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Steven Rickman
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(2) a Certificate of Insurance for Environmental Impairment as evidence of environmental impairment insurance coverage.

(b) The mechanisms must reflect that insurance coverage is in effect on or before the date that the permit application is received.

(c) When requested by the executive director, a responsible person subject to this subchapter must submit proof of Environmental Impairment and/or Commercial Liability insurance.

§37.9130. *Drawing on the Financial Assurance Mechanisms.*

The executive director may make a written demand for performance under the environmental impairment policy when a responsible person who is required to comply with this subchapter has failed to perform corrective action when required.

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 September 30, 2005.

TRD-200504401

Stephanie Bergeron Perdue

Director, Environmental Division

Texas Commission on Environmental Quality

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§115.167, 115.169, 115.219, 115.427, and 115.429; and corresponding revisions to the state implementation plan (SIP). Section 115.429 is adopted *with changes* to the proposed text as published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3078). Sections 115.167, 115.169, 115.219, and 115.427 are adopted *without changes* to the proposed text and will not be republished.

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The 1990 Federal Clean Air Act (FCAA) Amendments authorized EPA to designate areas failing to meet national ambient air quality standards (NAAQS) for ozone as nonattainment and to classify them according to severity. The Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area consists of Hardin, Jefferson, and Orange Counties. The BPA area was originally classified as a "serious" one-hour ozone nonattainment area in 1991, and was required to meet the one-hour ozone NAAQS by November 1999. Based on subsequent review of the BPA area's ozone monitoring data showing lower recorded ozone levels, EPA reclassified BPA as "moderate" on April 2, 1996. The commission adopted a series of SIP revisions culminating in the "Super SIP" submitted in July 1996, which contained only controls for volatile organic compounds (VOCs). However, the BPA

region did not attain the one-hour ozone standard by the November 1996 deadline for moderate areas. Based on photochemical modeling demonstrating transport from the Houston-Galveston-Brazoria (HGB) ozone nonattainment area, the commission requested an extension of the attainment date to November 2007, the attainment date for HGB.

On April 16, 1999, EPA proposed, in the *Federal Register*, to extend the BPA attainment date to November 15, 2007, based on its ozone transport policy in effect at the time. EPA's transport policy provided that in determining the appropriate attainment date for an area, EPA may consider the effect of transport of ozone or its precursors from an upwind area that interferes with the downwind area's ability to attain. On May 15, 2001, EPA approved the transport demonstration and extended the attainment date for the BPA area to November 15, 2007, while retaining the area's classification as "moderate." Environmental groups subsequently challenged EPA's extension of attainment dates based on transport in the United States Court of Appeals for the Fifth Circuit. BPA was one of three areas in the nation for which suits were filed. On December 11, 2002, the Fifth Circuit Court of Appeals ruled that EPA is not authorized by the FCAA to extend the area's attainment date based on transport. On June 19, 2003, EPA proposed, in the *Federal Register*, to reclassify BPA to either serious or severe, with a November 2005 attainment date for either classification. EPA published final action in the *Federal Register* on March 30, 2004, effective April 29, 2004, and determined that the BPA area failed to attain the one-hour NAAQS by the deadline for moderate areas (November 15, 1996) as well as for serious areas (November 15, 1999), as set forth in the FCAA. EPA reclassified BPA from moderate to serious nonattainment under the FCAA, as codified in 42 United States Code (USC), §§7401 *et seq.*, with an attainment date of the one-hour ozone standard by November 15, 2005. This reclassification required Texas to submit a SIP revision within one year of the reclassification.

The commission adopted the required SIP revision on October 27, 2004. This adoption fulfills commitments made by the commission in that submittal to address major source applicability cutoffs for purposes of reasonably available control technology (RACT) and to address contingency measures previously adopted under the 15% rate-of-progress (ROP) requirements.

Under 42 USC, §7511(b), the EPA is required to issue control techniques guideline (CTG) guidance documents for the purpose of assisting states in developing RACT controls for major sources of VOC emissions. In turn, each state is required to submit a revision to its SIP that implements RACT regulations for VOC sources in moderate or above one-hour ozone nonattainment areas. 42 USC, §7511(b)(2)(A) requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. Similarly, 42 USC, §7511(b)(2)(C), requires that RACT be applied to major VOC sources located in moderate or above one-hour ozone nonattainment areas that are not the subject of a CTG; such sources are known as "non-CTG" sources. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT.

