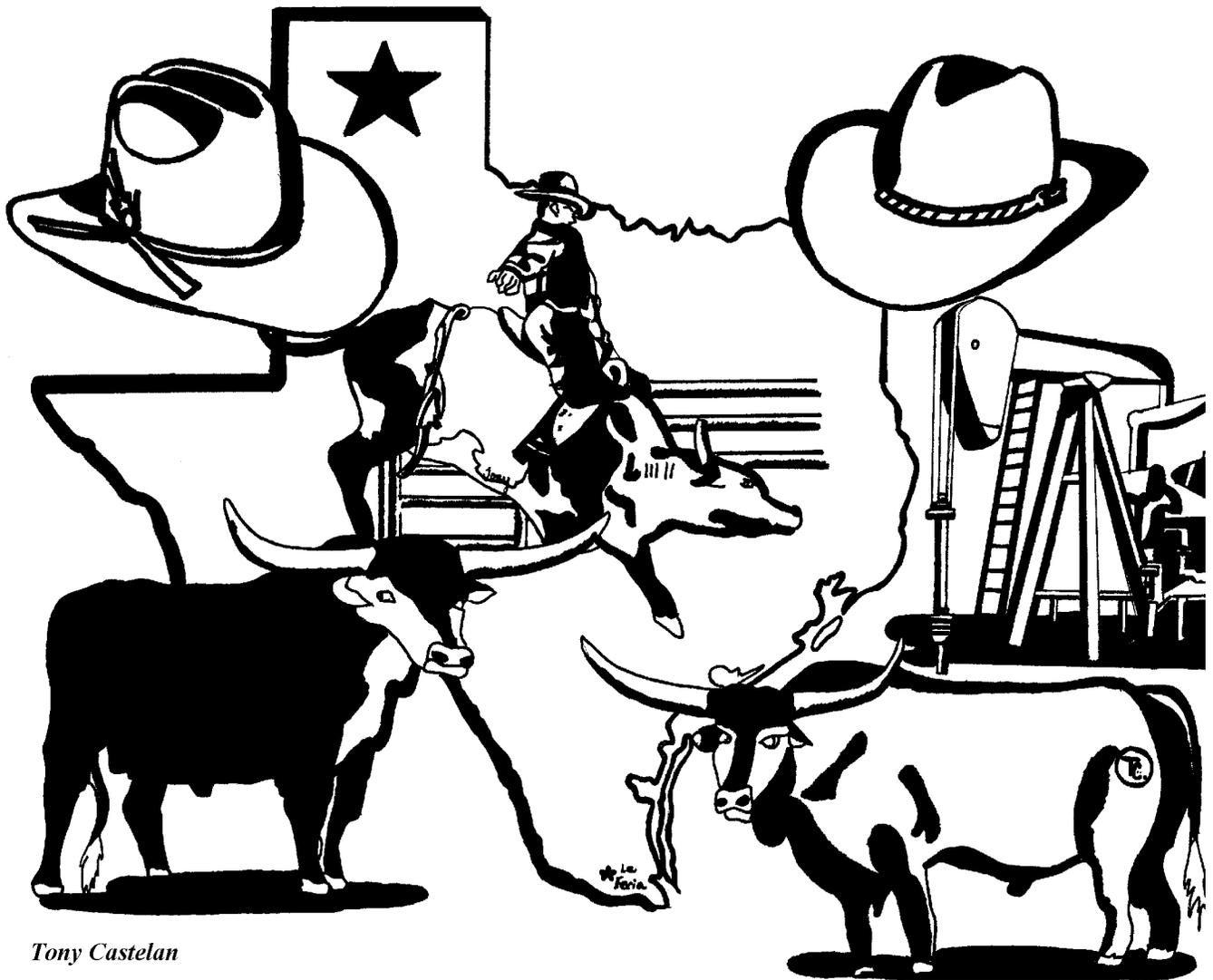

TEXAS REGISTER

Volume 30 Number 17

April 29, 2005

Pages 2477-2616



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TRD-200501586
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Effective date: May 5, 2005
Proposal publication date: December 24, 2004
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.10, 115.229, and 115.429. Section 115.10 is adopted *with change* to the proposed text as published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11910). Sections 115.229 and 115.429 are adopted *without changes* and will not be republished.

