditional SIP requirements

should EAC terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC will implement every measure. Should an EAC area miss a milestone at any time during the agreement, including attaining the eight-hour standard by 2007, it would forfeit its participation and rejoin the eight-hour implementation process in progress. The EAC area would then be subject to the same requirements and deadlines that would have been effective had it not participated in this program, with no delays or exemptions from EPA rules.

On December 9, 2002, the cities of Floresville, New Braunfels, San Antonio, and Seguin; the counties of Bexar, Comal, Guadalupe, and Wilson; the commission; and EPA entered into an EAC for the San Antonio metropolitan statistical area (MSA). The San Antonio EAC area applies to Bexar, Comal, Guadalupe, and Wilson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the San Antonio EAC elected to use the MSA at the time of the agreement for the EAC and the clean air action plan. In accordance with the commitments made in the San Antonio EAC, the area prepared and submitted by March 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA designated as nonattainment the San Antonio EAC area counties of Bexar, Comal, and Guadalupe based on the 2001 - 2003 design value of 89 parts per billion. Wilson County was designated attainment.

On December 18, 2002, the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos; the counties of Bastrop, Caldwell, Hays, Travis, and Williamson; the commission; and EPA entered into an EAC for the MSA. The Austin EAC area applies to the five counties included in the MSA, which are Bastrop, Caldwell, Hays, Travis, and Williamson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the Austin EAC elected to use the MSA for the EAC and the clean air action plan. In accordance with the commitments made in the Austin EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

On December 20, 2002, the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler; the counties of Gregg, Harrison, Rusk, Smith, and Upshur; the commission; and EPA entered into an EAC for the Northeast Texas area. The Northeast Texas area applies to the five counties of Gregg, Harrison, Rusk, Smith, and Upshur. In accordance with the commitments made in the Northeast Texas area EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of

the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Based on the 2001 - 2003 design value of 84 parts per billion, the Northeast Texas area EAC was designated attainment. This rulemaking implements measures contained in the Austin and San Antonio EAC plans only. These measures are not part of the Northeast Texas EAC plan, therefore, no further mention will be made of the Northeast Texas EAC in this preamble.

Adopted amendments to Chapter 115, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons in a calendar month to 25,000 gallons of gasoline in a calendar month in the four counties in the San Antonio EAC area (Bexar, Comal, Guadalupe, and Wilson Counties) and in the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties).

Adopted amendments to Chapter 115, Subchapter E, Solvent-Using Processes, Division 1, Degreasing Processes extend the control requirements to the four counties in the San Antonio EAC area and to the five counties in the Austin EAC area.

Adopted changes to Chapter 115, Subchapter F, Miscellaneous Industrial Sources, Division 1, Cutback Asphalt extend the control requirements to the five counties in the Austin EAC area.

As previously discussed, these changes were requested by local governments in the affected counties as part of the EACs for the San Antonio and Austin areas. Under the EAC program, EPA issued to the San Antonio area counties of Bexar, Guadalupe, and Comal a deferral of the effective date of their designation of nonattainment with the eight-hour ozone standard. EPA will continue to defer the effective date until September 30, 2005 as long as the milestones of the compact continue to be met, including a SIP revision that demonstrates attainment by 2007. The SIP revision is due to EPA by December 31, 2004. The adopted rules are part of the attainment demonstration. Prior to the September 30, 2005 expiration of this deferral, EPA has indicated that it intends to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for these counties as long as they continue to meet EAC obligations and milestones. Monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average in the Austin area will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

SECTION BY SECTION DISCUSSION

Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

§115.227, Exemptions

The adopted amendment to §115.227(3) specifies that the exemption for motor vehicle fuel dispensing facilities which have dispensed less than 125,000 gallons of gasoline in any calendar month does not apply to the counties in the San Antonio and

Austin EAC areas. A new exemption, §115.227(4), specifies a lower exemption level of 25,000 gallons per month for facilities in the San Antonio and Austin EAC counties. The existing exemption in §115.227(4) has been renumbered to §115.227(5) to accommodate addition of the new §115.227(4). This change has been requested by the San Antonio and Austin areas in order to secure volatile organic compound (VOC) emission reductions as part of their EAC attainment demonstrations.

§115.229, Counties and Compliance Schedules

Adopted new §115.229(c) is added to specify that facilities in the San Antonio and Austin EAC areas (Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties) that become subject to control requirements as a result of the change in the exemption level for these counties must comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

The words "or more" were removed from the proposed version of §115.229(c) because these words are redundant.

Subchapter E, Solvent-Using Processes, Division 1, Degreasing Processes

§115.412, Control Requirements

The adopted amendment to §115.412 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the control requirements for cold solvent cleaning, open-top vapor degreasing, and conveyORIZED degreasing. This change has been requested by the San Antonio and Austin areas in order to secure VOC emission reductions as part of their EAC attainment demonstrations.

