

~~[(4)]~~ The testing required by §115.785 of this title (relating to Testing Requirements) shall be conducted as soon as practicable, but no later than December 31, 2005.]

(4) [(5)] Compliance with the recordkeeping required by §115.786 of this title (relating to Recordkeeping Requirements) must [shall] be implemented and made available upon request to authorized representatives of the executive director, United States Environmental Protection Agency [EPA], or any local air pollution control agency having jurisdiction as soon as practicable, but no later than March 31, 2004.

(5) [(6)] The initial monitoring of pump seals and compressor seals using a leak definition of 500 parts per million by volume, as required by §115.781(b)(9) of this title, must [shall] begin as soon as practicable, but no later than March 31, 2004.

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 June 25, 2004.

TRD-200404259

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 8, 2004

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



30 TAC §115.785

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed 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, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements Examination of Records, that authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§115.785. *Testing Requirements.*

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.

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Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

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



CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES

DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §§115.352, 115.354 - 115.357, 115.359

The Texas Commission on Environmental Quality (commission) proposes amendments to §§115.352, 115.354 - 115.357, and 115.359.

The amended sections are proposed to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed amendments to §§115.352(2), (2)(A) and (E), 115.354(10), 115.356(2)(D) and (F)(ix) and (3), and 115.359(2) and (3) are at the request of industry. The commission is also proposing changes to §§115.352, 115.354 - 115.357, and 115.359 to better explain the intent of these sections.

SECTION BY SECTION DISCUSSION

General Administrative Rule Language Changes

The commission proposes to change the word "shall" to "must" and the word "which" to "that" in numerous locations in the rule language to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, October 2002.

The commission proposes to spell out acronyms the first time they are used in a section and to delete acronyms that are only used once in a section. The acronym "EPA" is proposed to be spelled out as "United States Environmental Protection Agency" in §§115.352, 115.354, 115.356, 115.357, and 115.359. The term "Code of Federal Regulations" is proposed to be acronymed to "CFR" in §115.352 and the acronym "CFR" is proposed to be spelled out in §115.355. The acronym "HRVOC" is proposed to be spelled out as "highly-reactive volatile organic

compound" in §115.352. The acronym "API" is proposed to be deleted in §115.355. The acronym "VOC" is proposed to be deleted in §115.356. The acronym "kPa" is proposed to be spelled out as "kiloPascals" in §115.357.

Section 115.352, Control Requirements

The proposed amendment to §115.352(2) would restore the language as it was prior to the amendments that were published in the January 3, 2003 *Texas Register* (28 TexReg 9835) with the exception of subparagraph (C) and the first sentence of subparagraph (D). Subparagraphs (A), (B), and (E) would be deleted. The current language specifies the procedure that must be used to demonstrate that emissions from leaking components that cannot be repaired without a process unit shutdown are less than the emissions that a shutdown would generate. The commission proposes to remove this language from the general fugitive rules in Subchapter D (concerning Petroleum Refining, Natural Gas Processing, and Petrochemical Processes) and move the language to Subchapter H, Division 3 (concerning Fugitive Emissions), so that it would apply only to components in HRVOC service. These changes are being proposed at the request of industry. The commission seeks comment on these proposed changes.

The proposed amendment to §115.352(7) would revise the definition of a "nonaccessible component" to be consistent with the definition of a "difficult to monitor" component in Chapter 115, Subchapter H. The proposed change would also expand the definition to include components that are below floors or deck gratings such that they would require confined space entry as defined in 29 Code of Federal Regulations (CFR) §1910.146 (concerning Permit-required confined spaces). Components that cannot be accessed for monitoring without confined space entry should be allowed the same reduction in monitoring frequency as elevated components.

The proposed amendment to §115.352(8) would move the requirement to monitor new and reworked piping connections to §115.354(11) so that it will be located in the same section with other monitoring requirements. Language would also be added to specify that joined fittings that are welded completely around the circumference of the interface are not subject to this monitoring requirement. The definition of "connector" in 30 TAC §115.10 (concerning Definitions) specifically excludes such welded connections because of the low potential for leaks.

Section 115.354, Inspection Requirements

The commission proposes to change the title of §115.354 from "Inspection Requirements" to the more descriptive "Monitoring and Inspection Requirements" because the section contains requirements for monitoring and inspection of fugitive components. The language in the opening sentence would also be changed to state that affected persons must conduct a monitoring and inspection program to more clearly describe the requirements of the section.

The proposed amendment to §115.354(1)(A) would specify that only process drains that receive or contact wastewater that is defined as an "affected volatile organic compound (VOC) wastewater stream" in Industrial Wastewater Subchapter B, Division 4 of this chapter (concerning Industrial Wastewater) are required to conduct the yearly hydrocarbon gas analyzer monitoring. This addition would specify that drains with little or no potential for VOC emissions would not be subject to the annual monitoring requirement.

The proposed amendment to §115.354(1)(B) and (C) would specify that only those nonaccessible and unsafe to monitor components that would otherwise be subject to more frequent monitoring would be subject to annual monitoring. Amendments published in the November 7, 2003 *Texas Register* (28 TexReg 9835) replaced the term "valves" with the more general term "components." The resulting language could be interpreted to mean that all nonaccessible and unsafe to monitor components would be subject to annual monitoring, even though some components (such as flanges) would not be subject to monitoring even if they were not nonaccessible or unsafe to monitor. The proposed change would add language specifying that annual monitoring for nonaccessible and unsafe to monitor components is required only if the component would otherwise be subject to more frequent monitoring under §115.354(2).

