

The Texas Commission on Environmental Quality (commission) proposes an amendment to §115.769; Subchapter H, Highly-Reactive Volatile Organic Compounds; Division 2, Cooling Tower Heat Exchange Systems. This amended section and corresponding revision to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission proposes this amendment to Chapter 115 and the associated revision to the SIP in order to change the compliance date for cooling tower heat exchange systems in the eight-county Houston/Galveston (HGA) ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. The proposed amendment would make the compliance date for cooling tower heat exchange systems in highly-reactive volatile organic compound (HRVOC) service the same as the potential compliance dates for HRVOC flares and HRVOC vent gas streams, but would not affect the compliance date for the site-wide cap in 30 TAC §115.761, Site-wide Cap. The proposed change is necessary to provide sufficient time for owners and operators of cooling tower heat exchange systems to purchase and install the required monitoring equipment, and is consistent with commission objectives to achieve the intended volatile organic compound emission reductions of the HGA ozone SIP.

The scope of the rulemaking is limited to the proposed change to the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area. No additional changes are being proposed to the cooling tower rules or other HRVOC rules at this time.

#### SECTION DISCUSSION

The proposed amendment to §115.769, Counties and Compliance Schedules, would change the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. The proposed amendment would make the compliance date for cooling tower heat exchange systems with HRVOC in the water the same as the potential compliance dates for HRVOC flares and HRVOC vent gas streams, but would not affect the compliance date for the site-wide cap in §115.761.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Analyst with Strategic Planning and Appropriations, determined that, for each year of the first five-year period the proposed rule revision is in effect, there will be no fiscal implications to the agency or any other unit of state or local government due to administration or enforcement of the proposed revision.

The proposed rulemaking would extend the compliance date for cooling tower heat exchange systems containing HRVOCs from December 31, 2004 to December 31, 2005. No other changes are proposed in this rulemaking. None of the sources required to comply with the proposed Chapter 115 requirements are owned or operated by units of state or local government.

#### PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rule revision is in effect, the public benefit anticipated from enforcement of and compliance with the proposed revision

would be potentially increased compliance with air emission standards due to an extension of the compliance date for owners and operators of cooling tower heat exchange systems containing HRVOCs.

The commission estimates that approximately 68 privately owned and operated facilities (primarily large petrochemical and industrial businesses) in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties would be subject to the proposed rule revision. The primary purpose of the proposed rule revision is to extend the compliance date for cooling tower heat exchange systems with HRVOCs in order to provide additional time for affected owners and operators to purchase and install the required monitoring equipment. This rulemaking is limited to the compliance date change, and no other regulatory changes are proposed. Therefore, the commission does not anticipate additional fiscal implications for affected owners and operators beyond what is already anticipated due to existing regulations.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission does not anticipate adverse fiscal implications for small or micro-businesses due to implementation of the proposed rule amendment. The commission has not identified any small or micro-businesses which would be affected by the proposed rule revision. The majority of sites affected by the proposed rule revision are large petrochemical and industrial businesses. If there are affected small or micro-businesses, however, no adverse fiscal implications are anticipated for small or micro-businesses as a result of implementation of the proposed rule revision.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a “major environmental rule.” 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, 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. This proposal is not a major environmental rule because its primary purpose is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water and does not implement additional regulations that are not already required by the commission and the EPA.

In addition, a draft regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a “major environmental rule” as defined in Texas Government Code, §2001.0225. Section 2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the

state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendment does not exceed a standard set by federal law nor exceed an express requirement of state law. There is no contract or delegation agreement that 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 authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code which are cited in the STATUTORY AUTHORITY section of this preamble. Finally, this proposal does not exceed a requirement of a delegation agreement or contract to implement a state and federal program. The commission invites public comment on the draft regulatory impact analysis determination during the public comment period.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule revision is subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water. Promulgation and enforcement of this proposed rule revision would be neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the proposed rule revision does not affect a landowner's rights in private real property because this proposal does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rule. Therefore, this rule revision will not constitute a takings under the Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

The commission determined that the proposed rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in Title 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with Title 40 Code of Federal Regulations; therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments on the consistency of the proposed rule revision with the CMP during the public comment period.

**EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM**

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter

122, revise their operating permit to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revision to Chapter 115.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on December 2, 2003 at 2:00 p.m. at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2004-008-115-AI. Comments must be received by 5:00 p.m., December 8, 2003. For further information, please contact Ashley Forbes of the Strategic Assessment Division at (512) 239-0493.

**SUBCHAPTER H: HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUNDS**

**DIVISION 2: COOLING TOWER HEAT EXCHANGE SYSTEMS**

**§115.769**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements – Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.017.

**§115.769. Counties and Compliance Schedules.**

The owner or operator of each cooling tower heat exchange system in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division (relating to Cooling Tower Heat Exchange Systems) as soon as practicable, but no later than December 31, 2005 [2004], with the exception of the site-wide cap in §115.761 of this title (relating to Site-wide Cap) for which the owner or operator shall demonstrate compliance as soon as practicable, but no later than April 1, 2006.