

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§118.1-118.6, relating to Control of Air Pollution Episodes. Sections 118.1, 118.3, and 118.4 are adopted with changes to the proposed text as published in the October 15, 1999 issue of the *Texas Register* (24 TexReg 8913). Sections 118.2, 118.5, and 118.6 are adopted without changes and will not be republished. The revisions update references and statutory citations, make various wording changes in all six sections to improve readability, and remove unnecessary wording. The amendments are adopted as a revision to the Texas State Implementation Plan (SIP). Also, the commission is adopting the rules review of and readopting Chapter 118 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The notice of adopted review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

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

Chapter 118 implements the requirements of the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.026, concerning Orders Issued Under Emergencies and the Texas Water Code (TWC), §5.514, concerning Order Issued Under Air Emergency. In addition, Chapter 118 is the state's means of complying with the federal requirements of 40 Code of Federal Regulations (CFR) 51, Subpart H, relating to Air Pollution Emergency Episodes; and is a part of the SIP to attain the federal national ambient air quality standard (NAAQS) for ozone under 40 CFR §52.2270 which implements the Federal Clean Air Act (FCAA), §110, concerning Implementation Plans and §303, concerning Emergency Powers.

Chapter 118 specifies conditions and establishes actions to be taken by the commission and man-made emissions sources to protect human health and safety in response to an air emergency ranging from generalized air pollution episodes to localized air pollution episodes. Under such conditions, the commission or the executive director, with the governor's concurrence, could request or order any contributing source immediately to reduce or discontinue the emission of air contaminants. The rules also establish administrative procedures for review of any order issued under these rules. The rules contain requirements for certain major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties to prepare and maintain Emission Reduction Plans. Finally, the rules require the commission to prepare a contingency plan for communications regarding actual or impending air pollution episodes.

#### SECTION BY SECTION DISCUSSION

The changes to §§118.1, 118.3, and 118.4 simply correct the reference to state law from TCAA, §382.026, to TWC, §5.514, in response to the reorganization of certain commission authorities relating to emergency orders into the TWC. Sections 118.1 and 118.2 implement the provisions of the TWC, §5.514(a), and contain episode criteria recommended in 40 CFR 51, Appendix L, concerning Example Regulations for Prevention of Air Pollution Emergency Episodes. Sections 118.2 and 118.3 satisfy the FCAA, §110(a)(2)(G), by providing authority comparable to that given the United States Environmental Protection Agency (EPA) administrator in the FCAA, §303, to stop the emission of air pollutants causing or contributing to an episode. Also, §118.3 implements the provisions of the TWC, §5.514(b), relating to localized episodes. Section 118.4 satisfies requirements of the TWC, §5.514(c) and (d), relating to notice of a hearing to be held before the commission. Section 118.5 conforms to the EPA

recommendations for emission reduction standby plans to be prepared, approved, and maintained on-site by sources which are likely to contribute to an episode. Section 118.6 satisfies a requirement of the FCAA, §110(a)(2)(G), for the SIP to provide a contingency plan to implement the state's authority specified in the FCAA, §303. Also, §118.6 satisfies the requirement for a state plan under 40 CFR 51, Subpart H.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 118 are not anticipated to 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, because the amendments are administrative in nature and are intended to correct or update references, citations, clarify existing rules, and make the rules easier to read and understand. The amendments do not add any additional regulatory requirements not already required by state or federal law. In addition, the amendments do not meet the applicability requirements of a "major environmental rule." The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, or

exceed a requirement of a delegation agreement. In addition, the amendments are consistent with federal law regarding the control of air pollution episodes.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to update references and citations and to improve readability. These changes are editorial in nature and will not affect private real property because they do not change existing requirements.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the rulemaking concerning Chapter 118 is 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 CMP. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), 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 rules of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies, specifically §501.12(1), which is to protect, restore, and enhance the diversity, quality, functions, and values of coastal natural resource areas and §501.14(q), regarding compliance with 40 CFR, Protection of Environment. The rules are consistent with 40 CFR 51, Subpart H, and the rule changes do not modify any requirements of Subpart H. Thus,

the rulemaking complies with regulations in 40 CFR, Part 51, and is, therefore, consistent with this policy. No comments were received on the consistency of the proposed rules with the CMP during the public comment period.

#### HEARING AND COMMENTERS

A public hearing was held November 10, 1999, in Austin but no oral comments were received. The only written comment submitted during the public comment period, which closed November 15, 1999, was from the EPA.

#### ANALYSIS OF TESTIMONY

The EPA simply stated that their agency had no comment on the proposed revisions to Chapter 118.

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, TCAA, §382.026, which authorizes the commission to issue orders for air emergencies; Texas Water Code (TWC), §5.514, which authorizes the commission to issue emergency orders where needed to protect human health or safety under air emergencies; TCAA, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and TWC, §5.103, which authorizes commission to adopt any rules as needed to carry out its powers and duties. The adopted amendments do not implement any new state or federal requirements.

**CHAPTER 118**  
**CONTROL OF AIR POLLUTION EPISODES**

**§118.1. Generalized Air Pollution Episodes.**

(a) A generalized air pollution episode is a widespread condition of air pollution as specified in the Texas Water Code, §5.514, that requires immediate action to protect human health or safety. An episode may be declared for one or more air contaminants and will apply to any geographical area affected by the generalized condition of air pollution.

(b) A Level 1 air pollution episode exists if the criteria specified in paragraphs (1) and (2) of this subsection are met.