The proposed amendment to §115.354(3) would exempt flanges from weekly visual, audio, olfactory inspections if the flanges are monitored at least once each calendar year using EPA Test Method 21 as found in 40 CFR Part 60, Appendix A (October 17, 2000). The current language in §115.354(3) exempts flanges from these inspections if the flanges are monitored using Test Method 21 as required by the HRVOC rules in Chapter 115, Subchapter H, Division 3. Flanges that are monitored at the same frequency and with the same methodology for other reasons should be allowed the same exemption from weekly inspections as flanges that are monitored under the HRVOC rules. The proposed amendment to §115.354(3) would also specify that those flanges that cannot be inspected safely would not be subject to the weekly inspection requirement, but must be inspected as soon as possible during a time it is safe to inspect. Flanges that are unsafe to inspect must be identified in a list made available upon request.

The proposed amendment to §115.354(5) would allow nonaccessible leaking components to be identified by reference tagging. A leaking component may be detected by audio, visual, or olfactory inspection, but physically attaching a tag to the component may be extremely difficult. The proposed change would allow such leaks to be tagged at grade level with a reference to the elevated component.

The commission proposes to delete §115.354(10) from the general fugitive rules in Subchapter D and move the requirement to Subchapter H, Division 3, so that it would apply only to components in HRVOC service. This change is being proposed at the request of industry. The commission seeks comment on this proposed change.

Paragraph (11) is proposed to be renumbered as paragraph (10) because of the proposed deletion of existing paragraph (10).

Proposed §115.354(11) contains the requirement to monitor new and reworked piping connections that was previously located in §115.352(8). The requirement is proposed to be moved to §115.354 so that it will be located in the same section as other monitoring requirements. Language would also be added to specify that joined fittings welded completely around the circumference of the interface are not subject to this monitoring requirements. The definition of "connector" in §115.10 specifically excludes such welded connections because of their low potential for leaks.

Section 115.355, Approved Test Methods

The most recent date of Test Method 21 of October 17, 2000 is proposed to be added to the CFR citation in §115.355.

Section 115.356, Monitoring and Recordkeeping Requirements

The commission proposes to change the title of §115.356 from "Monitoring and Recordkeeping Requirements" to "Recordkeeping Requirements" to better reflect the content of the section.

The proposed amendment to §115.356(2) would delete subparagraph (D) and reletter as appropriate. Subparagraph (D), that requires maintenance of records of the weekly flanges inspections required by §115.354(3), is proposed to be deleted from the general fugitive rules in Subchapter D. The proposed change would require records of flange inspections only if a leak is detected. This change is being proposed at the request of industry. The commission seeks comment on this proposed change.

The proposed amendment would reletter §115.356(2)(F) as §115.356(2)(E) and add the words "if applicable." This subparagraph lists the items for which records are required to be maintained for leaking components. Some of these required data elements are not applicable for all components. The wording change is proposed to specify that only those records applicable for a particular leaking component need to be maintained. The commission proposes to add the CFR citation for Test Method 21 in proposed §115.356(2)(E). The commission proposes to delete language in proposed §115.356(2)(E)(viii) that references a requirement that is also proposed to be deleted. The commission also proposes to delete existing §115.356(2)(F)(ix). This requirement to maintain a record of the estimated VOC emission rate of the component is proposed to be deleted from Subchapter D and moved to Subchapter H so that it will be applicable only to components in HRVOC service. This change is being proposed at the request of industry. The commission seeks comment on this proposed change. The commission proposes to reletter §115.356(2)(G) to §115.356(2)(F) because of the proposed deletion of §115.356(2)(E).

The proposed amendment would delete §115.356(3). The requirement to maintain records of estimated VOC emissions from leaking components would be deleted from Subchapter D and moved to Subchapter H so that it will be applicable only to components in HRVOC service. This change is being proposed at the request of industry. The commission seeks comment on this proposed change. Paragraphs (4) and (5) in §115.356 are proposed to be renumbered as paragraphs (3) and (4), respectively.

The commission proposes to change the word "valve" in renumbered paragraph (3) to the more general term "component." The current language requires records to identify unsafe and nonaccessible valves, but not other such components. The change would require that records identifying components other than valves that are unsafe to monitor or nonaccessible be maintained. Additionally, the proposed changes to §115.356(3)(A) would require that records be maintained to identify and justify each unsafe to inspect flange.

Section 115.357, Exemptions

The proposed amendment to §115.357(2), (5) - (7), (10), and (11) would specify that the affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas must comply with the recordkeeping requirements of §115.356(3)(C) to identify exempt components and justify the exemptions claimed.

The proposed amendment to §115.357(1) would require that components in heavy liquid service that are exempt from instrument monitoring be inspected by visual, auditory, and/or olfactory means according to the same schedule. The current wording refers only to visual monitoring. The proposed change would make the inspection requirements for unmonitored heavy liquid components consistent with inspection requirements for unmonitored flanges.

