

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §115.950, Emissions Trading, ~~without changes~~ to the proposed text as published in the August 25, 2000 issue of the ~~Texas Register~~ (25 TexReg 8272) and therefore will not be republished. This amendment will be submitted as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

In concurrent rulemaking, §101.29 is repealed and its requirements transferred and amended in new Chapter 101, Subchapter H, Divisions 1 and 4. This rulemaking amends §115.950 to cite the correct cross-reference. The amended section requires the user of credits to obtain additional emission reduction credits or achieve lower actual emissions if new lower volatile organic compound (VOC) emission specifications are established by future amendments to this chapter.

SECTION BY SECTION DISCUSSION

Section 115.950 is amended to change the title to "Use of Emissions Credits for Compliance" from "Emissions Trading" to more clearly reflect the language in §115.950, which discusses how to use emission reduction credits for alternative compliance, not how to trade emission reduction credits.

The adoption of §115.950(a) removes the reference to §101.29 and corrects the reference to Chapter 101, Subchapter H, Division 1, Emission Reduction Credit Banking and Trading, or Division 4, Discrete Emission Reduction Banking and Trading. In addition, the amendment clarifies that emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission reduction credit (DERCs), or mobile discrete emission reduction credit (MDERCs) may be used to meet any of the requirements of Chapter 115. The term "RC" refers to an ERC, MERC, DERC, or MDERC.

Adopted §115.950(b) adds language requiring that owners or operators using Chapter 101, Subchapter H, Division 1 or Division 4 to meet the emission control requirements of Chapter 115 must obtain additional RCs or reduce actual emissions if any lower VOC emission specification is established by future amendments to Chapter 115.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission has determined that the amendment to Chapter 115 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, amendment to achieve administrative consistency with amendments to Chapter 101 adopted in concurrent rulemaking. The amendment to Chapter 115 does not add regulatory requirements, but is adopted to allow compliance flexibility in meeting current or future VOC emission limitations in Chapter 115. Therefore, there will be no adverse impact of this rule.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the adopted rule. The following is a summary of that assessment. The commission is adopting the amendment to achieve administrative consistency with amendments to Chapter 101 adopted in concurrent rulemaking. The amendment to Chapter 115 does not add regulatory requirements, but allows compliance flexibility in meeting current or future VOC emission limitations in Chapter 115.

The amendment does not affect private real property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, the amended section does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined the rulemaking 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's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The amendment to Chapter 115 does not add regulatory requirements, but is adopted to allow compliance flexibility in meeting current or future VOC emission limitations in Chapter 115.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sources that currently have §115.590 listed in their federal operating permit would not be required to amend the permit in response to this amendment. However, those sources that wish to use RCs to comply with this chapter

must revise their operating permit, consistent with the process in 30 TAC Chapter 122, to include the revised §115.590 requirements for each emission unit affected by §115.590 at their site.

PUBLIC HEARINGS AND COMMENTERS

The commission held public hearings on this proposal at the following locations: September 18, 2000, in Conroe and Lake Jackson; September 19, 2000 in Houston (2 hearings); September 20, 2000, in Katy and Pasadena; September 21, 2000, in Beaumont, Amarillo, and Texas City; September 22, 2000, in Dayton, El Paso, and Arlington; and September 25, 2000, in Austin and Corpus Christi. The comment period closed at 5:00 p.m. on September 25, 2000. There were no comments on this specific amendment.

STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA, and 42 United States Code, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

CHAPTER 115: CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER J: ADMINISTRATIVE PROVISIONS

DIVISION 4: EMISSIONS TRADING

§115.950

§115.950. Use of Emissions Credits for Compliance.

(a) An owner or operator may meet the emission control requirements of this chapter, in whole or in part, by obtaining emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission

reduction credits (DERCs), or mobile discrete emission reduction credits (MDERCs) in accordance with this section and Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading) or Chapter 101, Subchapter H, Division 4 of this title (relating to Discrete Emission Reduction Banking and Trading). For the purposes of this section, the term "RC" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(b) Any lower volatile organic compound (VOC) emission specification established under this chapter for the unit or units using RCs shall require the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 of this title or Chapter 101, Subchapter H, Division 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.

Figure: 30 TAC §115.950(b)

$$\Delta E = \left[LA \times (ER_{old} - ER_{new}) \times \frac{d}{2000} \right]$$

Where:

- ΔE = the differential of emissions
- LA = the maximum level of activity
- ER_{old} = the existing VOC emission rate for the affected unit in lb per unit of activity

ER_{new} = the new VOC emission rate for the affected unit in lb per unit of activity

d = (i) to calculate annual emission reductions, $d = 365$
(ii) to calculate emission reductions for the remainder of a control period, $d =$ the number of days remaining in the control period