The reclassification of BPA from moderate to serious nonattainment resulted in a change in the major source definition from 100 tons per year (tpy) to 50 tpy. Rules in Chapter 115 for two source categories exempt sources at accounts that have less than 100 tpy of VOC. In order to ensure that RACT is applied to

all major sources in BPA, the commission is adopting a change in the exemption levels in these rules from 100 tpy to 50 tpy of VOC to conform to the major source threshold for sources in serious nonattainment areas. The two source categories are batch process operations and shipbuilding and repair operations. Shipbuilding and repair operations include surface coating of ships and offshore oil or gas drilling platforms. The commission published rules for RACT requirements for batch processes in BPA on November 12, 1999, and published rules for RACT requirements for shipbuilding and repair operations on April 3, 1998.

This adopted rulemaking also deletes §115.219(d), which requires control of VOCs from marine terminals in the BPA nonattainment area. This rule was adopted as a contingency measure in Chapter 115, Subchapter C, Division 1, on January 4, 1995. States are required by 42 USC, §7502(C)(9) to submit a SIP that provides for the implementation of contingency measures to be undertaken if the area fails to make reasonable further progress, or to attain the one-hour NAAQS by the attainment date. This measure was not implemented by the commission, even though the BPA area failed to achieve attainment of the one-hour NAAQS by the attainment date, November 15, 1996.

Photochemical modeling indicates that reductions in nitrogen oxide (NO_x) emissions in BPA are more effective in reducing ozone levels than reductions in VOC emissions. Therefore, the BPA SIP is being revised to remove the marine vessel loading contingency measure. The adopted rule change deletes this contingency measure for the BPA nonattainment area from Chapter 115. Voluntary reductions in NO_x emissions that have been made by three companies in the BPA area and additional voluntary reductions that have occurred as a result of the Texas Emissions Reduction Plan (TERP) exceed the reductions in VOC emissions that would have resulted from implementation of the marine vessel loading measure. EPA has indicated that NO_x emission reductions equivalent to 3% of the target level for 1996 could be used to replace the marine vessel loading contingency measure. A target level for 1996 was not available. The initial reasonable further progress requirement for 1990 - 1996 was VOC only; NO_x reductions were allowed to be used as part of ROP for target year 1999. The NO_x target level for 1999 (as reported in the post-1996 ROP demonstration SIP for BPA, adopted October 27, 2004) is 303.37 tons per day (tpd). That SIP indicates that the 9% reduction from 1996 to 1999 was 7% VOC and 2% NO_x. Thus, the "target" 1996 NO_x value would have been 2% higher than the 1999 target, or 309.56 tpd. The 3% reduction required for the contingency measure would thus be 9.3 tpd.

In 2004, three companies in the BPA area (Mobil Chemical Company, Division of Exxon Mobil Oil Corporation; Motiva Enterprises LLC; and Premcor Refining Group, Inc.) agreed to make voluntary reductions in emissions. On December 15, 2004, the commission adopted a revision to the BPA SIP incorporating the agreed orders to make these voluntary reductions federally enforceable. The agreed orders included NO_x reductions of 2,359 tpy, which is equivalent to 6.46 tpd.

The TERP program provides grants to eligible projects in nonattainment areas and affected counties to offset the incremental costs associated with reducing emissions of NO_x. Projects in the BPA area that have been funded thus far together with future TERP projects are projected to result in NO_x reductions of 3.0 tpd by 2007.

Total NO_x emission reductions from the agreed orders and TERP projects total 9.46 tpd. These reductions were not relied upon in

any pre-2004 ROP or attainment demonstration. These reductions are real, permanent, and federally enforceable. They will occur within the same time frame as reductions from the contingency measure would have occurred, or sooner. For these reasons, the NO_x emissions reductions resulting from the agreed orders and TERP projects are sufficient to replace the marine vessel loading contingency measure.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are adopted throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004. This includes, but is not limited to, replacing the term "shall" with "must" and replacing the term "which" with "that."

Subchapter B, General Volatile Organic Compound Sources

Division 6, Batch Processes

§115.167, Exemptions

The adopted amendment to §115.167(1)(A) changes the exemption level for sites in BPA from 100 tpy of VOC to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.169, Counties and Compliance Schedules

The adopted amendment to §115.169 revises the existing text in §115.169(a) to specify that the owner or operator of batch process operations at an account that has total VOC emissions (determined before control but after the last recovery device) of 100 tpy or more shall continue to comply with this division as required by 30 TAC §115.930. This change ensures that sources currently subject to the batch process control requirements of this division continue to comply with the applicable requirements. The reference to the compliance date of December 31, 2001, is deleted because this date has passed. The rulemaking also deletes the requirement that these sources continue to comply with the requirements of Subchapter B, Division 2, until the batch process operations are in compliance with the requirements of Subchapter B, Division 6. This wording is no longer necessary because the affected operations are already required to be in compliance with the requirements of Division 6.