Proposed new §115.357(11) would provide a *de minimis* vapor pressure cutoff of 0.002 pounds per square inch, absolute at 68 degrees Fahrenheit. Components with a VOC vapor pressure equal to or below this cutoff would be exempt from the requirements in this division. This cutoff is consistent with the policy of the commission's Air Permits Division that fugitive emissions from compounds with a vapor pressure below this level do not need to be calculated. Existing §115.357(11) is proposed to be renumbered as §115.357(12).

Section 115.359, Counties and Compliance Schedules

The proposed amendment to §115.359 would remove the reference to §115.356(2)(D), because that requirement is proposed to be deleted and would change the reference to the title of 115.356. The proposed amendment to §115.359(3) would delete the reference to paragraph (4) because existing §115.356(3) is proposed for deletion and existing §115.356(4) is proposed to be renumbered to paragraph (3).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal implications to the commission or any other unit of state or local government due to administration or enforcement of the proposed amendments. The commission anticipates no fiscal implications for any other unit of state or local government to comply with the proposed amendments because none of the sources required to comply with the proposed amendments are owned or operated by units of state or local government.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be increased compliance with air emission standards because the rules are more understandable.

The commission estimates that there are approximately 140 - 215 privately-owned and operated facilities in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties that would be subject to the proposed amendments.

The proposed amendments will not impose any new requirements on individuals or businesses required to comply with the rules. The purposes of the proposed amendments are to better explain the intent of the existing rules, and to remove certain requirements for sources in general VOC service and make the requirements applicable only to sources in HRVOC service. The proposed amendments are also intended to make a variety of changes that correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. The commission

does not anticipate any adverse fiscal implications resulting from the implementation of the proposed amendments.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission has been unable to identify any small or micro-businesses that would be affected by the proposed amendments. The majority of sites affected by the proposed amendments are large petrochemical and industrial businesses. If there are affected small or micro-businesses; however, the commission does not anticipate any adverse fiscal implications as a result of the implementation of the proposed amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking action and determined that a local employment impact statement is not required, because the proposed amendments would not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments to Chapter 115 and revisions to the SIP would improve implementation of Chapter 115 by making minor changes to language and organization to better explain the intent of the rules. The proposed amendments would also delete certain requirements from Subchapter D and move them to Subchapter H so that they will be applicable only to sources in HRVOC in the Houston/Galveston ozone nonattainment area (HGA). The proposed amendments will not have adverse effects as a result of enforcement and administration of the amendments, because the proposed amendments do not impose any new requirements. Many of these sources are owned or operated by utilities, petrochemical plants, refineries, and other industrial, commercial, or institutional groups, and each group could be considered a sector of the economy. This is based on the analysis provided elsewhere in this preamble, including the discussion in the PUBLIC BENEFITS AND COSTS section of this proposal. The remaining amendments in this rulemaking are intended to correct typographical errors, update cross-references, add flexibility and delete obsolete language. These amendments are not expected to adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed amendments do not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 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.

The proposed amendments implement requirements of 42 United States Code (USC). Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary national ambient air quality standard (NAAQS) in each air quality control region of the state. While 42 USC, §7410, does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, such as the inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of the 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As discussed earlier in this preamble, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions

reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. Because the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the Legislative Budget Board, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of 42 USC. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are specifically required by federal law.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable, and §7511a(d), requires states to submit ozone attainment demonstration SIPs for severe ozone nonattainment areas such as the HGA. The proposed rules, that will reduce ambient VOC and ozone in the HGA, will be submitted to the EPA as one of several measures in the federally approved SIP. As discussed earlier in this preamble, controls on upsets and routine industrial VOC emissions are necessary to address some of the elevated ozone levels observed in the HGA; these controls will result in reductions in ozone formation in the HGA and help bring the HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. As discussed in Chapter 6 of the HGA SIP, this revision is another phase in the process of continued analysis and review of the science, and the data collected as a result of these revisions will further assist the commission as it develops its full reassessment of the attainment demonstration at the midcourse review. Therefore, the proposed amendments are necessary components of and consistent with the ozone attainment demonstration SIP for the HGA, as required by 42 USC, §7410.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. The commission presumes that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied* *per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990), *no writ*. *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245 (Tex. 1991); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App.-Austin 2000), *pet. denied*; and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).

As discussed earlier in this preamble, this rulemaking implements requirements of 42 USC. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, the proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor are adopted solely under the general powers of the agency. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code (also known as the Texas Clean Air Act), §§382.011, 382.012,

382.014, 382.016, 382.017, 382.021, and 382.034. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The proposed amendments will not impose any new requirements on individuals or businesses required to comply with the rules. The purposes of the proposed amendments are to better explain the intent of the existing rules, and to remove certain requirements for sources in general VOC service and make the requirements applicable only to sources in HRVOC service. The proposed amendments are also intended to make a variety of changes that correct typographical errors, update cross-references, add flexibility, and amend requirements to achieve the intended emission reductions of the program. The commission does not anticipate any adverse fiscal implications resulting from the implementation of the proposed amendments, and the proposed amendments will not place a burden on private, real property.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. The emission limitations and control requirements within this rulemaking action were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet the air quality standards established under federal law as NAAQS.