(1) The concentration of any of the air contaminants is equal to or greater than the levels specified for Level 1 in Table 1.

(2) In the case of all air contaminants except ozone, meteorological conditions conducive to high levels of air contamination are predicted to continue for at least 12 hours. In the case of ozone, meteorological conditions conducive to high levels of ozone are likely to recur within the next 24 hours.

Figure: 30 TAC §118.1(b)(2)

TABLE 1  
 AIR POLLUTION EPISODES - AMBIENT CONCENTRATION CRITERIA

Pollutant	Averaging Time	Level 1	Level 2
Sulfur Dioxide (SO <sub>2</sub> )	24 hr.	0.6 ppm (1600 μg/m <sup>3</sup> )	0.8 ppm(2100 μg/m <sup>3</sup> )
Inhalable Particulate Matter (PM <sub>10</sub> )*	24 hr.	420 μg/m <sup>3</sup>	500 μg/m <sup>3</sup>
Carbon Monoxide	8 hr.	30 ppm (34 mg/m <sup>3</sup> )	40 ppm (46 mg/m <sup>3</sup> )
Ozone	1 hr.	0.4 ppm (800 μg/m <sup>3</sup> )	0.5 ppm (1000 μg/m <sup>3</sup> )
Nitrogen Dioxide	1 hr.	1.2 ppm (2260 μg/m <sup>3</sup> )	1.6 ppm (3000 μg/m <sup>3</sup> )
	24 hr.	0.3 ppm (565 μg/m <sup>3</sup> )	0.4 ppm (750 μg/m <sup>3</sup> )

ppm = parts per million by volume

μg = microgram

mg = milligram

m<sup>3</sup> = cubic meter

\*THESE CRITERIA DO NOT APPLY TO EPISODES CAUSED BY DUST STORMS.

(c) A level 2 air pollution episode exists if the commission determines that emergency reductions of emissions must be initiated to prevent ambient concentrations specified for Level 2 in Table 1.

**§118.2. Provisions Governing Generalized Episode Control.**

(a) Whenever the commission determines that a Level 1 air pollution episode exists, the commission shall issue an order, with the concurrence of the governor, declaring a Level 1 air pollution episode. A Level 1 episode may be declared for one or more air contaminants and may apply to any geographical area affected by the generalized condition of air pollution. Any person responsible for the operation of an emission source of a specified air contaminant in the designated area shall take the following actions:

(1) determine the existing emission levels for all specified contaminants involved in the episode;

(2) immediately implement all reasonably available methods to reduce the emission of the specified contaminant(s); and

(3) prepare to curtail operation of all affected emission sources in anticipation that a Level 2 episode will be declared.

(b) Whenever the commission determines that Level 2 concentrations may be reached unless emergency curtailment of source emissions is initiated, the commission shall issue an order, with the concurrence of the governor, declaring a Level 2 air pollution episode. A Level 2 episode may be declared for one or more air contaminants and may apply to any geographical area affected by the

generalized condition of air pollution. If a Level 2 episode is declared, the commission shall identify the primary sources of the specified contaminants and shall order those sources to curtail or cease operations. The notice and hearing requirements of §118.4 of this title (relating to Hearings) shall apply.

**§118.3. Localized Air Pollution Episodes.**

Whenever the commission determines that emissions from one or more air contaminant sources are causing localized imminent danger to human health or safety, but that there is not a generalized condition of air pollution of the type referred to in the Texas Water Code, §5.514, the commission shall order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the notice and hearing requirements of §118.4 of this title (relating to Hearings) shall apply.

**§118.4. Hearings.**

Any emission reduction order issued under the provisions of this chapter shall set a time and place for a hearing under the Texas Water Code, §5.514, to be held before the commission as soon as practicable after the order is issued. The commission shall give such general notice of the hearing as in its judgment is practicable under the circumstances.

**§118.5. Emission Reduction Plan.**

Any owner or operator of a major stationary source in El Paso, Galveston, Harris, Jefferson, and Orange Counties which emits 100 tons or more per year of any air contaminant specified in Table 1 of §118.1 of this title (relating to Generalized Air Pollution Episodes) or volatile organic compounds (VOC) shall prepare and maintain an emission reduction plan. A plan for any existing source shall be completed within six months after the effective date of this section. A plan for any new or modified source shall be completed within six months after the source begins operations. The emission reduction plan shall be made available to the commission or a local air pollution control agency upon request and shall contain at least the following:

(1) identification of all sources of air contaminants specified in Table 1 and sources of VOC to account for at least 95% of the total major stationary source emissions for each contaminant specified in Table 1 and VOC;

(2) the approximate amount of each air contaminant specified in Table 1 and amount of VOC from each facility;

(3) a description of the specified actions to be taken during a Level 1 episode and the amount of emissions reduction expected for VOC and for each air contaminant specified in Table 1;

(4) a description of specific actions to be taken to curtail or cease operations if so directed during a Level 2 episode;

(5) identification of processes which require relatively lengthy shutdown procedures and of practical limits of production curtailment to prevent equipment damage; and

(6) identification of processes which, under conditions of curtailed production, would affect adversely the activities of raw materials suppliers or product users.

**§118.6. Texas Air Pollution Episode Contingency Plan.**

The commission shall prepare a contingency plan which will include detailed procedures for public notification of actual or impending air pollution episodes; actions required by the commission and local air pollution control personnel; notification of public officials; and transmission of information to contiguous states as may be necessary.