The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §§115.240, 115.242 - 115.246; new §115.241; and repeal of §§115.241, 115.247, and 115.249.

Sections 115.241, 115.245, and 115.246 are adopted *with changes* to the proposed text. Amended §§115.240 and 115.242 - 115.244 and the repeal of §§115.241, 115.247, and 115.249 are adopted *without changes* to the proposed text and, therefore, will not be republished. The proposed sections were published in the May 10, 2013 issue of the *Texas Register* (38 TexReg 2823).

The commission will submit the amendments, new section, and repeals 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 require states to submit a revision to the SIP no later than November 15, 1992 that included a Stage II Vapor Recovery Program to control gasoline vapors from the refueling of motor vehicles for areas classified as moderate and above. A Stage II vapor recovery SIP was first approved for Texas on October 16, 1992 and later revised on November 10, 1993. The Stage II Vapor Recovery Program uses technology to prevent gasoline vapors from escaping

during refueling. Gasoline vapors are volatile organic compounds (VOC) that can react with nitrogen oxides in the presence of sunlight to form ozone. As part of the control strategy for ozone attainment, the EPA mandated that Stage II refueling requirements apply to all public and private gasoline dispensing facilities (GDFs) that dispense 10,000 gallons or more of gasoline per month. The TCEQ applied a more stringent throughput standard in the ozone nonattainment counties by requiring GDFs constructed after November 15, 1992 to install Stage II vapor recovery regardless of throughput. Diesel fuel dispensers were still exempt from the rule, and the rule also left in place exemptions for equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture. The original Stage II vapor recovery rules relied on the California Air Resources Board (CARB) certification procedures for vapor recovery equipment. The Stage II SIP revision was revised again November 6, 2002 to require more frequent testing and more on-site evaluation of testing performed on vapor recovery systems at GDFs, as well as a phase-in schedule to retrofit or install onboard-refueling vapor-recovery (ORVR) compatible Stage II vapor recovery systems. Stage II vapor system efficiency was compromised by ORVR equipped vehicles unless the system had ORVR compatible hardware. The Stage II SIP revision was again revised on March 23, 2005 to offer an expanded definition for "ORVR compatible" that allowed for the use of other technologies for controlling gasoline vapors. On June 27, 2007 the commission adopted changes to 30 TAC Chapter 115 to add language exempting facilities from installing Stage II equipment if the facility could demonstrate that refueling at that facility

involved a fleet of 95% or more ORVR-equipped vehicles. This rule change was submitted as a SIP revision with no change to the Stage II SIP narrative. The June 27, 2007 rule change is still under consideration by the EPA and has not been approved. The EPA expressed concerns that the language justifying the exemption needed to be more descriptive and explanatory. Upon the adoption of the this rulemaking concerning decommissioning, the commission will concurrently request withdrawal of the June 27, 2007 rule change, regarding exemptions for facilities that can demonstrate ORVR-equipped vehicle fleets that is currently pending EPA review, since that exemption will no longer be necessary.

FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if the EPA determines that ORVR is in widespread use through the motor vehicle fleet. In the May 16, 2012 issue of the *Federal Register* (77 FR 28772), the EPA published a final rulemaking for 40 Code of Federal Regulations (CFR) Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Vehicle ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed into a carbon canister holding system within the vehicle and ultimately to the engine where the vapors are consumed. The EPA required ORVR systems to be phased in beginning with 1998 model-year light-duty gasoline vehicles and as of 2006, all new light- and medium-duty gasoline vehicles are

equipped with ORVR. An initial analysis using the EPA Motor Vehicle Emissions Simulator 2010a model shows that the benefits from ORVR alone will be greater than the benefits from Stage II alone by the year 2010 in the Houston-Galveston-Brazoria (HGB) area, 2012 in the Dallas-Fort Worth (DFW) area, 2013 in the Beaumont-Port Arthur (BPA) area, and 2014 in the El Paso area. Vehicle ORVR systems are monitored through a vehicle's on-board diagnostic system making the system much more cost-effective than the required monitoring and testing of Stage II systems.

The determination that ORVR technology is in widespread use allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as moderate and above for the ozone National Ambient Air Quality Standard (NAAQS). States that have implemented a Stage II program may revise their Stage II SIP demonstrating that the air quality will be maintained after removing the Stage II equipment. The adopted rule revision would revise Chapter 115, Subchapter C, Division 4 to specify that owners or operators of new GDFs are not required to install Stage II equipment and to require owners or operators of existing GDFs in the current program areas to properly decommission Stage II equipment. According to the EPA's guidance document: *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures* issued August 7, 2012 by the EPA's Office of Air Quality Planning and Standards (EPA-457/B-12-001), the commission will need to demonstrate under

FCAA, §110(l) that air quality will not be affected by the decommissioning of, or failure to install, Stage II equipment. This demonstration will be incorporated into the corresponding SIP revision and is discussed further in the *Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)* portion of this preamble.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The Stage II program is a FCAA-specified VOC control strategy for ozone nonattainment areas designated as serious and above. Under FCAA, §110(l), the EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The EPA has to approve a SIP revision that removes or modifies Stage II gasoline refueling vapor control measures if the EPA concludes that a state's submittal provides that the removal of Stage II controls would not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the FCAA. The executive director has performed an assessment of the exact amount of benefit loss from removing Stage II and any effect on air quality programs in the four Texas Stage II areas using the method documented in the EPA's guidance referenced previously in this preamble. An analysis for years 2012 through 2030 found that for all years the losses represent less than one-half of one percent of the total VOC inventory. The benefit losses for removing Stage II are small in 2012 and decrease rapidly as the percentage of vehicles equipped with ORVR increase over time. The assessment found that small changes to the VOC

inventories due to the removal of Stage II do not significantly change any of the results of the Texas air quality plans. The detailed analysis, which demonstrates that removal of Stage II requirements does not interfere with attainment or maintenance of the NAAQS, is included in the Stage II SIP revision, *Stage II Vapor Recovery Program State Implementation Plan Revision*, proposed April 23, 2013, that corresponds with this rule revision (Project Number 2013-002-SIP-NR).

