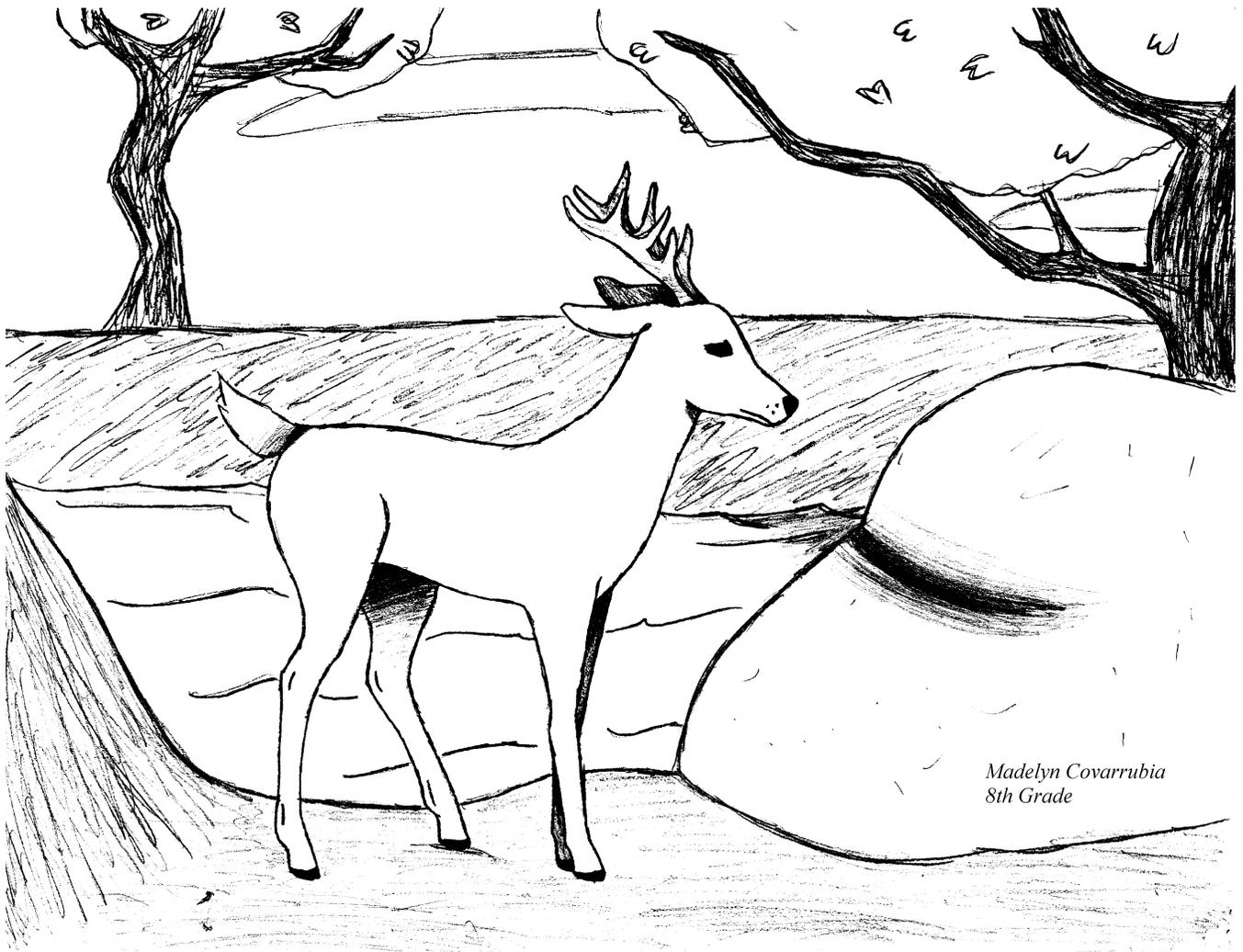

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Madelyn Covarrubia
8th Grade

Board of Directors of the Association, subject to approval of the DWC Commissioner, to adopt rules necessary to operate the Association.

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

Filed with the Office of the Secretary of State on November 21, 2006.

TRD-200606347

Judy Roach

Executive Director

Texas Certified Self-Insurer Guaranty Association

Effective date: December 11, 2006

Proposal publication date: June 2, 2006

For further information, please call: (512) 322-0514



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 (TCEQ or commission) adopts amendments to §§115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539. Sections 115.149 and 115.239 are adopted *with changes* to the proposed text as published in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5558). Sections 115.10, 115.119, 115.129, 115.139, 115.219, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539 are adopted *without changes* to the proposed text and will not be republished.

These amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) 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 the 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 for the one-hour ozone NAAQS in accordance with the 1990 FCAA 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 an additional SIP revision demonstrating attainment by the new deadline of November 15, 1999.

The Dallas-Fort Worth area also failed to reach attainment by the November 15, 1999, deadline. In the attainment demonstration SIP revision 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 later overturned by three federal courts, including the Court of Appeals for the 5th Circuit, which ruled in *Sierra Club et. al v. EPA*, 314 F. 3d 735 (2002), that EPA did 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 approvable by EPA.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS) (62 FR 38856). The eight-hour ozone NAAQS was challenged by numerous litigants and ultimately upheld by the United States Supreme Court in February 2001. On April 30, 2004, EPA promulgated the first phase of the implementation rules 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). Effective June 15, 2004, the DFW area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) that are nonattainment for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I Implementation Rule 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 eight-hour ozone designation (June 15, 2005); (2) submit an eight-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation, which is June 15, 2005, that provides for a 5% increment of progress (IOP) emission reduction from the area's 2002 emissions baseline that is in addition to federal and state measures already approved by EPA, and to achieve these reductions by June 15, 2007; or (3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three required successful photochemical grid modeling performance. Based on poor model performance, the commission, in consultation with EPA, determined that option two was the most expeditious approach to achieve the emission reductions ultimately needed to meet the June 15, 2005, transportation conformity deadline and attain the eight-hour ozone NAAQS by June 15, 2010. Therefore, the commission adopted a 5% IOP Plan in April 2005 and submitted it to EPA.

On November 29, 2005, EPA subsequently finalized its Phase II Implementation Rule for the eight-hour ozone NAAQS (Phase II Implementation Rule) (70 FR 71612). The Phase II Implementation Rule provides guidance and requirements for the remaining elements of the program to implement the eight-hour ozone NAAQS.

FCCA, §182(b)(2)(C), requires that reasonably available control technology (RACT) be implemented in nonattainment areas designated as moderate and above for the ozone NAAQS. The purpose of this rulemaking is to implement RACT controls for VOC emission sources in the five newly designated nonattainment counties. RACT for NO_x emission sources will be addressed, if necessary, in other rulemaking actions.

The adopted rulemaking subjects owners or operators of certain VOC-emitting facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW nonattainment area are subject. The definition of "Dallas/Fort Worth area" in §115.10 has been amended to include the five additional counties. The definition of "Covered attainment counties" was also amended to remove these five counties. Compliance dates have been added to specify when the owners or operators of newly affected facilities must achieve compliance with the requirements. The EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701) requires the implementation of RACT as expeditiously as practicable, but no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard. Since the five additional counties were designated on June 15, 2004, the required compliance date for RACT is March 1, 2009.

Rules in 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, were made applicable to the additional counties as part of the 5% IOP SIP adopted on April 27, 2005, and are not part of this adopted rulemaking. Rules in Subchapter B, Division 5, Municipal Solid Waste Landfills, are not part of this rulemaking because information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Rules in Subchapter C, Division 4, Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, are not part of this adopted rulemaking because of the decreased cost-effectiveness of these controls with the increased market penetration of motor vehicles equipped with on-board refueling vapor recovery. The Stage II rules continue to apply to the four-county one-hour ozone nonattainment area.

SECTION BY SECTION DISCUSSION

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with Texas Register requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, November 2004.

Subchapter A, Definitions

The adopted amendment to §115.10 revises 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 "Dal-

las/Fort Worth area" definition. The current definitions include these counties as part of the "Dallas/Fort Worth area" definition only for the purposes of Subchapter C, Division 2, and Subchapter E, Division 2. The adopted amendment includes the five counties as part of the "Dallas/Fort Worth area" definition for all sections of Chapter 115, except Subchapter B, Division 5. Information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Any new landfills would be subject to federal control requirements. For these reasons, no emission reductions would be expected from extension of the landfill control requirements to the five counties. Therefore, applying the requirements to the five counties is not required for RACT.