In addition, Texas Government Code, §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. Although the proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the HGA area exceeding the federal ozone NAAQS, which adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by reducing ozone levels in the HGA. Consequently, these proposed amendments meet the exemption in §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the proposed amendments do not constitute a takings under Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect

an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22 the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of these proposed amendments. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT 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 permits to include the revised Chapter 115 requirements for each emission unit affected by the revisions to Chapter 115 at their sites.

ANNOUNCEMENT OF HEARINGS

Public hearings for this proposed rulemaking have been scheduled for the following times and locations: August 2, 2004, 1:30 p.m. and 5:30 p.m., City of Houston, City Council Chambers, 2nd Floor, 901 Bagby, Houston; and August 3, 2004, 10:30 a.m., John Gray Institute, 855 Florida Avenue, Beaumont; and August 5, 2004, 9:30 a.m., Texas Commission on Environmental Quality, 12100 North I-35, Building F, Room 2210, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A four-minute time limit may be established at the hearings to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes before the hearings and will answer questions before and after the hearings.

Persons planning to attend the hearings who have special communication or other accommodation needs, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to siprules@tceq.state.tx.us. All comments should reference Rule Project Number 2004-052-115-AI. Comments must be received by 5:00 p.m., August 9, 2004. For further information, please contact Ashley Forbes of the Environmental

Planning and Implementation Division at (512) 239-0493 or Alan Henderson, of the Policy and Regulations Division, at (512) 239-1510.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which 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. The amendments are also proposed under 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; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§115.352. Control Requirements.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), no person shall operate a petroleum refinery; a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation, as defined in §115.10 of this title, without complying with the following requirements.

(1) Except as provided in paragraph (2) of this section, no component shall be allowed to have a volatile organic compound (VOC) leak for more than 15 calendar days after the leak is found that ~~which~~ exceeds the following:

(A) for all components except pump seals and compressor seals, a screening concentration greater than 500 parts per million by volume (ppmv) above background as methane, or the dripping or exuding of process fluid based on sight, smell, or sound; and

(B) for pump seals and compressor seals, a screening concentration greater than 10,000 ppmv above background as methane, or the dripping or exuding of process fluid based on sight, smell, or sound.

(2) A first attempt at repair must ~~shall~~ be made no later than five calendar days after the leak is found and the component must ~~shall~~ be repaired no later than 15 calendar days after the leak is found, unless the repair of the component would require a unit shutdown that would create more emissions than the repair would eliminate ~~[except as provided in subparagraphs (A) - (C) of this paragraph]~~. A component in gas/vapor or light liquid service is considered to be repaired when it is monitored with an instrument using United States Environmental Protection Agency [EPA] Test Method 21 in 40 Code of Federal Regulations (CFR), Part 60, Appendix A (October 17, 2000) and shown to no longer have a leak after adjustments or alterations to the component. A component in heavy liquid service is considered to be repaired when it is inspected by audio, visual, and olfactory means and shown to no longer have a leak after adjustments or alterations to the component.

{(A) If the repair of a component within 15 days after the leak is detected would require a process unit shutdown which would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled process unit shutdown, provided that:}

{(i) the owner or operator maintains, and makes available upon request, documentation to authorized representatives of EPA, the executive director, and any local air pollution control agency having jurisdiction which includes a calculation of:}

{(i) the expected mass emissions resulting from the next scheduled process unit shutdown, clearing, and subsequent startup of the unit, including the basis for the calculation and all assumptions made;}

{(ii) the mass emission rates from each leaking component in the process unit for which delay of repair is sought as determined by using the methods in the EPA correlation approach in Section 2.3.3 of the EPA guidance document "Protocol for Equipment Leak Emission Estimates," (EPA-453/R-95-017, November, 1995) alone or in combination with the mass emission sampling approach in Chapter 4 of the guidance document (EPA-453/R-95-017, November, 1995). To use the EPA correlation approach, the estimated hourly mass emission rate for each component shall be based on the average of the component's current screening concentration and the previous screening concentration using Test Method 21 for the days between the two monitoring efforts, and the last screening concentration shall be used for the days following that last monitoring through the date of the planned process unit shutdown. Where the monitoring instrument is not calibrated to read past the leak definition or 100,000 ppmv, the pegged emission rate values in Tables 2-13 and 2-14 in Section 2.3.3 of the EPA guidance document "Protocol for Equipment Leak Emission Estimates" shall be used as appropriate. Leaking components in heavy liquid service shall be assigned the appropriate screening range leak rate for greater than 10,000 ppmv as defined in Section 2.3.2 of the guidance document. If the mass emission sampling approach is used, it replaces the estimated emissions rate of the EPA correlation approach in the calculation;}

{(iii) the cumulative mass emissions from each leaking component in the process unit for which delay of repair is sought, from the date the leak is found through the date of the next planned process unit shutdown; and}

{(iv) the total cumulative mass emissions in the process unit from the calculations made in subclause (iii) of this clause for leaking components in the unit for which delay of repair is sought; and