Section by Section Discussion

§115.240, Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment

The commission adopts amendments to §115.240 by adding definitions for "decommission" and "gasoline dispensing facility." The term "decommission" is defined as the permanent removal of all Stage II vapor recovery controls at a GDF. The term "gasoline dispensing facility" is defined as a location that dispenses gasoline to motor vehicles and includes retail outlets and private and commercial outlets. The definitions in this section have been re-numbered as needed.

§115.241, Emission Specifications

The commission adopts the repeal of existing §115.241. The emission specifications in §115.241 are no longer necessary because installation of Stage II equipment will not be required at any GDF upon adoption of this rulemaking. This section required that the

transfer of gasoline from a stationary storage container to a motor vehicle fuel tank be allowed only if an approved Stage II vapor recovery system had been installed at the GDF.

§115.241, Decommissioning of Stage II Vapor Recovery Equipment

The commission adopts new §115.241 to provide requirements for the time line and process for decommissioning of Stage II vapor recovery controls at GDFs. The new section establishes that the decommissioning process may begin 30 calendar days after the effective date of the EPA's approval of the repeal of the Stage II vapor recovery requirement and the EPA's approval of the corresponding SIP revision. The 30 calendar day time frame allows TCEQ regional office staff, on-site supervisors, licensed contractors, and owners and operators of GDFs to coordinate decommissioning activities. The commission adopts this delayed implementation for decommissioning because the EPA has stipulated that Stage II controls cannot be removed until the EPA has approved a State's Stage II decommissioning rule and SIP revisions.

The new language includes several independent notification requirements and procedural activities that must occur during the decommissioning process. Owners and operators of GDFs that decommission their Stage II vapor recovery equipment are required to provide three different notifications to ensure that decommissioning activities may be appropriately enforced. First, owners and operators must notify the

appropriate TCEQ regional office and local government with jurisdiction where the GDF is located of their intent to decommission at least 30 calendar days prior to the beginning of the decommissioning activity. The notification of intent to decommission provides information on the GDF location, the owner and operator of the GDF, the on-site supervisor who will be directing the decommissioning activities, the type of system installed at the GDF, as well as a projected start date for decommissioning activity. On-site supervisors are generally the responsible individuals involved in the Stage II vapor recover equipment installation and decommissioning and carry underground storage tank Class A or Class A/B licenses. If decommissioning activities are not initiated within 180 calendar days after the date the notice of intent to decommission is received by the TCEQ, the owner or operator of the GDF must re-file the notice of intent to decommission for the GDF location. This will provide additional flexibility for GDF locations that encounter problems with contractors or other logistical problems, while ensuring that TCEQ and local government staff are kept appropriately informed of decommissioning activity.

The second notification required by the section is a notification 24-72 hours prior to start of decommissioning activity to enable commission or local government staff to schedule site visits to ensure appropriate enforcement of decommissioning activity. The last notification owners and operators are required to submit to the TCEQ regional office and local government with jurisdiction where the GDF is located is a

decommissioning completion notification required no later than 10 calendar days after decommissioning activity is completed. This decommissioning completion notification provides for the submittal of information regarding appropriate certifications and license information for the on-site supervisor who supervised testing and required test results demonstrating that no leaks were detected. The adopted rules include additional detail as to the content of these notices to ensure compliance with the decommissioning requirements.

The section also describes requirements for decommissioning, including the proper procedures for disconnecting and capping parts of the system and a list of test procedures to ensure the prevention of leaking vapors and fluids. The TCEQ will develop a checklist: *Stage II Decommissioning Checklist and Submittal Form*, which will include all applicable decommissioning requirements included in this rulemaking. The requirements were developed using the Decommissioning Stage II Vapor Recovery Piping section in the Petroleum Equipment Institute's (PEI) publication, *Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites*, PEI/RP300-09, as a reference. PEI's practices are generally accepted and regarded by industry stakeholders as the appropriate methods for successfully decommissioning the equipment. The adopted rules revised proposed requirements to allow hanging hardware equipment to be replaced through attrition or by August 31, 2018 at the latest. The adopted rules also corrected the publication date from November

2002 to December 2002 of the *Vapor Recovery Test Procedures Hand Book*, RG-399, that is used for conducting the TXP-102 and TXP-103 test procedures.

Lastly, new subsection (c) establishes deadlines for the decommissioning processes. In response to comments, the commission adopts subsection (c)(1) that requires that all decommissioning activity at a specific GDF location be completed within 30 calendar days after the date decommissioning activity was initiated. Additionally, the commission adopts subsection (c)(2) requires that all GDFs in the state complete all decommissioning activity no later than August 31, 2018.