§115.413, Alternate Control Requirements

The adopted amendment to §115.413 adds the counties in the San Antonio and Austin EAC areas to the counties for which alternate control requirements for degreasing processes are specified. This change is necessary to allow alternatives for the counties that are being made subject to the control requirements in §115.412.

§115.415, Testing Requirements

The adopted amendment to §115.415 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the testing requirements for degreasing processes. This change is necessary to specify applicable testing requirements for the counties that are being made subject to the control requirements in §115.412.

§115.416, Recordkeeping Requirements

The adopted amendment to §115.416 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the recordkeeping requirements for degreasing processes. This change is necessary to specify applicable recordkeeping requirements for the counties that are being made subject to the control requirements in §115.412.

§115.417, Exemptions

The adopted amendment to §115.417 adds the counties in the San Antonio and Austin EAC areas to the counties for which exemptions from control requirements for degreasing processes are specified. This change is necessary to allow the counties that are being made subject to the control requirements in §115.412 to use the exemptions that are specified in §115.417.

§115.419, Counties and Compliance Schedules

The adopted amendment to §115.419 designates the existing text in §115.419 as §115.419(a) and adds a new subsection (b), to specify that degreasing facilities in the San Antonio and Austin EAC areas must comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

Subchapter F, Miscellaneous Industrial Sources, Division 1, Cutback Asphalt

§115.512, Control Requirements

The adopted amendment to §115.512 adds the counties in the Austin EAC area to the counties specified as subject to the control requirements for cutback asphalt. This change has been requested by the Austin area in order to secure VOC emission reductions as part of its EAC attainment demonstration. The San Antonio area did not request that cutback asphalt rules become effective in its area; thus, the San Antonio area counties are not being added.

§115.516, Recordkeeping Requirements

The adopted amendment to §115.516 adds the counties in the Austin EAC area to the counties specified as subject to the recordkeeping requirements for this division. This change is necessary to specify applicable recordkeeping requirements for the counties that are being made subject to the control requirements in §115.512.

§115.517, Exemptions

The adopted amendment to §115.517 adds the counties in the Austin EAC area to the counties for which exemptions from control requirements for cutback asphalt use are specified. This change is necessary to allow the counties that are being made subject to the control requirements in §115.512 to use the exemptions that are specified in §115.517.

§115.519, Counties and Compliance Schedules

The adopted amendment to §115.519 designates the existing text in §115.519 as §115.519(a) and adds a new subsection (b), to specify that affected persons in the Austin EAC areas must comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because although the rulemaking meets the definition of a "major environmental rule" as defined in that statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of §2001.0225 only apply 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; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this adopted rulemaking subjects the San Antonio EAC and Austin EAC counties to

the emission limitations and control requirements that were developed in order to meet the eight-hour ozone standard set by EPA under Federal Clean Air Act (FCAA), §109. States are primarily responsible for ensuring attainment and maintenance of the eight-hour ozone standard once it is established by EPA. Under FCAA, §110, states must submit to EPA for approval SIPs that provide for the attainment and maintenance of the ozone standard through control programs directed to sources of the pollutants involved. This rulemaking is not an express requirement of state law, but was developed in order to meet the federal air quality standard. This rulemaking is intended to help bring the San Antonio EAC area into compliance with the ozone standard and to help keep the Austin EAC area from going into nonattainment. This rulemaking does involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the adopted amendments to Chapter 115 do not exceed the requirements of the compacts. The rulemaking was requested by local governments in the Austin and San Antonio EAC areas as part of their plan to comply with the eight-hour ozone standard set by EPA. This adopted rulemaking helps the EAC areas continue to meet the milestones of the compacts and to demonstrate attainment of the eight-hour ozone standard by 2007. This rulemaking was not developed solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates this action is reasonably being taken to fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons to 25,000 gallons of gasoline in a calendar month in the four counties in the San Antonio EAC area (Bexar, Comal, Guadalupe, and Wilson Counties) and in the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties); extend the control requirements for cold solvent cleaning, open-top vapor degreasing, and conveyORIZED degreasing to the four counties in the San Antonio EAC area and to the five counties in the Austin EAC area; and extend the control requirements for cutback asphalt to the five counties in the Austin EAC area. These changes were requested by local governments in the affected counties as part of the EACs for the San Antonio and Austin areas. Under the EAC program, EPA issued a deferral of the effective date of the designation of nonattainment with the eight-hour ozone standard to Bexar, Comal, and Guadalupe Counties. The deferral will continue as long as the milestones of the compact continue to be met, including a SIP revision that demonstrates attainment by 2007. The adopted rules are part of the attainment demonstration. Monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average in the Austin area will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations. Certain sources in the EAC areas are required to install Stage I vapor recovery equipment, install or implement controls on degreasing operations, and restrict use of cutback asphalt and

meet corresponding recordkeeping and/or reporting obligations for these newly applicable requirements. These requirements could conceivably place a burden on private, real property.