{(ii) the total cumulative mass emissions from leaking components in the process unit for which delay of repair is sought as determined in clause (i)(iv) of this subparagraph, assessed from the time that each additional leaking component is identified or at the time of any other changes to the emissions estimates, from the date of the change forward, will be less than the mass emissions resulting from shutdown, clearing, and subsequent startup of the unit as determined in clause (i)(i) of this subparagraph; or}

{(iii) as an alternative to the requirements of clause (i) and (ii) of this subparagraph, delay of repair is allowed for each leaking component for which the owner or operator has chosen to undertake "extraordinary efforts" to repair the leak. For purposes of this subparagraph, "extraordinary efforts" is defined as nonroutine repair methods (e.g., sealant injection) or utilization of a closed-vent system to capture and control the leaks by at least 90%. For leaks detected over 10,000 ppmv, extraordinary efforts shall be undertaken within 22 calendar days after the leak is found; however, the owner or operator

may keep the leaking valve on the shutdown list only after two unsuccessful attempts to repair a leaking valve through extraordinary efforts, provided that the second extraordinary effort attempt is made within 37 calendar days after the leak is found. For all other leaks, extraordinary efforts shall be undertaken within 30 calendar days after the leak is found, and a second extraordinary effort attempt is not required.}

{(B) Process unit shutdown and component repairs are required within 15 days of the day that leaks are determined to exceed the requirement of subparagraph (A)(ii) of this paragraph for components that were not subjected to extraordinary efforts, and except as provided in subparagraph (C) of this paragraph, each component for which repair has been delayed must be repaired or replaced at the next process unit shutdown.}

{(A) [(C)] Delay of repair beyond a process unit shutdown will be allowed for a component if that component is isolated from the process and does not remain in VOC service.

{(B) [(D)] Valves that can be safely repaired without a process unit shutdown may not be placed on the shutdown list. [However, the use of "extraordinary efforts," as described in subparagraph (A)(iii) of this paragraph, is not required for a valve to be eligible for the shutdown list.}

{(E) All components in gas/vapor or light liquid service for which a repair attempt was made during a shutdown shall be monitored (with a hydrocarbon gas analyzer) and inspected for leaks within 30 days after startup is completed following the process unit shutdown. All components in heavy liquid service for which a repair attempt was made during a shutdown shall be inspected for leaks within 30 days after startup is completed following the process unit shutdown.}

(3) All leaking components, as defined in paragraph (1) of this section, that [which] cannot be repaired until a process unit shutdown must [shall] be identified for such repair by tagging. The executive director, at his discretion, may require an early process unit shutdown or other appropriate action based on the number and severity of tagged leaks awaiting a process unit shutdown.

(4) No valves shall be installed or operated at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second valve, a blind flange, or a tightly-fitting plug or cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve must [shall] be closed first.

(5) Construction of new and reworked piping, valves, and pump and compressor systems must [shall] conform to applicable American National Standards Institute, American Petroleum Institute, American Society of Mechanical Engineers, or equivalent codes.

(6) New and reworked underground process pipelines must [shall] contain no buried valves such that fugitive emission monitoring is rendered impractical.

(7) To the extent that good engineering practice will permit, new and reworked components must [shall] be so located to be reasonably accessible for leak-checking during plant operation. A nonaccessible component is a component that cannot be inspected without elevating the monitoring personnel more than two meters above a permanent support surface or that is below floors or deck gratings requiring confined space entry as defined in 29 CFR §1910.146 (December 1, 1998). [Components elevated more than two meters above a support surface will be considered nonaccessible.] Nonaccessible components must [shall] be identified in a list to be made available upon request.

(8) New and reworked piping connections must [shall] be welded, flanged, or consist of pressed and permanently formed metal-

to-metal seals. Screwed connections are permissible only on new piping smaller than two inches in diameter. [All new connections shall be checked for leaks within 30 days of being placed in VOC service by monitoring with a hydrocarbon gas analyzer for components in light liquid and gas service and by using visual, audio, and/or olfactory means for components in heavy liquid service.]

(9) For pressure relief valves installed in series with a rupture disk, pin, second relief valve, or other similar leak-tight pressure relief component, a pressure gauge or an equivalent device or system must [shall] be installed between the relief valve and the other pressure relief component to monitor for leakage past the first component. When leakage is detected past the first component, that component must [shall] be repaired or replaced at the earliest opportunity, but no later than the next process unit shutdown. Equivalent devices or systems must [shall] be identified in a list to be made available upon request and must have been approved by the methods required by §115.353 of this title (relating to Alternate Control Requirements).

(10) Any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in the Houston/Galveston area in which a highly-reactive volatile organic compound [HRVOC], as defined in §115.10 of this title, is a raw material, intermediate, final product, or in a waste stream is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas).

§115.354. Monitoring and Inspection Requirements.

All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas must [shall] conduct a monitoring and inspection program consistent with the following provisions.

(1) Measure yearly (with a hydrocarbon gas analyzer) the emissions from all:

(A) process drains that receive or contact affected volatile organic compound wastewater streams as defined in Subchapter B, Division 4 of this chapter (relating to Industrial Wastewater);

(B) nonaccessible components as identified in §115.352(7) of this title (relating to Control Requirements) that would otherwise be subject to more frequent monitoring under paragraph (2) of this section; and

(C) unsafe to monitor components that would otherwise be subject to more frequent monitoring under paragraph (2) of this section. An unsafe to monitor component is a component that the owner or operator determines is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (2) of this section. Components that [which] are unsafe to monitor must [shall] be identified in a list made available upon request. If an unsafe to monitor component is not considered safe to monitor within a calendar year, then it must [shall] be monitored as soon as possible during safe to monitor times.