§115.242, Control Requirements

The commission adopts revisions to §115.242 providing that after May 16, 2012 the owner or operator of newly constructed GDF is no longer required to install Stage II vapor controls on its gasoline dispensing equipment. May 16, 2012 is the date the EPA issued its final rule determining that vehicle ORVR technology is in widespread use for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. Since the commission is mandating decommissioning of all Stage II equipment by August 31, 2018, requiring owners or operators of new GDFs to install Stage II equipment would provide little to no measurable benefit for air quality. GDFs that did not have Stage II vapor controls as of May 16, 2012 due to a confirmed exemption because of low monthly throughput or low average monthly throughput are not subject

to the requirements of this section. Owners and operators of GDFs with installed Stage II equipment have the option of decommissioning Stage II equipment in compliance with the requirements adopted in §115.241 or continuing to operate with the current Stage II equipment until the mandatory removal date of August 31, 2018. The mandatory removal date was established after stakeholders requested that the commission provide five to six years prior to decommissioning to allow for Stage II equipment installed at the time of the EPA's rule being finalized to be used through its expected life use. The mandatory date has also been established since finding compliant replacement equipment will be more difficult and the number of licensed testers will be reduced making it difficult for owners and operators of GDFs with Stage II equipment to comply with existing requirements. The TCEQ requested comment on the mandatory decommissioning date of August 31, 2018 and comment was received supporting the end date by which all Stage II vapor control equipment must be appropriately removed.

The adopted language also states that if an owner or operator elects to retain the Stage II vapor controls, the GDF will continue to meet the requirements of this division until the Stage II vapor controls are properly removed from the GDF. To address the voluntary installation of Stage II equipment at GDFs not located in the affected counties, new language was incorporated requiring all owners of GDFs, regardless of location in the state, to remove all Stage II equipment by August 31, 2018. The adopted language replaces repealed language requiring all GDFs in the counties listed in §115.249 to

comply with this division. This rule revision provides that no GDF in any county would have Stage II equipment installed or operational after August 31, 2018. Voluntary Stage II installations at GDFs outside of affected counties have not been included in any modeling for past SIP activities and have no impact on the SIP revision associated with this rulemaking.

The adopted revisions to §115.242 delete paragraphs (10) - (12), because GDFs no longer need to meet these requirements. Paragraph (10) corresponded to exemptions in §115.247, which was also repealed. Paragraph (11) related to the installation of approved systems if CARB certification of a previously installed system was revoked. Finally, paragraph (12) required facilities to notify the regional office with jurisdiction of any Stage II vapor recovery system installation.

§115.243, Alternate Control Requirements

The adopted revision to §115.243 updates references to §115.242, which was revised to authorize the decommissioning of Stage II vapor controls.

§115.244, Inspection Requirements

The adopted revision to §115.244 updates references to §115.242, which was revised to authorize the decommissioning of Stage II vapor controls and updates a reference to gasoline dispensing facilities to correspond to the new definition of this term.

§115.245, Testing Requirements

The commission adopts amended §115.245 to require that prior to the decommissioning deadline of August 31, 2018, owners or operators of GDFs that elect to install, repair, replace, or retain the Stage II vapor controls must comply with the requirements of this section. The adopted language clarifies that owners or operators of GDFs must continue to maintain and test the facility's Stage II vapor control equipment to ensure it is working properly and capturing gasoline vapors.

§115.246, Recordkeeping Requirements

The commission adopts amended §115.246 to update references to gasoline dispensing facilities, to correspond to the new definition of this term, and to provide that records sufficient to demonstrate compliance with decommissioning requirements be kept on site for five years following the completion of decommissioning activities. Although other recordkeeping requirements in this subchapter are required to be maintained for two years or indefinitely, the high level of decommissioning activity will likely require inspections and investigations beyond a two-year time frame.

In response to comments to clarify the recordkeeping requirements, adopted §115.246 is restructured and streamlined to avoid confusion. Records that must be maintained, proposed as §115.246(1) - (7), are provided under adopted subsection (a) and include the

same content requirements as proposed. The records retention schedule and availability requirements, proposed as §115.246(8), are adopted as subsection (b). Adopted §115.246(b)(1) specifies that the records required under subsection (a)(1), (2), (5), and (7) must be maintained until five years following the date of completion of decommissioning. Records required under subsection (a)(7) are those records associated with the decommission process. The records specified under subsection (a)(1), (2), and (5) are existing record requirements that were previously required to be maintained indefinitely. However, in response to comments, the adopted rule is revised to require that the records under subsection (a)(1), (2), and (5) be maintained until five years following the date of completion of decommissioning. Adopted §115.246(b)(1) also specifies that records required under subsection (a)(3), (4), and (6) must be maintained for two years as was proposed. The records contained in §115.246(a)(3), (4), and (6) are existing record requirements that are tied to specific events, and records generated from these events will cease once decommissioning is completed. Therefore, owners or operators will only be required to maintain the records under §115.246(a)(3), (4), and (6) for two years following the most recent event preceding decommissioning.

The current records availability requirements, proposed as §115.246(8)(A) and (B), are adopted as §115.246(b)(2) and (3). The adopted records availability requirements are substantively unchanged from the proposed language.

§115.247, Exemptions

The commission repeals §115.247 because exemptions from the Stage II requirements are longer applicable to this division. Since Stage II is no longer required, the exemptions for GDFs that dispense gasoline to aircraft, watercraft, and agricultural equipment; GDFs that began construction before November 15, 1992 and dispense less than 10,000 gallons a month; and GDFs that refuel a motor fleet that is 95% ORVR equipped are no longer necessary. The adopted language in §115.242(a) makes clear that GDFs that did not have Stage II vapor controls installed as of May 16, 2012 are not subject to this division. Therefore, GDFs that qualified for these exemptions are not subject to the rule by the repeal of this exemption section.