Subchapter B, General Volatile Organic Compound Sources

Division 1, Storage of Volatile Organic Compounds

The adopted amendment to §115.119, Counties and Compliance Schedules, deletes language in subsections (a) and (b) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held shall continue to comply with the division as required by §115.930. Subsection (b) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Vent Gas Control

The adopted amendment to §115.129, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Water Separation

The adopted amendment to §115.139, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Industrial Wastewater

The adopted amendment to §115.149, Counties and Compliance Schedules, deletes language in subsections (a) - (g) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) has been changed to specify that the owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with the division as required by §115.930. In response to a comment, the order of the counties has been changed in the adopted rule so that they are in proper alphabetical order. Subsection (b) has been changed to specify that the owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The adopted amendment to §115.219, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each VOC transfer operation in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline terminals and gasoline bulk plants in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline terminals and gasoline bulk plants shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements.

Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels

The adopted amendment to §115.239, Counties and Compliance Schedules, adds subsection (c) to specify that the owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline tank-truck tanks in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline tank-truck tanks shall continue to comply with those requirements until the facility achieves compliance

with the newly applicable requirements. The adopted rule corrects a capitalization error in §115.269(c) of the proposal.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

The adopted amendment to §115.319, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

The adopted amendment to §115.359, Counties and Compliance Schedules, deletes language in paragraphs (2) and (3) that is no longer needed due to the passing of the specified compliance dates. The remaining existing language and the language in paragraph (1) have been designated as subsection (a). Subsection (b) has been added to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter E, Solvent-Using Processes

Division 1, Degreasing Processes

The adopted amendment to §115.419, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Flexographic and Rotogravure Printing

The adopted amendment to §115.439, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the

eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Offset Lithographic Printing

The adopted amendment to §115.449, Counties and Compliance Schedules, adds subsection (f) to specify that the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter F, Miscellaneous Industrial Sources

Division 1, Cutback Asphalt

The adopted amendment to §115.519, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Pharmaceutical Manufacturing Facilities

The adopted amendment to §115.539, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected pharmaceutical manufacturing facility in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. 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 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 rulemaking is intended to protect the environment and to reduce risks to human health from environmental exposure. However, as discussed in the fiscal note, the commission finds the adopted rulemaking will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area.

Therefore, the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if the adopted rulemaking is determined to meet the definition of a major environmental rule, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). 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 rulemaking is adopted to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Specifically, the adopted rulemaking subjects owners or operators of certain VOC-emitting facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW eight-hour ozone nonattainment area are subject.

The adopted rulemaking is intended to protect the environment and to reduce risks to human health and safety from environmental exposure by reducing VOC emissions from sources subject to control requirements in Chapter 115, Subchapter B, Divisions 1 - 4; Subchapter C, Divisions 1 and 3; Subchapter D, Divisions 1 and 3; Subchapter E, Divisions 1, 3, and 4; and Subchapter F, Divisions 1 and 2.

The adopted rulemaking implements requirements of the FCAA. Under 42 USC, §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs shall include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter" (meaning Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and shall develop programs to assure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS within the state.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory

language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted 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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states shall develop programs for each area contributing to nonattainment to help ensure those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) 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 LBB, the commission believes the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

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. It is presumed "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); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *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)).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code,

§2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the adopted rulemaking is to protect the environment and to reduce risks to human health by adoption of rules to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in Texas Health and Safety Code, §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b); because, even if the adopted rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period that ended August 14, 2006. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). As addressed elsewhere in this preamble, 42 USC, §7410 specifically requires states to adopt and implement SIPs that provide for implementation, maintenance, and enforcement of the NAAQS within the state. This adopted rulemaking is a required component of the Texas SIP. The action will specifically advance the health and safety purpose by reducing VOC emissions in the DFW area. The rulemaking specifically targets sources with VOC emissions. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chap-

ter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined the 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(l)). No new sources of air contaminants will be authorized, and the adopted amendments will maintain at least the same level of or increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of Chapter 115 are applicable requirements of 30 TAC Chapter 122. Owners or operators of sites that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their Federal Operating Permits as appropriate in order to include the requirements of this adopted rulemaking.

PUBLIC COMMENT

Public hearings were held on the proposed rules in Waxahachie, Texas, on August 8, 2006. One individual presented testimony, as discussed in the RESPONSE TO COMMENTS section. The public comment period closed at 5:00 p.m. on August 14, 2006. The commission received written comments from EPA Region 6 and from one individual. EPA generally supported the proposed rulemaking but had suggestions for changes or clarifications as discussed in the RESPONSE TO COMMENTS section. One individual urged more stringent controls on VOC emissions from cement kilns. Another individual urged the commission to delay permitting coal-fired power plants upwind from DFW.

