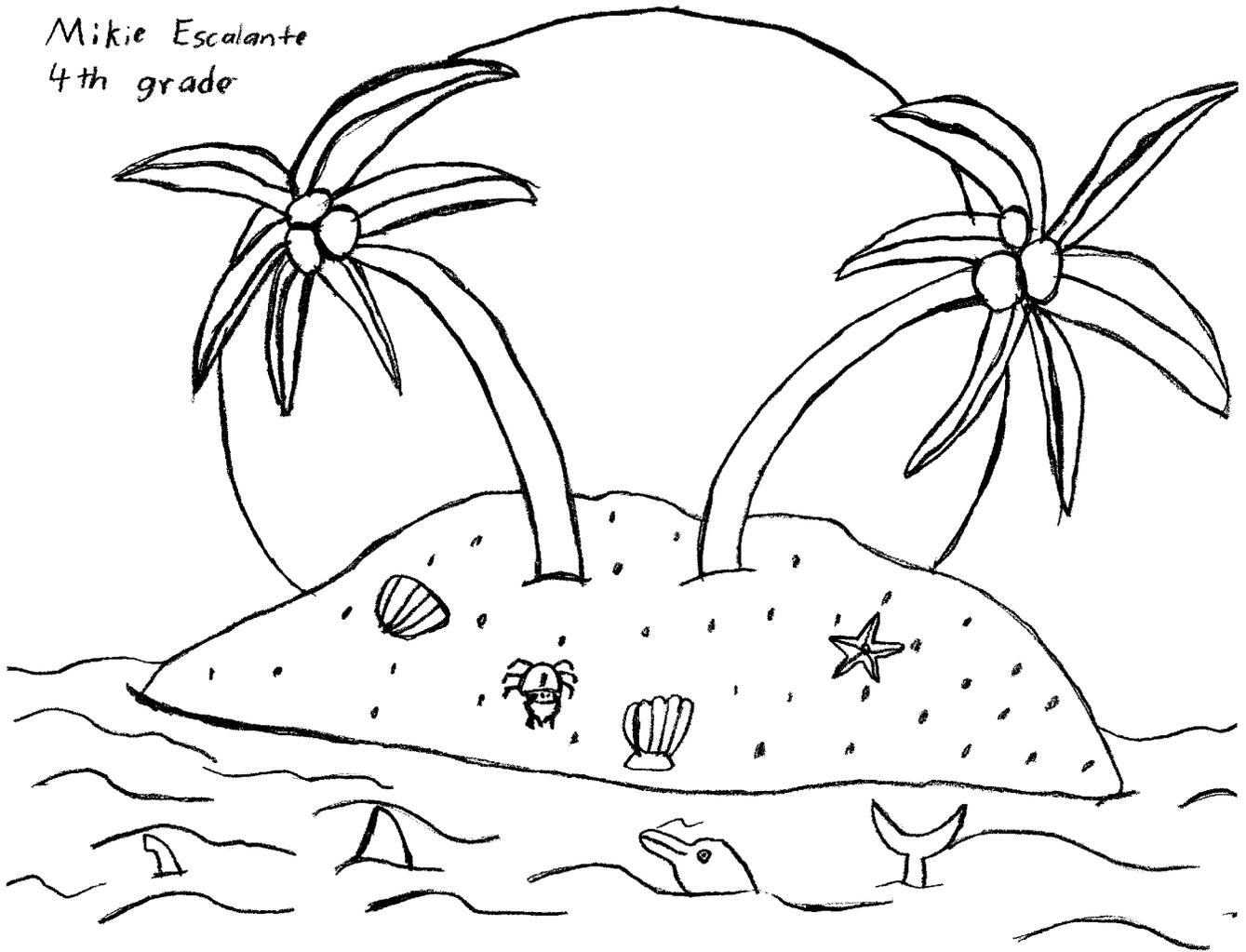

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Mikie Escalante
4th grade



title (relating to Definitions); and §114.1 of this title (relating to Definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Idle--The operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.

(2) Local government--A city, county, municipality, or political subdivision of the state.

(3) Motor vehicle--Any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code, §502.002, excluding vehicles registered under §502.006(c).

(4) Primary propulsion engine--A gasoline or diesel-fueled internal combustion engine attached to a motor vehicle that provides the power to propel the motor vehicle into motion and maintain motion.

§114.511. Applicability.