§115.249, Counties and Compliance Schedules

The commission repeals §115.249 because upon EPA approval of the Stage II Vapor Recovery Program SIP Revision, *Stage II Vapor Recovery Program State Implementation Plan Revision*, proposed April 23, 2103, Stage II will no longer be required at GDFs in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties. Additionally, the compliance date of April 1, 2007 for GDFs to become ORVR compatible has passed.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the 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 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. Additionally, the 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 adopted rulemaking amends §§115.240, 115.242-115.246, creates new §115.241, and repeals §§115.241, 115.247, and 115.249. The revisions to Chapter 115 specify that new GDFs are not required to install Stage II equipment and allow existing GDFs in the

current program areas to properly decommission Stage II equipment.

FCAA, §182(b)(3) provides that for ozone nonattainment areas classified as serious or above, states must revise their SIP to require all owners or operators of gasoline dispensing systems operating after November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) requires the EPA to implement requirements for ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provides that the EPA may revise or waive the application of Stage II requirements if it determines that ORVR is in widespread use throughout the motor vehicle fleet. As mentioned previously in this preamble, the EPA published final rulemaking for 40 CFR Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet on May 16, 2012 (77 FR 28772). This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS.

The adopted rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the

state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must 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 (42 USC, Chapter 85). The provisions of the FCAA recognize that 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 must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule.

The adopted rulemaking implements the EPA's rulemaking that was published May 16, 2012 (77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet and waiving the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as

serious and above for the ozone NAAQS. Revisions to Chapter 115 specifying that owners of new GDFs are not required to install Stage II equipment and to allow existing owners of GDFs in the current program areas to properly decommission Stage II equipment is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

The requirement to provide a fiscal analysis of proposed 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 rules 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 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that 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 proposed 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 must develop programs for each area contributing to nonattainment to help ensure that 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 proposed 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 that 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, the 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 un-amended. It is presumed that "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." 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 allows owners of new GDFs not to install Stage II equipment and allows owners of existing GDFs in the current program areas to properly decommission Stage II equipment. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The adopted rules permit these changes to occur in Texas. As explained previously in this preamble, vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II vapor control systems and are more cost-effective. 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 adopted rulemaking. Therefore, this adopted rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b) because although the 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 regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis and no changes were made.

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 specify that new GDFs are not required to install Stage II equipment and to allow existing GDFs in the current program areas to properly decommission Stage II equipment as required by 42 USC, §7410. FCAA, §182(b)(3) provides that for certain nonattainment areas, states must revise their SIP to require all owners or operators of GDFs operating after November 15, 1990 to install a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. FCAA, §202(a)(6) also required the EPA to implement requirements for vehicle ORVR. Both Stage II and vehicle ORVR are types of emission control systems that capture fuel vapors from vehicle gas tanks during refueling. FCAA, §202(a)(6) also provided that the EPA may revise or waive the application of Stage II requirements if it determined that ORVR was in widespread use throughout the motor vehicle fleet.

As mentioned previously in the preamble, the EPA finalized a rulemaking on May 16, 2012 (77 FR 28772) for 40 CFR Part 51, determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. This action allows the EPA to waive the requirement for states to implement Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. The EPA may grant the removal and waiver of Stage II equipment due to the widespread use of ORVR in the overall vehicle fleet. The adopted rulemaking and corresponding SIP revision permits these changes to occur in Texas. As explained previously in the preamble,

vehicles equipped with ORVR technology provide greater pollution reduction benefits than Stage II control systems and are more cost-effective. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action 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). The adopted rules fulfill the FCAA requirement to decommission Stage II equipment in nonattainment areas. These revisions will result in VOC emission reductions in ozone nonattainment areas, which may contribute to the timely attainment of the ozone standard and reduced public exposure to 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 rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found it identified in the Coastal

Coordination Act Implementation Rules 31 TAC §505.11(b)(2) or (4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. 31 TAC §505.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. 31 TAC §505.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council Advisory Committee and determined that the revisions are consistent with CMP goals and policies, will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the revisions will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received and no changes were made to the assessment.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal

Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

Public Comment

The commission offered public hearings in: El Paso on May 28, 2013; Beaumont on May 30, 2013; Houston on May 31, 2013; Arlington on June 3, 2013; and Austin on June 4, 2013. The comment period closed on June 10, 2013. Oral comments were received from Tarrant County. The commission received written comments from Arid Technologies, Buc-ee's Ltd. (Buc-ee's), Texas Chemical Council (TCC), Texas Food and Fuel Association (TFFA), and Texas Oil and Gas Association (TxOGA).

TxOGA incorporated TFFA's comments by reference. Buc-ee's, TCC, TFFA, and TxOGA expressed overall support for the proposed rule change, and Arid Technologies submitted comments opposing the rule change. Changes to the rule were suggested by all six commenters.

General Comments

Arid Technologies questioned whether the TCEQ considered storage tank breathing loss in a non-Stage II environment.

The commission focused modeling in the associated SIP revision to the effects of Stage II decommissioning only in areas that have Stage II requirements in place in Texas as recommended in the EPA guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures,* August 7, 2012. Breathing losses from storage tanks are a separate source of emissions from refueling and are not included as of the assessment on the decommissioning of Stage II. The EPA guidance document did not include a requirement for including storage tank breathing losses. No change to the rule has been made in response to this comment.

Arid Technologies suggested that enhancing Stage II systems will provide better emission reductions from refueling and storage tank emissions.

The ORVR systems on vehicles are designed to replace Stage II vapor recovery systems for capturing the emissions during vehicle refueling and are already required by federal law, as discussed elsewhere in this preamble. Once ORVR systems are in widespread use, the Stage II systems become redundant and more costly to maintain. Any future improvements to emission control systems for vehicle refueling will involve improving the

effectiveness of these ORVR systems currently found in vehicles. In addition, the commission did not include Stage II vapor control enhancement as part of the proposed Stage II decommissioning rule revision. Consideration of Stage II vapor recovery enhancements is outside the scope of this rulemaking. No change to the rule has been made in response to this comment.