The adopted amendment to §115.169 adds a new subsection (c), to specify that the owner or operator of batch process operations in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level shall comply with the requirements as soon as practicable, but no later than December 31, 2006. These batch process operations must continue to comply with the requirements of Subchapter B, Division 2, concerning Vent Gas Control, until these batch process operations are in compliance with the requirements of Subchapter B, Division 6.

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

§115.219, Counties and Compliance Schedules

The adopted amendment to §115.219 deletes subsection (d). Current analyses indicate that this contingency measure is no longer needed in order for the BPA area to reach attainment with the one-hour ozone standard. Measures that have been

implemented to reduce NO_x emissions have exceeded the reduction targets needed for reasonable further progress. The excess NO_x reductions are more effective in reducing ozone formation than the VOC reductions from implementation of this contingency measure would have been.

Subchapter E, Solvent-Using Processes

Division 2, Surface Coating Processes

§115.427, Exemptions

The adopted amendment to §115.427(a)(3)(H) changes the exemption level for sources in the BPA from 100 tpy to 50 tpy of VOC in order to ensure that RACT is applied at all major sources. This change is necessary because of the reclassification of the BPA area to serious nonattainment with respect to the one-hour ozone standard.

§115.429, Counties and Compliance Schedules

The adopted amendment to §115.429 adds a new subsection (c), to specify that shipbuilding and repair facilities in Hardin, Jefferson, and Orange Counties that become subject to the control requirements because of the change in exemption level must comply with the requirements as soon as practicable, but no later than December 31, 2006. Shipbuilding and ship repair facilities that are already subject to the control requirements must remain in compliance as specified in §115.429(a). The wording of §115.429(c) has been revised from proposal to add the words "equal to or" before "greater than 50 tons per year" to clarify that shipbuilding and ship repair operations in Hardin, Jefferson, and Orange Counties with emissions of 50 tpy must comply with the requirements as soon as practicable, but no later than December 31, 2006.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rule amendments are one element of the BPA SIP and require major sources in BPA to apply RACT to obtain VOC emissions reductions and remove a contingency measure for marine vessel loading in the BPA nonattainment area. These adopted rule amendments are necessary to comply with the requirements of the FCAA and to achieve attainment in the BPA ozone nonattainment area. The adopted rules are not anticipated to adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the adopted amendments do not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative

of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rule amendments implement requirements of 42 USC, §7410 and §7511. Under 42 USC, §§7410, *et seq.*, states are required to adopt a SIP that provides for "implementations, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. For nonattainment areas that are designated as moderate and above, 42 USC, §7511a(b)(2)(C) requires states to submit SIPs that include provisions to require implementation of RACT at major stationary sources of VOCs that are in the nonattainment area. As discussed previously, this rulemaking amends major source exemptions from 100 tpy to 50 tpy to reflect BPA's reclassification to serious and require RACT at major sources that emit 50 tpy or more VOCs. In addition, this rulemaking removes a contingency measure for marine vessel loading. This measure was not implemented and, as discussed previously, the commission has demonstrated that NO_x emission reductions resulting from the agreed orders concerning voluntary emission reductions at three companies in the BPA area and TERP projects are sufficient to replace the marine vessel loading contingency measure.

As discussed earlier in this preamble, this rulemaking implements the requirements of 42 USC, §7410 and §7511. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. The adopted rules were not developed solely under the general powers of the agency, but are adopted under the Texas Clean Air Act (TCAA), as codified in Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The specific purpose of these revisions is to amend major source exemption levels for batch processes and surface coating processes in the BPA nonattainment area due to BPA's reclassification by EPA to a serious ozone nonattainment area and to remove a contingency measure that was never implemented in the BPA ozone nonattainment area.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking because it is reasonably taken to fulfill an obligation mandated by federal law. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under 42 USC, §§7410, *et seq.* and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. For ozone nonattainment areas that are designated moderate or above, 42 USC, §7511a(b)(2)(C), requires that RACT be applied at major stationary sources of VOCs. Through this adopted rulemaking and SIP revision, the commission is implementing RACT at major sources of VOCs in the BPA area by amending the major source

exemption levels from 100 tpy to 50 tpy, the level for major stationary sources of VOCs in serious ozone nonattainment areas. This adopted rulemaking also removes a contingency measure for loading of VOCs into marine vessels in the BPA area. Under 42 USC, §7502(c)(9), states must submit, as part of their SIP, contingency measures to be implemented if an area fails to make reasonable further progress or fails to attain the NAAQS by the attainment date. As discussed previously, this measure was never implemented and the commission has demonstrated that NO_x emission reductions resulting from the agreed orders concerning voluntary emission reductions at three companies in the BPA area and TERP projects are sufficient to replace the marine vessel loading contingency.