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

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (CAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq.* require EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas/Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate, in accordance with the 1990 CAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas/Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the EPA reclassified the Dallas/Fort Worth area from "moderate" to "serious," resulting in a requirement to submit a new SIP demonstrating attainment by the new deadline of November 15, 1999.

The November 15, 1999 deadline passed, and EPA has not made a determination regarding the Dallas/Fort Worth area attainment status. In the attainment demonstration SIP adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Houston/Galveston/Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the Dallas/Fort Worth area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA

policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was overturned by federal courts, which ruled that EPA does not have authority to extend an area's attainment date based on transport. Although the Dallas/Fort Worth area was not the specific subject of any of these suits, the Dallas/Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approved by EPA. Thus, the Dallas/Fort Worth area does not currently have an approved attainment demonstration SIP for the one-hour ozone NAAQS.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS), and on April 30, 2004, promulgated the first phase implementation rule for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas/Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the Dallas/Fort Worth eight-hour ozone nonattainment area (DFW area). The DFW area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) effective June 15, 2004, for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I guidance provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the designation (by June 15, 2005); 2) submit an eight-hour ozone plan no later than one year after the effective date of the designation (by June 15, 2005) that provides a 5% increment of reductions from the area's 2002 emissions baseline in addition to federal measures and state measures already approved by EPA, and achieves these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three require successful photochemical grid modeling performance. The commission, in coordination with EPA, determined that option two is the most expeditious approach to beginning to achieve the reductions ultimately needed to: 1) meet the June 15, 2005 transportation conformity deadline; and 2) attain the eight-hour ozone NAAQS by June 15, 2010. In order for the DFW area to comply with the requirement to submit a 5% increment of progress plan that provides a 5% emission reduction from the 2002 emissions baseline, additional emission reduction strategies are necessary.

The adopted rules represent two of the control strategies that have been selected to provide the 5% increment of progress. The SIP revision also establishes a 2007 motor vehicle emissions budget (MVEB) for the DFW area, which is necessary to prevent a transportation conformity lapse after June 15, 2005.

Amendments to Chapter 115, Subchapter A, Definitions, revise the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dallas/Fort Worth area." This definition change is for the purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes.

Amendments to Chapter 115, Subchapter C, Division 2, lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons of gasoline in a calendar month to 10,000 gallons of gasoline in a calendar month in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties.

Amendments to Chapter 115, Subchapter E, Division 2, extend the control requirements to Ellis, Johnson, Kaufman, Parker, and Rockwall Counties.

The emission reduction requirements in this rulemaking will result in reductions in ozone formation in the DFW area and help bring the DFW area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas/Fort Worth SIP that the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA. EPA has not yet issued Phase II of its eight-hour implementation rule (Phase II guidance) for states to use in developing eight-hour ozone attainment demonstrations. Phase II guidance, expected to be promulgated by EPA later this year, will provide additional information relating to eight-hour ozone attainment demonstrations. The commission is continuing to prepare for the required eight-hour ozone attainment demonstration SIP.

SECTION BY SECTION DISCUSSION

Subchapter A, Definitions

§115.10, Definitions

The amendment to §115.10 revises, for the purposes of Subchapter C, Division 2, the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dallas/Fort Worth area" definition. Additionally, the definition change for "Dallas/Fort Worth area," that includes Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, applies to Subchapter E, Division 2. The existing definitions continue to apply in the other sections of the chapter. A reference to the Texas Health and Safety Code has been added to the first sentence of §115.10, as a change to the proposed language, to be consistent with other agency rules.