TFFA expressed support for most aspects of the changes to the Stage II Vapor Recovery Program. TFFA offered assistance in developing an owner/operator checklist to facilitate compliance.

The commission appreciates TFFA's support and will continue to work with all stakeholders to ensure successful implementation of decommissioning activities.

TFFA commented that it supports the continued inspection and appropriate testing for Stage II vapor recovery systems that continue in service until the final decommissioning deadline and would like for the inspection and testing activities to be counted towards SIP credit until such time as those systems are finally removed.

The commission has developed the rule and SIP revisions for the

implementation of decommissioning of Stage II vapor recovery to ensure that emission reduction plans are not affected in any area. Using the EPA's *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012, the commission determined that the inspection, testing, and maintenance of Stage II vapor recovery equipment that continues in service until August 31, 2018 will prevent a harmful gap in area-wide emissions control and will not affect compliance with the NAAQS. Neither the guidance nor the Stage II SIP provide for continuing of SIP credit once ORVR widespread use has been determined and decommissioning of Stage II vapor control equipment has begun. No changes have been made as a result of this comment.

TCC and TXOGA requested that TCEQ provide clarification as to when the reports required under §115.247(2) are no longer applicable to these exempt facilities, and in particular, whether the report required for 2013 is still required after the rule is finalized.

As stated in the EPA's final rulemaking (77 FR 28772), the EPA further evaluated Stage II exemptions for facilities with throughputs of less than 10,000 gallons per month and determined the exemption rate is still

appropriate. To ensure the control requirements outlined in the Stage II SIP are not affected, the commission will require facilities to continue to submit reports until the rule revision becomes effective. No change was made in response to this comment.

Impact of Decommissioning

Arid Technologies stated that decommissioning Stage II vapor control equipment and relying solely on ORVR technology will increase VOC and hazardous air pollutants (HAP) emissions and that motorists in Environmental Justice areas will bear the brunt of increased emissions. The commenter provided a copy of a recent study conducted by Meszler Engineering and submitted to the Maryland Department of Environment that reviews the impact of removing Stage II vapor control equipment to support its claim.

The commission performed an assessment on the removal of Stage II vapor control equipment and included this assessment along with the calculations required by the EPA guidance for assessing the removal of Stage II vapor control programs in the Stage II SIP revision, Chapter 12: *Demonstrating Noninterference Under Federal Clean Air Act, Section 110(l)*. The SIP revision includes an assessment of the effects of decommissioning Stage II equipment on each nonattainment area with Stage II requirements in the state. The assessments were developed using local specific data from each

affected area and local variables as required by EPA guidance. The assessment also included a determination of the emissions benefits of both Stage II and ORVR systems, an assessment of widespread use of ORVR, and the effects on air quality plans in all areas with Stage II vapor equipment requirements. The TCEQ found that by 2018 ORVR rule penetration will range from 93 to 95% and from 97 to 98% by 2030 in the four affected areas in Texas.

Each HAP emitted by motor vehicles is a subset of the VOC emissions. Since the VOC emissions from vehicle refueling are effectively controlled by ORVR systems, HAP emissions are also controlled.

In reviewing the Maryland study and other information provided by the commenter, the commission has determined that there are substantial differences between the Maryland assessment and Texas specific data. Additionally, some elements of the EPA's guidance document addressing removal of Stage II programs discussed elsewhere in this preamble make the direct comparison of the Texas assessment and Maryland study ineffective. Differences include: Uncontrolled emission factors of 7.01 pounds (lbs)/100 gallons (gals) in the Maryland study versus a range of 7.47 to 8.51 lbs/100 gals for Texas; ORVR Penetration of 85% in 2013 in the

Maryland study versus 85% to 89% in 2014, 94% to 96% for 2020, and 96% to 98% for 2030 for Texas; and, Stage II efficiency of 75% in the Maryland study versus 60% for Texas as recommended by EPA guidance. The results of the Texas specific analyses best assess the Stage II removal in the Texas.

In addition, and as stated earlier in this preamble, the EPA published finalized rulemaking for 40 CFR Part 51 determining that vehicle ORVR technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet (77 FR 28772). The EPA provided in the final rulemaking for the Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver (77 FR 28781) that decommissioning of Stage II systems will not have disproportionally high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment under the EPA's NAAQS for ozone. Lastly, the study provided by the commenter did not provide specific information regarding the potential for emission increases in Texas from reliance on ORVR; nor did the study provide any information regarding increased impact to citizens in Environmental Justice areas other than an assertion regarding a lower population of ORVR equipped vehicles. No revision to the rule has been made in response to this comment.

Arid Technologies questioned whether the TCEQ considered the impact of emissions generated during fueling of tanks which do not have ORVR technology, such as motorcycles, boats, and gas cans.

The EPA guidance which includes analyses for ORVR widespread use requires the assessment to include an evaluation of vehicles that are not equipped with ORVR systems. The TCEQ assessment included: 1) the distribution of vehicles into categories of vehicles equipped and not equipped with ORVR including motorcycles; and, 2) the age distribution of ORVR-equipped vehicles to capture the percent of these vehicles that do not have ORVR systems. The percent of ORVR-equipped vehicles will increase for each future analysis year as the pre-ORVR vehicles are retired from the fleet. Data to assess the amount of fuel dispensed to non-road vehicles is not available, and the inclusion of non-road sources is not part of the Stage II vapor control system analysis and not included in the EPA's guidance of the decommissioning of Stage II vapor control equipment. No revision to the rule has been made in response to this comment.