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 purpose of these amendments does 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 BPA area exceeding the federal ozone NAAQS, which adversely affects public health, primarily through irritation of the lungs. This adopted rulemaking will ensure that additional VOC emission reductions will be achieved at major stationary sources through the implementation of RACT in the BPA. VOC is an ozone precursor that reacts with NO_x in sunlight to form ozone. The action will specifically advance the health and safety purpose by reducing VOC levels, and consequently ozone levels in the BPA nonattainment area. In addition, this adopted rulemaking removes a contingency measure that has not been implemented. The removal of the contingency measure does not specifically advance the health and safety purpose by reducing ozone levels in the BPA nonattainment area, but is part of a larger scheme to reduce ozone levels as expeditiously as possible in the BPA nonattainment area. Consequently, these adopted amendments meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the adopted amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking action and found that the rulemaking is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore considered the applicable goals and policies of the Texas Coastal Management Program (CMP) during the rulemaking process.

The commission determined that, under 31 TAC §505.22, the rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of these amendments. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance

air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

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

Public hearings were held on the proposed rules in Beaumont on June 16, 2005, at 2:00 p.m. and 6:00 p.m. No oral comments were received at the hearings. The public comment period ended at 5:00 p.m. on June 17, 2005. The commission received one written comment from EPA.

RESPONSE TO COMMENTS

EPA expressed appreciation that the commission had proposed rule changes for shipbuilding and repair and batch processes. These were two source categories where EPA had determined a possibility that not all major sources were covered by RACT.

The commission appreciates the support.

EPA requested that TCEQ review the point source inventory to confirm that all major sources had been covered by RACT rules and provide the documentation.

Staff has reviewed the point source inventory to confirm that all major sources are covered by RACT rules in this chapter and 30 TAC Chapter 117. Documentation of the review is provided in Appendix T of the SIP revision to be submitted to EPA in September 2005. The commission has confirmed that, with the exception of the batch process rules and the shipbuilding and ship repair rules, there are no exemptions for VOC sources that have potential to emit greater than or equal to 50 tpy but less than 100 tpy. With this rulemaking, the exemption levels for these rules are being changed to 50 tpy. The review of the inventory indicated only nine sites that might be classified as major sources of VOC at the 50 tpy definition that were not already considered major at the 100 tpy definition. One of these sites would be covered by RACT rules in this rulemaking. The other sites are covered by appropriate RACT rules in this chapter. The rules in Chapter 117 regarding control of NO_x emissions define a major source in the BPA area at 50 tpy. Thus, all major sources of NO_x emissions in the BPA area are covered by RACT rules in Chapter 117.

EPA commented that the reduction in emissions for marine vessel loading from 13.10 tpd in 1990 to 1.92 tpd in 2002 must be documented as real, permanent, and federally enforceable in order to be creditable as a contingency measure.

The commission is no longer using the actual reduction in VOC emissions from marine vessel loading as a contingency measure. Instead, the commission has documented that equivalent reductions in NO_x emissions have been used to replace the marine vessel loading contingency measure as discussed previously in this preamble. The reductions used to replace the marine vessel loading contingency measure are real, permanent, and federally enforceable.

EPA commented that if the TCEQ wishes to substitute the reductions from the lean burn engine rule for the marine vessel loading contingency measure, then it must show a 3% reduction of the target level from 1996 because that is the attainment year that triggered the reclassification from "moderate" to "serious" for the one-hour standard. Further, EPA stated that TCEQ must show that the reductions occurred in 2004 or earlier, were not relied upon in any pre-2004 ROP plans and attainment demonstrations, and were above the level of reductions required for RACT.