Subchapter C, Volatile Organic Compound Transfer Operations

Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

§115.229, Counties and Compliance Schedules

The amendment to §115.229 adds new subsection (d) to specify that facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that have dispensed at least 10,000 but less than 125,000 gallons of gasoline per month must comply with the requirements as soon as practicable, but no later than June 15, 2007. This date is the deadline specified for control measures to be in place for the 5% increment of progress.

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.429, Counties and Compliance Schedules

The amendment to §115.429 designates the existing text in §115.429 as §115.429(a) and adds a new subsection (b), to specify that surface coating facilities in Ellis, Johnson, Kaufman,

Parker, and Rockwall Counties must comply with the requirements as soon as practicable, but no later than June 15, 2007. This date is the deadline specified for control measures to be in place for the 5% increment of progress.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means 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, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§115.10, 115.229, and 115.429 lower the exemption level for motor vehicle fuel dispensing facilities subject to Stage I vapor recovery requirements in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, extend surface coating requirements in Chapter 115 to the same counties, and revise the SIP to include these requirements. While this rulemaking is intended to protect the environment by reducing VOC emissions that help form ozone, the commission does not find that the additional motor vehicle fuel dispensing facilities and surface coating operations covered by this rulemaking comprise a sector of the economy, or that the rules will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area.

The adopted amendments to Chapter 115 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal 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, the adopted amendments to Chapter 115 were developed as part of the control strategy to meet the eight-hour ozone NAAQS set by the EPA under 42 USC, §7409, and therefore meet a federal requirement. 42 USC, §7410, requires states to adopt and submit a SIP that provides for "implementation, maintenance, and enforcement" of the primary 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 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq.* does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq.*, recognized that the states

are in the best position to determine what programs and controls are necessary or appropriate to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §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 during the 75th Legislative Session, 1999. 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 delegation 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 previously discussed, 42 USC, §§7401 *et seq.* 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 the 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 a 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. Since 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 intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules may have broad impacts, those impacts are no greater than necessary or appropriate to meet the requirements of the FCAA, 42 USC, §§7401 *et seq.* For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

In addition, 42 USC, §7502(a)(2), requires attainment as expeditiously as practicable and 42 USC, §7511a(c), requires states to submit attainment demonstration SIPs for ozone nonattainment areas, such as the DFW area. The adopted rules, which will reduce ozone in the DFW area, will be submitted to the EPA as one of several measures in the federally required SIP. By reducing emissions of VOCs, these controls will result in reductions in ozone formation in the DFW area and help bring the DFW area into compliance with the air quality standards established under

federal law as NAAQS for ozone. Therefore, the adopted rule-making is a necessary component of, and consistent with, the eight-hour ozone attainment demonstration Dallas/Fort Worth SIP 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 with 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 action implements requirements of 42 USC, §§7401 *et seq.* There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, nor does it exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and Texas Water Code that are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §382.012 and §382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purposes of this rulemaking are to achieve reductions of VOC emissions to reduce ozone formation in the DFW area and help bring the DFW area into compliance with the air quality standards established under federal law as NAAQS for ozone. If adopted, motor vehicle fuel dispensing facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties that dispense at least 10,000 but less than 125,000 gallons of gasoline per month will be subject to Stage I vapor recovery requirements and surface coating control requirements in Chapter 115 will be extended to the same counties. The Stage I gasoline vapor recovery portion of these requirements could conceivably place a burden on private, real property to the extent that they require the installation of permanent equipment at fuel dispensing facilities.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted 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 eight-hour 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. Attainment of the eight-hour ozone standard may require further reductions in NO_x emissions as well as VOC emissions. This rulemaking is one step toward meeting the state's obligations under the FCAA.

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 rules 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 DFW area exceeding the federal eight-hour ozone NAAQS, that 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 DFW area. Consequently, these adopted rules meet the exemption in Texas Government Code, §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 adopted rules do not constitute a takings under Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rulemaking is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the 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 is, 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, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission conducted public hearings on the proposed rules on January 3, 2005, in Arlington, Texas; January 4, 2005, in Austin, Texas; and January 5, 2005, in Houston, Texas. No comments were received at the public hearings regarding this rulemaking in particular. The public comment period closed on January 6, 2005. The commission received a written comment from Mayor Robert N. Cluck, M.D., City of Arlington, Texas (Mayor Cluck), who spoke in support of the collaboration between the commission and EPA.