Decommissioning Requirements

TFFA comments that once a Stage II system has been removed they know of no reason

an entity should maintain records relating to the decommissioned system. The commenter indicated that the TCEQ database will continue to show the facilities status as a former Stage II facility and asked if there is a purpose for the information beyond showing this history. TFFA expressed opposition to keeping any records on-site beyond an immediate use, or for an "indefinite period of time," as stated in the proposed rule. TFFA suggests amending §115.246 to clarify that the records, specifically CARB Executive Orders, must be kept on-site indefinitely or until such time as the system has been decommissioned in accordance with §115.242.

The commission agrees that §115.246 of the proposed rule requires clarification. Recordkeeping retention requirements in the existing section vary depending on the type of record. The commission has revised the proposal language within §115.246 by placing proposed §115.246(1) - (7) requirements under adopted subsection (a). The records retention schedule and availability requirements proposed as §115.246(8) are now adopted under adopted subsection (b). The records specified under subsection (a)(1), (2), and (5) are existing records that were required to be maintained indefinitely. The adopted rule will require these records be maintained for five years following the date of decommissioning. The records contained in §115.246(a)(3), (4), and (6) are existing records that must be maintained for two years; however, these records are related to

events that will cease once decommissioning has been completed. The adopted rule will require that these records be maintained for two years following the most recent event preceding decommissioning.

Buc-ee's requested clarification whether the notification required by §115.241(b)(1) may be submitted prior to the 30 calendar-day window between the EPA approval of the Stage II decommissioning rule and the effective date, if there is effectively a minimum 60-day waiting period from the date of EPA approval before decommissioning activities may commence.

The commission apologizes for confusion on this issue. There is not a 60-day waiting period from the effective date of the EPA's approval. Owners or operators of GDFs may begin submitting notices of intent to decommission on or after the EPA's effective date of their approval of the adopted rulemaking and SIP revision. Owners or operators of GDFs may begin decommissioning activities 30 calendar days after the submittal of notice of intent to decommission. These 30 calendar days will support planning and review activities and provide for adequate compliance oversight. As discussed in the Section by Section portion of the accompanying rulemaking preamble, the commission changed language in adopted §115.241(a) to make clear that owners and operators could begin

decommissioning activities 30 calendar days after the effective date of EPA's effective date of their approval of the adopted rulemaking and SIP revision.

TCC and TXOGA commented that requiring operators to notify TCEQ: 1) 30 days before decommissioning; 2) 24 - 72 hours before decommissioning; and 3) ten days after decommissioning is excessive. TCC recommended that TCEQ streamline the notice requirements associated with decommissioning. Specifically, TCC and TXOGA recommended that TCEQ delete the electronic notice requirements.

The notification requirements are necessary to maintain communication between facilities, TCEQ regional staff, and the on-site supervisors and licensed contractors that will be performing the decommissioning and testing of equipment at the facilities. The notifications required prior to the commencement of decommissioning activities provide TCEQ notification that the facility plans to begin decommissioning activities. In addition, the 24 - 72 hour notification provides the facility an opportunity to extend or change decommissioning plans in the event of weather or equipment issues. The ten-day notification after the decommissioning is necessary to provide notice to the TCEQ that all Stage II equipment has been removed, that testing has occurred, and that the final close out activities have

occurred. Notifications of these types and durations are typically seen during construction activities and are necessary not only to maintain communication but to promote and enhance compliance oversight. No changes have been made in response to this comment.

TCC and TXOGA commented that §115.241(b)(3)(E), which requires the owner/operator to provide "Stage II vapor recovery system information" is not sufficiently clear and requested that the requirement for "Stage II vapor recovery system information" be struck from the notice requirements.

The commission agrees with the commenter that this phrase could be unclear and has made a change to the rule to clarify that the "Stage II vapor recovery system information" as referenced in §115.241(b)(3)(E) includes the vapor recovery system manufacturer and the CARB Executive Order for that system or other information necessary to provide identifying system information.

TCC and TXOGA commented that proposed §115.241(b)(5)(A) states that notification after decommissioning must include “a certified and signed document with the name, address, and license number of the licensed contractor who performed the decommissioning,” and requested clarification on the licensing credentials of the

contractor required by this rule.

The commission has made a change to the proposed rule to clarify the licensing credentials of the contractor who performed the decommissioning. The commission changed "licensed contractor" to "on-site supervisor" and requested license numbers for their Class A or Class A/B licenses in §115.241(b)(3)(D) and (4)(D) and (E).

Decommissioning Process

Tarrant County suggested a transition period of relaxed enforcement while entities are in the process of decommissioning Stage II tanks.

The commission has determined that a relaxation of enforcement activity regarding compliance with the testing and inspection of Stage II vapor control equipment is not appropriate. The adopted rule provides for adequate notification and provides facilities a five-year period to plan for and implement decommissioning activities. The TCEQ is committed to working with facility owners to resolve unplanned issues on an individual basis. No revision to the rule has been made in response to this comment.

TFFA commented in support of the final date of decommissioning deadline of August

31, 2018 since this will allow those owners who wish to fully maximize Stage II equipment's useful life and minimize the cost to those companies that have multiple sites with Stage II equipment installed. This date should also allow a more orderly transition to the industry for other issues such as daily and weekly inspections, budgeting for decommissioning costs, and other ancillary issues related to the use, maintenance, and operation of Stage II vapor recovery systems.