The provisions of §114.512 and §114.517 of this title (relating to Control Requirements for Motor Vehicle Idling; and Exemptions) are applicable only within the jurisdiction of a local government that has signed a Memorandum of Agreement with the commission to delegate enforcement of the provisions of this division to that local government.

§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 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 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 other than propulsion, 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 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 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 July 16, 2004.

TRD-200404579

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 29, 2004

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) proposes amendments to §115.227 and §115.229, concerning Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; §§115.412, 115.413, 115.415 - 115.417, and 115.419, concerning Degreasing Processes; §§115.512, 115.516, 115.517, and 115.519, concerning Cutback Asphalt; and corresponding revisions to the state implementation plan (SIP).

The commission proposes 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.

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

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS
FOR THE PROPOSED 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 were 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. Based on the 2001 - 2003 design value of 84 parts per billion, the Austin EAC area was designated attainment.

On December 20, 2002, the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler; the counties of Gregg, Harrison, Rusk, Smith, 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.

Proposed 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 would 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).

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

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

As previously discussed, these changes are proposed at the request of 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 2004. The proposed rules in this package 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. The Austin area is currently in attainment with the one-hour and eight-hour ozone standards. However, there is concern, based on historical eight-hour ozone levels, that future monitoring may indicate nonattainment for the Austin area. If Austin continues to meet the milestones of its compact, a nonattainment designation can be deferred if future monitoring shows nonattainment.

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 proposed amendments to §115.227(3) would specify 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

Proposed new §115.229(c) would be 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.

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

§115.412, Control Requirements

Proposed amendments to §115.412 would add 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

Proposed amendments to §115.413 would add 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

Proposed amendments to §115.415 would add 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

Proposed amendments to §115.416 would add 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

Proposed amendments to §115.417 would add 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

Proposed amendments to §115.419 would designate the existing text in §115.419 as §115.419(a) and add 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

Proposed amendments to §115.512 would add 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

Proposed amendments to §115.516 would add 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

Proposed amendments to §115.517 would add 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

Proposed amendments to §115.519 would designate the existing text in §115.519 as §115.519(a) and add 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rulemaking has been requested by local governments in the Austin and San Antonio EACs as part of their plans to comply with the eight-hour ozone standard mandated by EPA. In the San Antonio EAC area, Bexar, Comal, Guadalupe, and Wilson Counties propose to reduce VOC emissions from gasoline dispensing facilities and degreasing facilities. In the Austin EAC area, Bastrop, Caldwell, Hays, Travis, and Williamson Counties propose to reduce VOC emissions from the use of cutback asphalt as well as from gasoline dispensing facilities and degreasing facilities.

The proposed rules would require gasoline dispensing facilities in the Austin and San Antonio EAC areas with more than 25,000 gallons throughput in a calendar month to implement Stage I vapor recovery controls. Under current rules, only gasoline dispensing facilities with 125,000 gallons or greater throughput in a calendar month are required to have such controls in place.

The proposed rulemaking would also require degreasing facilities in the San Antonio and Austin EAC counties to implement the controls and comply with the same testing and record keeping requirements required of facilities in the Houston/Galveston nonattainment area, the Dallas/Fort Worth nonattainment area, the Beaumont/Port Arthur nonattainment area, Gregg County, Nueces County, and Victoria County. These controls are already required for new degreasing facilities that have been placed in service since 1994, as a condition of their authorization under 30 TAC §106.454, but the proposed rules would extend the control requirements to existing facilities.

Users and sellers of cutback asphalt in the Austin EAC would have to limit the sale and use of cutback asphalt containing VOC when paving roads, driveways, or parking lots and comply with the limitations and requirements in §115.512.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a reduction in VOC emissions in the San Antonio and Austin EAC areas. Since VOC is a precursor to ozone, the reductions would lead to decreased ozone formation in the areas affected

by the proposed rules. The resulting reductions would enhance the ability of the San Antonio and Austin EAC areas to comply with the eight-hour ozone standard mandated by EPA.

The details related to the costs of implementing the proposed rulemaking are as follows:

Costs to Gasoline Dispensing Facilities

Staff estimates that there are approximately 400 dispensing facilities in the San Antonio EAC area and 360 dispensing facilities in the Austin EAC area that will have to implement Stage I vapor recovery controls. The cost per facility to implement these controls would be between \$4,000 to \$5,000. This will be a one time cost over the first five years the proposed rules would be in effect and includes equipment, parts, labor, and installation costs. Total costs for the San Antonio EAC is estimated to range from \$1.6 million to \$2 million. Total costs for the Austin EAC is estimated to range from \$1.44 million to \$1.8 million.