(2) Measure each calendar quarter (with a hydrocarbon gas analyzer) the screening concentration from all:

- (A) compressor seals;
- (B) pump seals;
- (C) accessible valves; and
- (D) pressure relief valves in gaseous service.

(3) Inspect weekly, by visual, audio, and/or olfactory means, all flanges, excluding flanges [in the Houston/Galveston area] that are monitored at least once each calendar year using United States Environmental Protection Agency [EPA] Test Method 21 in 40 Code of Federal Regulations, Part 60, Appendix A (October 17, 2000) and excluding flanges that are unsafe to inspect [as required by §115.781(b)(3) of this title (relating to General Monitoring and Inspection Requirements)]. Flanges that are unsafe to inspect must be identified in a list made available upon request. If an unsafe to inspect flange is not considered safe to inspect within the calendar quarter, then it must be inspected as soon as possible during a time that it is safe to inspect.

(4) Measure (with a hydrocarbon gas analyzer) emissions from any relief valve that [which] has vented to the atmosphere within 24 hours.

(5) Upon the detection of a leaking component, affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was detected. This tag must [shall] remain in place until the leaking component is repaired. Tagging of nonaccessible leaking components may be done by reference tagging. The reference tag should be located as close as possible to the leaking component and should clearly identify the leaking component and its location.

(6) The monitoring schedule of paragraphs (1) - (3) of this section may be modified to require an increase in the frequency of monitoring in a given process area if the executive director determines that there is an excessive number of leaks in that process area.

(7) After completion of the required quarterly valve monitoring for a period of at least two years, the operator of a petroleum refinery; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation may request in writing to the executive director that the valve monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking must [shall] be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed (including valves that [which] have been classified as non-repairable under §115.357(8) of this title (relating to Exemptions)) by the total number of valves subject to the requirements. This request must [shall] include all data that have been developed to justify the following modifications in the monitoring schedule.

(A) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(B) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(8) Alternate monitoring schedules approved before November 15, 1996, under §§115.324(a)(8)(A), 115.334(3)(A), and 115.344(3)(A) of this title (relating to Inspection Requirements), as in effect December 3, 1993, are approved monitoring schedules for the purposes of paragraph (7) of this section.

(9) All component monitoring must [shall] occur when the component is in contact with process material and the process unit is in service. If a unit is not operating during the required monitoring period but a component in that unit is in contact with process fluid that [which] is circulating or under pressure, then that component is considered to be in service and is required to be monitored. Valves must be in gaseous or

light liquid service to be considered in the total valve count for alternate valve monitoring schedules of paragraph (7) of this section.

~~{(10) Except as provided in subparagraph (B) of this paragraph, the owner or operator shall use dataloggers and/or electronic data collection devices during all monitoring required by this section. The owner or operator shall use best efforts to transfer, on a daily basis, electronic data from electronic datalogging devices to the database required by §115.356(2) of this title (relating to Monitoring and Recordkeeping Requirements).}~~

~~{(A) For all monitoring events in which an electronic data collection device is used, the collected monitoring data shall include the identification of each component and each calibration run; the maximum screening concentration detected; the time of monitoring (i.e., the time that the organic vapor concentration is read or recorded for each component); a date stamp; an operator identification; an instrument identification; and calibration gas concentrations and certification dates. The acceptable rate for recording data shall be determined individually by each owner or operator considering such factors including, but not limited to, the size of the equipment, the equipment type, the accessibility of the equipment, the number of leakers being found, and the skill of the monitoring technicians. Each owner or operator shall have a documented auditing process in place to assure proper calibration; identify response time failures; and assess pace anomalies.}~~

~~{(B) The owner or operator may use paper logs where necessary or more feasible (e.g., small rounds (less than 100 components); re-monitoring following component repair; or when dataloggers are broken or not available); and shall record, at a minimum, the information required in subparagraph (A) of this paragraph. For audio, visual, and olfactory inspections, the owner or operator shall record, at a minimum, the identification of the person conducting the inspection; the date; and the area that was inspected. The owner or operator shall transfer any manually recorded monitoring data to the database required by §115.356(2) of this title within seven days of monitoring.}~~

~~{(C) Each change to the database regarding the monitored concentration; date and time read; repair information; addition or deletion of components; or monitoring schedule shall be detailed in a log or inserted as a notation in the database. All such changes shall include the name of the person who made the change; the date of the change; and an explanation to support the change.}~~

~~(10) [(44)] Monitored screening concentrations must be recorded for each component in gaseous or light liquid service. Notations such as "pegged," "off scale," "leaking," "not leaking," or "below leak definition" may not be substituted for hydrocarbon gas analyzer results. For readings that are higher than the upper end of the scale (i.e., pegged) even when using the highest scale setting or a dilution probe, record a default pegged value of 100,000 parts per million by volume.~~

~~(11) All new connections must be checked for leaks within 30 days of being placed in volatile organic compound service by monitoring with a hydrocarbon gas analyzer for components in light liquid and gas service and by using visual, audio, and/or olfactory means for components in heavy liquid service. Joined fittings welded completely around the circumference of the interface are not subject to this requirement.~~

~~(12) All exemptions for valves with a nominal size of two inches or less expired on July 31, 1992 (final compliance date).~~

§115.355. Approved Test Methods.