Although the amendments to Chapter 115 do not directly prevent a nuisance, prevent a grave and immediate threat to life or property, and do not prevent a real and substantial threat to public health and safety, Texas Government Code, §2007.003(b)(4) provides that Chapter 2007 does not apply to these adopted amendments because they are reasonably taken to fulfill an obligation mandated by federal law. This rulemaking subjects the San Antonio EAC and Austin EAC counties to the emission limitations and control requirements that were developed in order to meet the eight-hour ozone standard set by EPA under FCAA, §109. States are primarily responsible for ensuring attainment and maintenance of the ozone standard once it is established by EPA. Under FCAA, §110, states must submit to EPA for approval SIPs that provide for the demonstration of attainment and maintenance of the ozone standard through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet and maintain the federal ozone standard. Meeting the milestone requirements of the EAC in the San Antonio EAC area, including demonstration of attainment of the federal standard, will require reductions in VOC emissions from filling of storage tanks at gasoline dispensing facilities and degreasing operations. These reductions, as well as reductions from cutback asphalt use restrictions, will help the Austin EAC area meet its compact milestones and thus defer a nonattainment designation.

Therefore, these adopted amendments meet the requirements of §2007.003(b)(4). For this reason, this rulemaking does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking does not affect any Coastal Natural Resource Areas because the rules only affect counties outside the CMP area and are therefore consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission conducted public hearings on the proposed rules on August 23, 2004 in Austin, August 24, 2004 in Longview, and on August 26, 2004 in San Antonio. Public hearing comments were received from the Judge Samuel T. Biscoe of Travis County (Judge Biscoe), the EAC Taskforce (EACT), and one individual. During the public comment period which closed on August 30, 2004, the commission received written comments from the Alamo Area Council of Governments (AACOG); Central Texas Clean Air Coalition (CAC); Chemical Lime Company; Environmental Protection Agency Region 6 (EPA); and Ray Sanders, Mayor of Lockhart (Mayor Sanders).

All commenters, with the exception of the individual, generally expressed support for the proposed rules.

RESPONSE TO COMMENTS

AACOG, Judge Biscoe, Chemical Lime Company, EACT, and Mayor Sanders commented in support of the rulemaking. AACOG and Judge Biscoe noted appreciation of the collaborative nature of the EAC development. EACT stated that the EAC process is a good template for ways to get things done because it takes ideas from the local level and sends them to the state, rather than the reverse.

The commission appreciates these comments in support of the rulemaking.

CAC stated support of the rulemaking, and requested that the time frame for the prohibition on the use, application, sale, or offering for sale of cutback asphalt be changed from April 16 through September 15 to April 1 through October 31. The requested time frame would coincide with the ozone season for the Austin EAC counties and the time frame for the new locally enforced motor vehicle idling rule in Chapter 114, Subchapter J, Division 2.

The requested change would result in the Austin EAC area being subjected to a more stringent control requirement than existing nonattainment areas. For this reason, the commission declines to make the requested change at this time. The commission will reevaluate the time frame as it develops SIPs for the eight-hour standard for current nonattainment areas.

CAC also requested that the preamble to the rules clarify that the Austin area is currently monitoring nonattainment.

The commission modified the preamble to explain that monitoring results obtained since the rulemaking was proposed have shown ozone readings in the Austin area that are above the eight-hour standard. The preamble further explains that these results have not yet been quality-assured, but if verified they could form the basis for EPA designating the Austin area as nonattainment for the eight-hour standard.

Judge Biscoe commented that local elected officials anticipated that the Austin/Round Rock MSA might not meet the new eight-hour national ambient air quality standard, which is why they worked hard to draft the Clean Air Action Plan. He further commented that the 12 jurisdictions that signed the Clean Air Action Plan concluded that region-wide rules are the only reasonable and fair approach to addressing air pollution, and that because counties do not have ordinance authority in this area, that state rules are necessary.

The commission appreciates this comment in support of the adopted rulemaking and appreciates Judge Biscoe and the other elected officials for contributing their time and efforts towards developing the region-wide Clean Air Action Plan.

CAC and Judge Biscoe supported commission's conclusion that the proposed rules do not exceed a standard set by federal law.

The commission appreciates this comment in support of the rulemaking.

EPA commented that the preamble states "The SIP revision is due to EPA by December 2004." EPA requested that the commission clarify that the date is actually December 31, 2004.

The commission modified the preamble in response to this comment, and changed "December 2004" to "December 31, 2004."