The commission appreciates TFFA's support. Section 115.245 of the adopted rulemaking has been modified to clarify that GDF owners and operators who elect to continue with Stage II systems until August 31, 2018 must also continue to repair, replace, and maintain Stage II vapor control equipment.

Buc-ee's urged the TCEQ to quickly implement the rule revisions necessary to allow for decommissioning of Stage II systems. Currently, facilities are delaying replacing existing dispensers because they do not want to purchase equipment that will need to be removed through the decommissioning process.

The commission appreciates Buc-ee's support and recognizes the difficulties inherent in transitioning from current Stage II requirements and testing. The commission will continue to work with all stakeholders to ensure that proper decommissioning activities are performed upon the

EPA's approval. Additionally, the EPA has agreed to a parallel review process of this rulemaking change and accompanying Stage II SIP revision, which may expedite the EPA's approval and allow for entities to decommission as quickly as possible. In order to provide additional clarity and avoid a time gap between the EPA's effective date of the approval of the adopted rulemaking and SIP revision and the date that decommissioning activities may begin at GDFs, the commission revised language in proposed §115.241(a) to clarify the effective date of when GDF owners or operators could begin decommissioning Stage II vapor control equipment at their site. Additionally, §115.41(b)(1)(A) requires that notice of intent to decommission be submitted to the commission at least 30 days prior to the beginning of any decommissioning activity.

Buc-ee's questioned the time frame for when the various requirements of §115.241(b)(4)(A) - (P) should be completed. As currently written, the proposed rule did not stipulate when various components of the decommissioning process should be accomplished. Buc-ee's proposed that §115.241(b)(4) be modified to read as follows: "The owner or operator shall perform and complete all of the following decommissioning activities, as applicable, within 30 days of the initiation of decommissioning."

The commission agrees that the language in the proposed §115.241(b)(4)(A) - (P) requires clarification to provide for a deadline by which the decommissioning activities must be completed. In order to avoid the situation of owners or operators of GDFs partially decommissioning and being required to continue testing and inspection of remaining Stage II equipment at the site, the commission developed the rules requiring that owners and operators of GDFs would decommission entirely once the activity was begun. The commission revised proposed subsection (c) to establish deadlines for the decommissioning processes. The commission adopts subsection (c)(1), which requires all decommissioning activity at a specific GDF location be completed within 30 calendars days after the date decommissioning activity was initiated. Additionally, the commission adopts subsection (c)(2), which requires that all owners or operators of GDFs in the state complete all decommissioning activity no later than August 31, 2018.

Buc-ee's questioned why immediate replacement of the Stage II hanging hardware with conventional, industry-standard hanging hardware, required by §115.241(b)(4)(I), should be necessary if all other applicable portions of §115.241(b)(4) are met. Buc-ee's further commented that if the vacuum motors, vapor return lines, and other Stage II components are removed or plugged, the replacement of existing hanging hardware

over time, through normal attrition, would not result in a negative environmental impact.

The commission agrees that if the system has been properly decommissioned in accordance with §115.241(b)(4) the continued use of hanging hardware equipment will not have an environmental impact. The commission has made a change to the rule requirement in §115.241(b)(4)(I) to allow owners or operators of GDFs to continue using existing hanging hardware equipment such as hoses, nozzles, swivels, and breakaway components until the equipment is replaced through attrition or by August 31, 2018 at the latest.

TCC and TXOGA commented that the proposed rule states that the "owner/operator of every gasoline dispensing facility that has installed Stage II vapor controls shall complete decommissioning of Stage II vapor controls no later than August 31, 2018." TCEQ's proposal also states that equipment could be removed 30 days after the EPA approves the rule but no later than August 31, 2018. However, 40 CFR §51.126(b) states, "States must submit and receive EPA approval of a revision to their approved State Implementation Plans before removing Stage II requirements that are contained therein." The commenters questioned how facilities could proceed with decommissioning and comply with both state and federal regulations in the event that

the EPA does not act on the SIP revision incorporating this final rule prior to August 31, 2018.

As the EPA has indicated in its guidance document, *Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures*, August 7, 2012, and as the commission noted in the proposed preamble, the EPA may take up to 18 months to approve the SIP and rule submittal. However, the commission anticipates that approval will occur well before the August 31, 2018 deadline. The TCEQ will continue to work with stakeholders to ensure proper implementation of the decommissioning rules, in addition to working with the EPA, which has indicated its willingness to proceed with a parallel review process of the rulemaking and SIP revision. No change to the rule has been made in response to this comment.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES

§§115.240, 115.241, 115.242 - 115.246

Statutory Authority

The amendments and new section are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement

transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The new section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new section is also adopted under THSC, §382.019, concerning methods used to control and reduce emissions from land vehicles, which authorizes the commission to adopt Stage II rules in nonattainment areas if demonstrated as necessary for attainment of the ozone National Ambient Air Quality Standard (NAAQS) or upon a adopted under FCAA, 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The amendments and new section implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq*.

§115.240. Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment.

(a) The following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§115.10, 101.1, and 3.2 of this title (relating to Definitions).

(1) Decommission--The permanent removal of the Stage II vapor control equipment at a gasoline dispensing facility.

(2) Gasoline dispensing facility--A location that dispenses gasoline to motor vehicles and includes retail, private, and commercial outlets.

(3) Major system replacement or modification:

(A) the repair or replacement of any stationary storage tank equipped with a Stage II vapor recovery system;

(B) the replacement of an existing California Air Resources Board (CARB) certified Stage II vapor recovery system with a system certified by CARB under a different CARB Executive Order, or certified by an approved third-party;

(C) the repair or replacement of any part of a piping system attached to a stationary storage tank equipped with a Stage II vapor recovery system, excluding the repair or replacement of piping which is accessible for such repair or replacement without excavation or modification of the vapor recovery equipment; or

(D) the replacement of at least one fuel dispenser.