For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this division (relating to Fugitive Emission Control in Petroleum Refining,

Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) must ~~[shall]~~ be determined by applying the following test methods, as appropriate:

(1) Test Method 21 (40 Code of Federal Regulations, Part [CFR] 60, Appendix A (October 17, 2000)) for determining volatile organic compound leaks;

(2) determination of true vapor pressure using American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for 68 degrees Fahrenheit (20 degrees Celsius) in accordance with American Petroleum Institute ([API] Publication 2517, Third Edition, 1989;

(3) minor modifications to these test methods approved by the executive director; or

(4) equivalent determinations using published vapor pressure data or accepted engineering calculations.

§115.356. [Monitoring and] Recordkeeping Requirements.

All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas must ~~[shall]~~ have the following recordkeeping requirements, maintained either electronically or in hard copy form:

(1) records identifying each process unit subject to fugitive monitoring in accordance with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) including, at a minimum, the following information:

(A) the name of each process unit;

(B) a scale plot plan showing the location of each process unit;

(C) process flow diagrams for each process unit showing the general process streams and major equipment on which the components are located; and

(D) the expected volatile organic compound [(VOC)] emissions if the process unit is shut down for repair of components or other equipment, including:

(i) the total emissions;

(ii) the calculations used; and

(iii) engineering assumptions applied;

(2) records on components and process areas that contain, at a minimum, the following data:

(A) the name of the process unit where the component is located;

(B) the type of component (e.g., pump, compressor, valve, pressure relief valve, etc.);

(C) all data required to be collected by the monitoring and inspection requirements of §115.354 of this title (relating to Monitoring and Inspection Requirements) for each component required to be monitored with a hydrocarbon gas analyzer;

~~{(D) the weekly audio, visual, and olfactory inspections of flanges; including, at a minimum, the identification of the person conducting the inspection and the area that was inspected. Flanges in the Houston/Galveston area that are monitored using Test Method 21 as required by §115.781(b)(3) of this title (relating to General Monitoring and Inspection Requirements) are excluded from this recordkeeping requirement.}~~

(D) ~~[(E)]~~ the calibration of the monitoring instrument [data required in §115.354(10) of this title];

(E) ~~[(F)]~~ if a component is found leaking, if applicable:

(i) the component identification and method of leak determination (Test Method 21 in 40 Code of Federal Regulations, Part 60, Appendix A (October 17, 2000), sight/sound/smell, or inert gas or hydraulic testing);

(ii) the date that ~~[on which]~~ a leaking component is discovered;

(iii) the date that ~~[on which]~~ a first attempt at repair was made to a leaking component;

(iv) the date that ~~[on which]~~ a leaking component is repaired;

(v) the date and instrument reading of the recheck procedure after a leaking component is repaired;

(vi) the dates and nature of each extraordinary effort to repair the leaking component;

(vii) the date that ~~[on which]~~ the leaking component is placed on the shutdown list; and

(viii) the date that ~~[on which]~~ the leaking component was taken out of service [as allowed by §115.352(2)(C) of this title (relating to Control Requirements)]; and

~~[(ix)]~~ the calculation showing the estimated VOC emission rates of the component as required by §115.352(2)(A)(i)(II) of this title if extraordinary efforts are not going to be initiated; and]

(F) ~~[(G)]~~ maintain records of any audio, visual, and olfactory inspections of connectors, but only if a leak is detected;

~~[(3)]~~ records for each process unit with leaking components, updated each day after a leaking component is determined to require a process unit shutdown to repair and where extraordinary efforts to repair the component will not be pursued, including the following:]

~~[(A)]~~ the date, calculations, and estimated emissions of VOC as required by §115.352(2)(A)(i)(III) of this title;]

~~[(B)]~~ the date, calculations, and comparison of emissions of VOC as required by §115.352(2)(A)(i)(IV) of this title; and]

~~[(C)]~~ the date of each process unit shutdown required due to VOC emissions of leaking components exceeding the expected VOC emissions from the shutdown;]

(3) ~~[(4)]~~ records by process unit identifying and justifying each:

(A) unsafe to monitor component and unsafe to inspect flange [valve];

(B) nonaccessible (difficult to monitor) component [valve]; and

(C) each exemption by component claimed under §115.357 of this title (relating to Exemptions); and

(4) ~~[(5)]~~ maintain all monitoring records for at least five years and make them available for review upon request by authorized representatives of the executive director, United States Environmental Protection Agency [EPA], or local air pollution control agencies with jurisdiction, except that the five-year record retention requirement does not apply to records generated before December 31, 2000.

§115.357. Exemptions.

For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/ Galveston areas, the following exemptions ~~[shall]~~ apply.

(1) Components that contact a process fluid containing volatile organic compounds (VOCs) having a true vapor pressure equal to or less than 0.044 pounds per square inch, absolute (psia) (0.3 kiloPascals [kPa]) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.354(1) and (2) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means ~~[visually]~~ according to the inspection schedules specified in §115.354(1) and (2) of this title.