RESPONSE TO COMMENTS

EPA expressed support of the commission's efforts to expand controls for additional VOC emissions within the DFW area.

The commission appreciates the support.

EPA commented that the proposed rulemaking partially fulfills RACT requirements for the State of Texas, and that a future proposed rulemaking will provide additional RACT requirements as defined by EPA's November 29, 2005, regulations.

The purpose of the rulemaking is to satisfy RACT requirements for VOC emission sources in the five new counties. Rules specifically implementing RACT requirements for NO_x emission sources in the five new counties are not expected to be needed, because controls that will be required to support the attainment demonstration are expected to be at least as stringent as, and possibly more stringent, than controls needed to satisfy RACT. The upcoming attainment demonstration SIP will also have

a more complete discussion of VOC and NO_x RACT for the four core counties in the DFW area. The NO_x rules and the attainment demonstration SIP are expected to be proposed in December and adopted by June 15, 2007.

EPA requested that the commission confirm that the proposal accounts for all major VOC sources of affected sectors within the five new counties.

All major VOC sources within the five new counties in sectors covered by control techniques guidelines documents will be subjected to RACT requirements by these rule changes or by rule changes that were adopted with the 5% IOP Plan in April 2005. The attainment demonstration SIP that will be submitted to EPA by June 15, 2007, will include additional documentation that all major sources of VOC in the five counties are complying with appropriate RACT requirements.

EPA requested that the commission confirm that the required degree of VOC control for major sources of each affected sector within the five new counties still represents RACT, or make sure this documentation can be confirmed in a future proposal.

The degree of VOC control required for major sources in the five new counties will be the same as that required for sources in the four counties that made up the one-hour ozone nonattainment area. Documentation that this level of control still represents RACT will be provided with the attainment demonstration SIP that will be submitted to EPA by June 15, 2007. The commission received only one comment questioning whether a more stringent level of control was appropriate. That comment related specifically to the use of thermal oxidizers for control of VOC emissions at cement kilns. As discussed elsewhere in this preamble in response to that comment, the commission maintains that the use of thermal oxidizers at cement kilns does not represent RACT.

EPA suggested that the commission consider a compliance date earlier than March 1, 2009. Since facilities in Collin, Dallas, Denton, and Tarrant Counties have already implemented the requirements, EPA expressed the opinion that facilities in the new counties may be able to implement the requirements more quickly, perhaps by the beginning of the ozone season in 2008.

The commission does not agree that an earlier compliance date is reasonable or possible. Requiring compliance by the beginning of the ozone season in 2008 would give regulated entities only 15 months after the rules become effective to obtain the necessary control equipment and make changes to operating or business practices to comply with the new rules. The fact that sources in the surrounding counties already employ the required measures does not mean that newly affected sources can comply more quickly. The preamble to the adopted Phase II Implementation Rule notes that "EPA encourages States to adopt rules expeditiously . . . so that sources have more than sufficient time to install the controls" (70 FR 71658). The preamble also cites the 1990 Clean Air Act Amendments, which specify a 30-month period for installation of RACT controls. The commission does not believe that shortening the proposed time period to achieve compliance by one year is reasonable.

EPA commented that "Hardin" should follow "Galveston" in §115.149 for alphabetic order.

The commission agrees and has made the suggested change.

An individual commented that TXI's Kiln Number 5 has set a new standard for VOC controls at cement plants by installing and operating a thermal oxidizer that has reduced VOC emissions

significantly at Kiln Number 5. The commenter further stated that the public and DFW expect TCEQ to apply this new standard to all the other cement kilns in Midlothian as well.

The commission does not agree that the use of thermal oxidizers should be required at other cement kilns. The thermal oxidizer at TXI is believed to be one of only two installed on cement kilns in the country. Neither was installed for the purpose of lowering ozone concentrations in a nonattainment area. The thermal oxidizer requires the use of supplemental natural gas fuel in order to reduce VOC emissions from the kiln exhaust. With the increasing costs of natural gas in addition to other operational costs and the capital cost of installing an oxidizer, the use of this technology is not economically reasonable. Furthermore, VOC emissions from the cement kilns represent less than 10% of the total VOC emissions in the DFW nine-county nonattainment area that come from point sources and less than 1% of total VOC emissions. Current modeling indicates that reductions in VOC emissions are less effective in reducing ambient ozone levels than reductions in NO_x emissions.