Older Degreasing Facilities

Costs for degreasing facilities that have not previously had to comply with the conditions detailed under the permit by rule in §106.454, are estimated to be approximately \$500 - \$1,000 for smaller units which are most frequently used. It could cost larger conveyerized facilities as much as \$20,000 to comply, but not many of these size facilities currently exist, and therefore, a small number of these facilities will be affected by this rule. Equipment replacement would be a one time cost in the first five years the proposed rules would be implemented. Staff estimates that there may be approximately 2,600 facilities in the San Antonio EAC and approximately 2,300 facilities in the Austin EAC that may be required to replace their equipment. Total costs for these facilities may be as high as \$2.6 million for the San Antonio EAC and \$2.3 million for the Austin EAC. Because new equipment would allow for greater recovery of solvent, the previously stated cost estimates could be mitigated somewhat because less solvent would have to be purchased. However, staff is not able to estimate the savings associated with the recovery of solvent using newer equipment.

Limitations on the Use of Cutback Asphalt

Under this proposed rulemaking, staff does not estimate any increase in cost to private or governmental entities in the Austin EAC when limiting the use of cutback asphalt. Alternative materials are available at comparable prices.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

It is not known how many gasoline dispensing facilities or degreasing facilities in the San Antonio and Austin EACs are owned by small or micro-businesses. A small or micro-business is defined as having fewer than 100 or 20 employees respectively. A small or micro-business owning a gasoline dispensing facility or a degreasing facility subject to the proposed rulemaking will have to incur the same costs as a large business to comply with the proposed rulemaking. Adverse fiscal implications are anticipated for small or micro-businesses having to comply with the proposed rulemaking if their volume of business and profit margins do not allow them to recoup such costs. The cost per employee for a small business operating a gasoline dispensing facility is estimated to be approximately \$40 to \$50. For a micro-business, the cost is estimated to be approximately \$200 to \$250 per employee. For a degreasing facility owned by a small business, the cost per employee is estimated to be as much as \$10. For a degreasing facility owned by a micro-business, the cost per employee is estimated to be as much as \$50.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules 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 amendments are not subject to §2001.0225 because although the proposal 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 proposed rulemaking would subject 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 proposed rulemaking is not an express requirement of state law, but was developed in order to meet the federal air quality standard. This proposal 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 proposed 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 proposed amendments to Chapter 115 do not exceed the requirements of the compacts. The proposed rulemaking has been 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 proposed 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 proposed rulemaking was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed 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 are proposed at the request of 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 proposed rules in this package are part of the attainment demonstration. The Austin area is in attainment with the one-hour ozone standard. The Austin area is currently in attainment with the one-hour and eight-hour ozone standards. However, there is concern, based on historical eight-hour ozone levels, that future monitoring may indicate nonattainment for the Austin area. If Austin continues to meet the milestones of its compact, a nonattainment designation can be deferred if future monitoring shows nonattainment. Certain sources in the EAC areas will be 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 proposed 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 proposed amendments because they are reasonably taken to fulfill an obligation mandated by federal law. This rulemaking would subject 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 if future monitoring shows nonattainment of the ozone standard.

Therefore, these proposed amendments meet the requirements of §2007.003(b)(4). For this reason, this proposed rulemaking will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on the takings impact assessment.

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 will 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.

ANNOUNCEMENT OF HEARING

Public hearings on this proposal will be held August 23, 2004, 2:00 p.m., at the Texas Commission on Environmental Quality, 12100 North I-35, Building E, Room 254S, Austin, Texas; August 24, 2004, 10:00 a.m., at the Longview City Hall Council Chambers, 300 West Cotton Street, Longview, Texas; and August 26, 2004, 10:00 a.m. and 7:00 p.m., Alamo Area Council of Governments Board Room, 8700 Tesoro Drive, Suite 100, San Antonio, Texas. 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 time limit may be established at each hearing 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 each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings 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

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-4808; or emailed to eaacsip@tceq.state.tx.us. All comments should reference Rule Project Number 2004-073-115-AI. Comments must be received by 5:00 p.m., August 30, 2004. For further information, please contact Teresa Hurley of the Environmental Planning and Implementation Division at (512) 239-5316 or Emily Barrett of the Policy and Regulations Division at (512) 239-3546.

SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS DIVISION 2. FILLING OF STORAGE VESSELS (STAGE 1) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §115.227, §115.229

STATUTORY AUTHORITY

The amendments are 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, 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.

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

§115.227. Exemptions.

The following exemptions apply:

- (1) - (2) (No change.)
- (3) In the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999 are exempt from the requirements of this division, except for:

(A) - (D) (No change.)

- (4) In Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(C) of this title.

- (5) [(4)] Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

§115.229. Counties and Compliance Schedules.

(a) - (b) (No change.)

(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 or more 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-4712



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 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, 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.

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

§115.412. Control Requirements.

In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, [and] Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties, the following control requirements shall apply.

(1) - (3) (No change.)

§115.413. Alternate Control Requirements.

The alternate control requirements for degreasing processes in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, [and] Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties are as follows.

(1) - (3) (No change.)

§115.415. Testing Requirements.

The testing requirements for degreasing processes in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, [and] Victoria, Bexar, Comal, Guadalupe,

Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties are as follows.

(1) - (3) (No change.)

§115.416. Recordkeeping Requirements.

The owner or operator of each degreasing process in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, [and] Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director, EPA, or the local air pollution control agency having jurisdiction in the area:

(1) - (3) (No change.)

§115.417. Exemptions.

The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, [and] Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties.

(1) - (5) (No change.)

§115.419. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with applicable sections of this division (relating to Degreasing Processes) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties must comply with applicable sections of this division (relating to Degreasing Processes) as soon as practicable, but no later than December 31, 2005.

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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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1. CUTBACK ASPHALT

30 TAC §§115.512, 115.516, 115.517, 115.519

STATUTORY AUTHORITY

The amendments are 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, 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.

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

§115.512. Control Requirements.

The following control requirements shall apply in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties [County] and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions).

(1) (No change.)

(2) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Bastrop, Caldwell, Hays, Travis, and Williamson Counties, no person shall allow the use, application, sale, or offering for sale of conventional cutback asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from April 16 to September 15 of any year.

(3) (No change.)

§115.516. Recordkeeping Requirements.

In Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties [County] and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any state, municipal, or county agency who uses or specifies the use of cutback asphalt or asphalt emulsion shall maintain records sufficient to document compliance with applicable restrictions and shall make such records available upon request to representatives of the executive director, EPA, or the local air pollution control agency having jurisdiction in the area.

§115.517. Exemptions.

For persons in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties [County] and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following are exempt from the provisions of §115.512(2) of this title (relating to Control Requirements):

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

§115.519. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, and Waller Counties shall continue to comply with applicable sections of this division (relating to Cutback Asphalt) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with applicable sections of this division (relating to Cutback Asphalt) as soon as practicable, but no later than December 31, 2005.

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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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39

The Comptroller of Public Accounts proposes new §5.39, concerning hazardous duty pay.

Subsection (a) of the new section defines important terms used throughout the section.

Subsection (b) of the new section provides important provisions about the receipt of hazardous duty pay.

Subsection (b)(1) governs only individuals who are not employed by the Texas Youth Commission (TYC). Subsection (b)(1)(B) states that hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in Government Code, §659.302(a), unless the individual is a "type 2 grandfathered employee" as described in subsection (g). Subsection (b)(1)(C) states that an individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. Subsection (b)(1)(D) states that for purposes of Government Code, §659.302(a)(2), 12 months of lifetime service credit are not required to be 12 continuous months.

Subsection (b)(2) governs only individuals who are employed by TYC. Subsection (b)(2)(B) specifies when TYC may include hazardous duty pay in the compensation paid to an individual. Subsection (b)(2)(C) prohibits TYC from paying hazardous duty pay to an individual who does not satisfy both of the criteria in subsection (b)(2)(B). Subsection (b)(2)(D) states that an individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. Subsection (b)(2)(E) states that for purposes of subsection (b)(2)(B)(ii), 12 months of lifetime service credit are not required to be 12 continuous months.

Subsection (c) of the new section provides important provisions about the amount of hazardous duty pay.

Subsection (c)(1) governs only individuals who are employed by TYC. The amount of hazardous duty pay paid monthly to a full-time state employee must be expressed in terms of a specific dollar amount for each 12 month period. The amount of hazardous duty pay may exceed neither \$7 for each 12 month period of lifetime service credit nor \$210.

Subsection (c)(2) governs only part-time state employees. The amount of hazardous duty pay for a part-time state employee