RESPONSE TO COMMENTS

Mayor Cluck stated support for the commission's work with EPA to bring cleaner air to North Texans.

The commission appreciates the support of Mayor Cluck and will continue to work with EPA to improve air quality in the North Texas region.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is adopted 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 amendment is also adopted 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; and §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.

The adopted amendment implements Texas Water Code, §5.103 and §5.105; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§115.10. *Definitions.*

Unless specifically defined in Texas Health and Safety Code, Chapter 382, (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Background--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) Beaumont/Port Arthur area--Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) Carbon adsorption system--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Closed-vent system--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) Component--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(7) Connector--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(8) Continuous monitoring--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(9) Covered attainment counties--For purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties. For all other divisions, Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(10) Dallas/Fort Worth area--For purposes of Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, and Tarrant Counties.

(11) El Paso area--El Paso County.

(12) Emergency flare--A flare that only receives emissions during an upset event.

(13) External floating roof--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed

space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(14) Fugitive emission--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(15) Gasoline bulk plant--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(16) Gasoline terminal--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(17) Heavy liquid--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(18) Highly-reactive volatile organic compound--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOCs): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOCs: ethylene and propylene.

(19) Houston/Galveston or Houston/Galveston/Brazoria area--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(20) Incinerator--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(21) Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(22) Leak-free marine vessel--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterfly covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(23) Light liquid--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute

(0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(24) Liquefied petroleum gas--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(25) Low-density polyethylene--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(26) Marine loading facility--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(27) Marine loading operation--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(28) Marine terminal--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(29) Metal-to-metal seal--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(30) Natural gas/gasoline processing--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

(31) Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(32) Polymer or resin manufacturing process--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(33) Pressure relief valve--A safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A pressure relief valve is automatically actuated by the static pressure upstream of the valve, but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(34) Printing line--An operation consisting of a series of one or more printing processes and including associated drying areas.

(35) Process drain--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(36) Process unit--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(37) Rupture disk--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(38) Shutdown or turnaround--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(39) Startup--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(40) Strippable volatile organic compound (VOC)--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(41) Synthetic organic chemical manufacturing process--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(42) Tank-truck tank--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(43) Transport vessel--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(44) True partial pressure--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(45) Vapor balance system--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(46) Vapor control system or vapor recovery system--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(47) Vapor-tight--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(48) Waxy, high pour point crude oil--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501545
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Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 239-0348

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

30 TAC §115.229

STATUTORY AUTHORITY

The amendment is adopted 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; §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 control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements Texas Water Code, §5.103 and §5.105; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.208.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501546

Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 239-0348

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**SUBCHAPTER E. SOLVENT-USING
PROCESSES
DIVISION 2. SURFACE COATING PROCESSES**

30 TAC §115.429

STATUTORY AUTHORITY

The amendment is adopted 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; §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 adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 15, 2005.

TRD-200501547
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 5, 2005
Proposal publication date: December 24, 2004
For further information, please call: (512) 239-0348

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CHAPTER 291. UTILITY REGULATIONS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§291.8, 291.15, 291.21, 291.22, 291.24, 291.26, 291.28, 291.29, 291.31, 291.34, 291.41, 291.81, 291.87, 291.121, 291.122, 291.124, 291.125, and 291.127 *without changes* to the proposed text as published in the November 26, 2004, issue of the *Texas Register* (29 TexReg 10883). The adopted amendments will not be republished.

**BACKGROUND AND SUMMARY OF THE FACTUAL BASIS
FOR THE ADOPTED RULES**

The commission adopts the amendments to implement House Bill (HB) 1152, HB 2388, and HB 3034, 78th Legislature, 2003. The adopted amendments also implement Senate Bill (SB) 2,