An individual urged the commission to delay permitting coal-fired power plants upwind from DFW until more studies showing the full, total impact of all the proposed plants can be completed. The commenter also suggested alternatives to new coal-fired power plants.

The commission appreciates the commenter's interest in air quality. The comment does not relate to the proposed VOC RACT update rulemaking, and no changes to the rule have been made in response to it. The commission encourages public input on the proposed power plants and, as part of the permitting process, has conducted a series of public meetings to inform the public of the permit applications and to seek public input on them.

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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 B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.119

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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DIVISION 2. VENT GAS CONTROL

30 TAC §115.129

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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DIVISION 3. WATER SEPARATION

30 TAC §115.139

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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DIVISION 4. INDUSTRIAL WASTEWATER

30 TAC §115.149

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.149. *Counties and Compliance Schedules.*

(a) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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 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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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**DIVISION 3. CONTROL OF VOLATILE
ORGANIC COMPOUND LEAKS FROM
TRANSPORT VESSELS**

30 TAC §115.239

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.239. Counties and Compliance Schedules.

(a) The owner or operator of each tank-truck tank in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Control of Volatile Organic Compound Leaks from Transport Vessels) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline tank-truck tank in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline tank-truck tank in these counties shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test Methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.

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

**DIVISION 1. PROCESS UNIT TURNAROUND
AND VACUUM-PRODUCING SYSTEMS IN
PETROLEUM REFINERIES**

30 TAC §115.319

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

30 TAC §115.359

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, concern-

ing 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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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 1. DEGREASING PROCESSES

30 TAC §115.419

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; §382.012, concerning State Air Control Plan, which authorizes the commission to pre-

pare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §115.439

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §115.449

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

Filed with the Office of the Secretary of State on November 17, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087



SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1. CUTBACK ASPHALT

30 TAC §115.519

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

30 TAC §115.539

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; §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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

The Texas Health and Human Services Commission adopts amendments to the rules of the Department of Assistive and Rehabilitative Services, Deaf and Hard of Hearing Services, in Title 40, Part 2, Chapter 109, Subchapter B, concerning the Board for Evaluation of Interpreters and Interpreter Certification, by repealing Divisions 1 - 6 of Subchapter B: Division 1, Definitions and Board Operations, §§109.201, 109.203, 109.205, 109.209, 109.211, 109.213, 109.217, 109.219, 109.221, 109.223, 109.225, 109.229, 109.231, and 109.233; Division 2, Board Certification Evaluation, §§109.301, 109.313, 109.317, 109.323, 109.325, 109.327, 109.329, 109.339, 109.341, 109.343, 109.347, 109.349, 109.357, 109.359, 109.361, 109.363, 109.365, 109.369, 109.371, 109.373, and 109.375; Division 3, Standards of Ethical Behavior for Interpreters, §109.501 and §109.505; Division 4, Denial, Suspension, or Revocation of a Certificate, §§109.701, 109.705, 109.707, and 109.711; Division 5, Fees, §§109.771, 109.773, 109.775, and 109.777; Division 6, Publications, §§109.801, 109.803 and 109.805 and replacing with new Division 1, Definitions and Board Operations, §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.221, 109.223, 109.225, 109.231, 109.233, 109.235, 109.241, 109.243, and 109.245. Divisions 2 - 6 of Chapter 109, Subchapter B, will not be replaced. The repeals and new sections are adopted without changes to the proposal as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8220) and will not be republished.

The repeals and new sections are being adopted to conform the rules concerning the Board for Evaluation of Interpreters and Interpreter Certification to current provisions of the Human Resources Code, Chapter 81, as amended through the 78th Legislative Session and as currently implemented following consolidation of the former Texas Commission for the Deaf and Hard of Hearing into the Department for Assistive and Rehabilitative Services; to provide updated information necessary to consumers to help them participate in programs for the Deaf and Hard of Hearing; and to remove procedures from rule that indirectly serve clients and providers but do not affect service delivery or rights and responsibilities and do not involve client or provider participation.

No comments were received regarding adoption of the repeals and new sections.

DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §§109.201, 109.203, 109.205, 109.209, 109.211, 109.213, 109.217, 109.219, 109.221, 109.223, 109.225, 109.229, 109.231, 109.233

The repeals are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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.