One individual questioned the basis and need for the SIP.

The commission, the local authorities, and EPA have agreed under the EAC that a SIP would be developed. The commission concludes that the proposed control measures will produce emission reductions necessary to address exceedances of the ozone standards.

**SUBCHAPTER C. VOLATILE ORGANIC
COMPOUND TRANSFER OPERATIONS
DIVISION 2. FILLING OF GASOLINE
STORAGE VESSELS (STAGE I) FOR MOTOR
VEHICLE FUEL DISPENSING FACILITIES**

30 TAC §§115.227, §115.229

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

§115.229. Counties and Compliance Schedules.

(a) The owner or operator of each motor vehicle fuel dispensing facility in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each motor vehicle fuel dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each motor vehicle fuel dispensing facility in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties that has dispensed at least 25,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after December 31, 2004, shall comply with this division as soon as practicable, but no later than December 31, 2005.

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 19, 2004.

TRD-200406895

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

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**SUBCHAPTER E. SOLVENT-USING
PROCESSES
DIVISION 1. DEGREASING PROCESSES
30 TAC §§115.412, 115.413, 115.415 - 115.417, 115.419
STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control 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 19, 2004.

TRD-200406896
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 9, 2004
Proposal publication date: July 30, 2004
For further information, please call: (512) 239-0348

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**SUBCHAPTER F. MISCELLANEOUS
INDUSTRIAL SOURCES
DIVISION 1. CUTBACK ASPHALT
30 TAC §§115.512, 115.516, 115.517, 115.519
STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt

rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control 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.

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Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

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Proposal publication date: July 30, 2004

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

31 TAC §357.5, §357.7

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 357, §357.5 and §357.7, concerning Regional Water Planning Guidelines without changes to the proposed text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9497) so these amendments will not be republished.

The 78th Texas Legislature, through House Bill 1378, amended Texas Water Code §16.053(d) and (e) to remove requirements that information concerning water pipelines and other facilities that can be used for water conveyance be reported to the board and incorporated into regional water plans. The 78th Texas Legislature also amended Texas Water Code §16.0121 and §16.053(j) pursuant to House Bill 3338 to add a new requirement that retail public utilities that provide potable water must conduct water loss audits and file the results with the board at least every five years. To comply with these statutory revisions, the board has amended 30 TAC §358.6 concurrently with these amendments to Chapter 357 to repeal the current §358.6, Pipeline and Facility Reports, and replace it with a new §358.6, Water Loss Audits, to implement the new water loss audits program.

The board adopts these amendments to implement House Bill 1378 and House Bill 3338.

Amended §357.5, Guidelines for Development of Regional Water Plans, adds a new §357.5(k)(1)(C) to require regional water planning groups to consider the information compiled pursuant to the new §358.6, Water Loss Audits, when developing a regional water plan. This information will be useful for regional water planning groups to assess system water loss in their area and to aid in the development of water planning and conservation efforts.

The amendments to §357.7, Regional Water Plan Development, reflect the repeal of the statutory requirement that regional water planning groups consider water pipeline and facility reports and the addition of a new statutory requirement that regional water planning groups consider information compiled by the board from water loss audits conducted pursuant to §358.6, Water Loss Audits, when developing their regional water plans. Specifically, the amendment to §357.7(a)(1)(M) deletes the reference to pipeline and facility reports and replaces it with a new requirement that the information concerning a regional water planning area compiled pursuant to the new §358.6, Water Loss Audits, be incorporated into that region's water plan. This will assure that regions consider the potential for curing water losses as a way to provide for future water sources. The board also adopts a new §357.7(a)(7)(A)(iv) to assure that regions consider the potential for addressing issues identified in information compiled by the board based on water loss audits as a water conservation strategy.

The public comment period closed at 5:00 p.m. on November 8, 2004. No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Water Code §6.101 and §16.053.

Cross reference to statute: Water Code, Chapter 16, Subchapters B and C.

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 16, 2004.

TRD-200406839

Suzanne Schwartz

General Counsel

Texas Water Development Board

Effective date: December 6, 2004

Proposal publication date: October 8, 2004

For further information, please call: (512) 475-2052



CHAPTER 358. STATE WATER PLANNING GUIDELINES

The Texas Water Development Board (the board) adopts amendments to 31 TAC Chapter 358, §§358.2, 358.3, 358.5, repeal of §358.6 and a new §358.6, concerning the State Water Planning Guidelines without changes to the proposed text as published in the October 8, 2004, issue of the *Texas Register* (29 TexReg 9499) and will not be republished.

The 78th Texas Legislature, through House Bill 1378, amended Texas Water Code §16.012(m) and §16.053(d) and (e). As amended, §16.012(m) specifies that the requirement to submit