(2) Conservation vents or other devices on atmospheric storage tanks that are actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch, gauge (psig), pressure relief valves equipped with a rupture disk or venting to a control device, components in continuous vacuum service, and valves that are not externally regulated (such as in-line check valves) are exempt from the requirements of this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas), except that each pressure relief valve equipped with a rupture disk must [shall] comply with §115.352(9) and §115.356(3)(C) of this title (relating to Control Requirements and Recordkeeping Requirements).

(3) Compressors in hydrogen service are exempt from the requirements of §115.354 of this title if the owner or operator demonstrates that the percent hydrogen content can be reasonably expected to always exceed 50.0% by volume.

(4) All pumps and compressors that [which] are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the monitoring requirement of §115.354 of this title. These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system. Submerged pumps or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) may be used to satisfy the requirements of this paragraph.

(5) Reciprocating compressors and positive displacement pumps used in natural gas/gasoline processing operations are exempt from the requirements of this division except §115.356(3)(C) of this title.

(6) Components at a petroleum refinery or synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process, that [which] contact a process fluid that contains less than 10% VOC by weight and components at a natural gas/gasoline processing operation that [which] contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division except §115.356(3)(C) of this title.

(7) Plant sites covered by a single account number with less than 250 components in VOC service are exempt from the requirements of this division except §115.356(3)(C) of this title.

(8) Components in ethylene, propane, or propylene service, not to exceed 5.0% of the total components, may be classified as non-repairable beyond the second repair attempt at 500 parts per million by volume (ppmv). These components will remain in the fugitive monitoring program and be repaired no later than 15 calendar days after the concentration of VOC detected via United States Environmental Protection Agency [EPA] Test Method 21 in 40

Code of Federal Regulations (CFR), Part 60, Appendix A (October 17, 2000) exceeds 10,000 ppmv. For the purposes of this division, components that ~~which~~ contact a process fluid with greater than 85% ethylene, propane, or propylene by weight are considered in ethylene, propane, or propylene service, respectively.

(9) The following valves are exempt from the requirements of §115.352(4) of this title:

(A) pressure relief valves;

(B) open-ended valves or lines in an emergency shut-down system that ~~which~~ are designed to open automatically in the event of an emissions event;

(C) open-ended valves or lines containing materials that ~~which~~ would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system; and

(D) valves rated greater than 10,000 psig.

(10) Connectors in instrumentation systems, as defined in 40 CFR §63.161 (January 17, 1997), that meet 40 CFR §63.169 (June 20, 1996) are exempt from the requirements of this division except §115.356(3)(C) of this title.

(11) Components/systems that contact a process fluid containing VOC having a true vapor pressure equal to or less than 0.002 psia at 68 degrees Fahrenheit are exempt from the requirements of this division except §115.356(3)(C) of this title.

(12) ~~[(4)]~~ In the Houston/Galveston area, the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) apply to components that ~~which~~ qualify for one or more of the exemptions in paragraphs (1) - ~~(11)~~ ~~[(4) - (40)]~~ of this section at any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in which a highly-reactive volatile organic compound, as defined in §115.10 of this title (relating to Definitions), is a raw material, intermediate, final product, or in a waste stream.

§115.359. Counties and Compliance Schedules.

The owner or operator of each affected source in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties must ~~shall~~:

(1) continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates);

(2) comply with §115.356(2)(C) ~~§115.356(2)(C) and (D)~~ of this title (relating to ~~Monitoring and~~ Recordkeeping Requirements) as soon as practicable, but no later than March 31, 2004; and

(3) develop and make available upon request to the executive director, United States Environmental Protection Agency [EPA], and any local air pollution control agency having jurisdiction the recordkeeping required by §115.356(1) and (3) ~~§115.356(1), (3), and (4)~~ of this title as soon as practicable, but no later than March 31, 2004.

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 June 25, 2004.

TRD-200404251

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 8, 2004

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office proposes an amendment to Title 31, Part 1, Chapter 3, Subchapter C of the Texas Administrative Code, §3.31(b)(16)(A) relating to fees for services and products. The amendment provides the Commissioner the discretion to waive the currently required in-kind contract maintenance fees. The Texas General Land Office will develop guidelines based on economies of scale to determine whether the fees shall be imposed.

The change will increase the flexibility of the Texas General Land Office to supply natural gas to its customers.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no significant negative fiscal impact to state or local government as a result of administering the section as amended.

Marshall Enquist, Attorney with the Energy Section, has determined that there will be a slight public benefit due to potential savings as a consequence of reduced service charges for sales of natural gas by the State. There will not be an effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Marshall Enquist, Attorney with the Energy Section, has determined that for each of the first five years that the amendment as proposed will be in effect, there will be no impact on local employment.

Comments may be submitted to Deborah Cantu, Legal Services, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78711 or by fax at (512) 463-6311, no later than 30 days after publication.

The amendment to this section is proposed under Texas Natural Resources Code §31.051, which authorizes the Texas General Land Office to make and enforce suitable rules consistent with the law.

The proposed amendment affects Sections 35.101 through 35.106 of the Utilities Code.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.