A target level for 1996 was not available. The initial reasonable further progress requirement for 1990 - 1996 was VOC only; NO_x reductions were allowed to be used as part of ROP for target year 1999. The target level for 1999 (as reported in the post-1996 ROP demonstration SIP for BPA, adopted October 27, 2004) is 303.37 tpd. That SIP indicates that the 9% reduction from 1996 to 1999 was 7% VOC and 2% NO_x. Thus, the "target" 1996 NO_x value would have been 2% higher than the 1999 target, or 309.56 tpd. The 3% reduction required for the contingency measure would thus be 9.3 tpd. Instead of using NO_x emission reductions from gas-fired, lean-burn stationary internal combustion engines rated 300 horsepower or greater to replace the marine vessel loading contingency measure, the commission is relying upon voluntary reductions in NO_x emissions that have been made by three companies in the BPA area and additional voluntary reductions that will occur as a result of TERP projects. In 2004, three companies in the BPA area agreed to make voluntary reductions in emissions. On December 15, 2004, the commission adopted a revision to the BPA SIP incorporating the agreed orders to make these voluntary reductions federally enforceable. The agreed orders included NO_x reductions of 2,359 tpy, which is equivalent to 6.46 tpd. TERP projects in the BPA area that have been funded thus far together with future TERP projects are projected to result in NO_x reductions of 3.0 tpd. Total NO_x emission reductions from the agreed orders and TERP projects total 9.46 tpd. These reductions were not relied upon in any pre-2004 ROP or attainment demonstration. These reductions are real, permanent, and federally enforceable and will occur within the same time frame as reductions from the contingency measure would have occurred, or sooner. For these reasons, the NO_x emissions reductions resulting from the agreed orders and TERP projects are sufficient to replace the marine vessel loading contingency measure.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 6. BATCH PROCESSES

30 TAC §115.167, §115.169

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also adopted under THSC, TCAA, §382.002, 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; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes

the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These adopted amendments implement THSC, §§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.

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.219

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also adopted under THSC, TCAA, §382.002, 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; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The adopted amendment implements THSC, §§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.

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 2. SURFACE COATING PROCESSES

30 TAC §115.427, §115.429

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. These amendments are also adopted under THSC, TCAA, §382.002, 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; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; and §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

These adopted amendments implement THSC, §§382.002, 382.011, 382.012, and 382.017.

§115.429. *Counties and Compliance Schedules.*

(a) The owner or operator of each surface coating operation 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 this division (relating to Surface Coating Processes) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each surface coating operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than June 15, 2007.

(c) The owner or operator of each shipbuilding and ship repair operation in Hardin, Jefferson, and Orange Counties that when uncontrolled emits a combined weight of volatile organic compounds from ship and offshore oil or gas drilling platform surface coating operations equal to or greater than 50 tons per year and less than 100 tons per year shall comply with this division as soon as practicable, but no later than December 31, 2006.

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

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CHAPTER 312. SLUDGE USE, DISPOSAL, AND TRANSPORTATION

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§312.4, 312.8 - 312.13, 312.44, 312.48, 312.82, 312.122, and 312.145. Sections 312.4, 312.8, 312.9, 312.11 - 312.13, 312.44, 312.48, 312.82, and 312.145 are adopted *with changes* to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2032). Sections 312.10 and 312.122 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking implements the requirements of House Bill (HB) 2546, 78th Legislature, 2003, which provides additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water. A corresponding rulemaking is published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 37, Financial Assurance.

SECTION BY SECTION DISCUSSION

Administrative changes are adopted throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 312.4, Requirements for Sewage Sludge Permit, Registration, or Notification, is adopted to amend the title to "Required Authorizations or Notifications." A provision is added to allow continuation of land application of Class B sewage sludge under existing registration if an administratively complete permit application has been submitted on or before September 1, 2002. This extension will cease when a final decision on the permit application is made by the commission. Subsection (a)(1) adds the requirement that all registrations for the land application of Class B sewage sludge expire on or before August 31, 2003, unless an administratively complete permit application was submitted on or before September 1, 2002, in which case the person holding such registration may continue operations under the existing registration until final commission action on the permit application. Paragraph (1) states that for registrations that also authorize the use of Class A sewage sludge, domestic septage, or water treatment plant sludge, only the provisions for the use of Class B sewage sludge expire on August 31, 2003; the other provisions expire on the expiration date of the registration or when a permit issuing the use of Class A sewage sludge, domestic septage, or water treatment plant sludge is issued for the site. The sentence "All provisions for this activity in any registration are void after August 31, 2003." is deleted from this subsection. A new paragraph (5) adds the HB 2546 provision prohibiting the issuance of a Class B sludge land application permit for a unit located in a county that borders the Gulf of Mexico and is within 500 feet of any water well or surface water. Subsection (b)(2) has been reformatted and names have been updated to