(4) Onboard refueling vapor recovery--A system on motor vehicles designed to recover hydrocarbon vapors that escape during refueling.

(5) Onboard refueling vapor recovery compatible--A Stage II vapor recovery system certified by CARB or other acceptable independent third-party evaluator, using test methods approved by the executive director, as onboard refueling vapor recovery (ORVR) compatible or a system listed in subsection (b) of this section, either of which maintains a required minimum overall system efficiency of 95% (as certified under third-party evaluation) while dispensing fuel without difficulty to both ORVR-equipped and non ORVR-equipped vehicles.

(6) Owner or operator of a motor vehicle fuel dispensing facility--Any person who owns, leases, operates, or controls the gasoline dispensing facility.

(b) The table contained in this subsection is a list of the Stage II vapor recovery systems certified by a CARB Executive Order in effect as of January 1, 2002.

Figure: 30 TAC §115.240(b) (No change to the figure as it currently exists in TAC.)

§115.241. Decommissioning of Stage II Vapor Recovery Equipment.

(a) The owner or operator of a gasoline dispensing facility may decommission Stage II vapor recovery equipment beginning 30-calendar days after the effective date of the United States Environmental Protection Agency's approval of the repeal of the Stage II vapor recovery requirement and adoption of decommissioning requirements, in compliance with the requirements of this section.

(b) Owners or operators of gasoline dispensing facilities decommissioning Stage II vapor recovery equipment shall comply with the following:

(1) Intent to decommission notification.

(A) The owner or operator of a gasoline dispensing facility shall submit written notification of intent to decommission the Stage II vapor recovery equipment at least 30-calendar days prior to the beginning of any decommissioning

activity to the appropriate Texas Commission on Environmental Quality (TCEQ) regional office and local government with jurisdiction where the gasoline dispensing facility is located.

(B) The notice of intent to decommission must provide a projected start date for decommissioning activity at the gasoline dispensing facility location. If decommissioning activities are not initiated within 180 calendar days after the date the notice of intent to decommission is received by the TCEQ, the owner or operator of the gasoline dispensing facility shall re-file the notice of intent to decommission for the gasoline dispensing facility location.

(C) The notice of intent to decommission must include the following information:

(i) gasoline dispensing facility name and location address;

(ii) owner name, address, and phone number;

(iii) operator name, address, and phone number;

(iv) on-site supervisor contractor name, address, phone number, and Class A or Class A/B Underground Storage Contractor License number; and

(v) Stage II vapor recovery system information including the vapor recovery system manufacturer, the California Air Resources Board Executive Order for the system, or other information necessary to identify the system.

(2) Start of decommissioning notification. The owner or operator shall also provide notification 24 to 72 hours prior to the beginning of any decommissioning activity by either telephone, e-mail, or facsimile, to the appropriate TCEQ regional office and local government with jurisdiction. The notification must include:

(A) the gasoline dispensing facility name and location address;

(B) owner name, address, and phone number;

(C) operator name, address, and phone number; and

(D) planned decommissioning start date.

(3) Required decommissioning activities. The owner or operator of the gasoline dispensing facility shall perform and complete all of the following decommissioning activities, as applicable for the particular Stage II vapor recovery system equipment installed at the gasoline dispensing facility:

(A) initiating safety procedures;

(B) relieving pressure in the tank ullage by removing all pressure/vacuum vent valves;

(C) draining all liquid collection points;

(D) disconnecting all electrical components of the Stage II system so that no electrical hazards are created including but not limited to all vapor pumping or processing units and dispenser electronics;

(E) reprogramming the dispenser electronics to reflect that Stage II Vapor Recovery is no longer in service;

(F) securely sealing off the below-grade vapor piping at a height below the level of the base of the dispenser using only threaded plugs, threaded caps, or glued fittings;

(G) disconnecting and sealing off the vapor piping at the tank top if this can be done without excavation and without interfering with the vent line using only threaded plugs, threaded caps, or glue fittings;

(H) securely sealing the lower end of the vapor piping inside the dispenser cabinet using only threaded plugs, threaded caps, or glue fittings;

(I) replace through attrition or by August 31, 2018 the Stage II hanging hardware including hoses, nozzles, swivels, and breakaway components with conventional, industry-standard hanging hardware;

(J) installing appropriate pressure/vacuum vent valve(s);

(K) removing any Stage II instructions from the dispenser cabinet;

(L) visually inspecting and verifying that the visible components of the storage system are left in a condition that will reliably prevent the release of any vapors or liquids from any components of the storage system;

(M) conducting the Texas test procedures TXP-102 (*Vapor Recovery Test Procedures Handbook*, RG-399, December 2002) and recording results on Form 102 indicating that the storage system is in a condition that will prevent leaking of vapors or liquids prior to restoring the facility to operating status;

(N) conducting the Texas test procedures TXP-103, Procedure 2, (*Vapor Recovery Test Procedures Hand Book*, RG-399, December 2002) recording results on Form 103 indicating that the vent lines are functioning in a condition that will prevent the leaking of vapors or liquids prior to restoring the facility to operating status;

(O) disconnecting the OPW VaporSavor or Arid Permeater vapor recovery systems if they are present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings; and

(P) disconnecting the central vacuum motor if present on the Stage II system and sealing piping using only threaded plugs, threaded caps, or glue fittings.

(4) Decommissioning completion notice. The owner or operator of the gasoline dispensing facility shall notify in writing the TCEQ regional office and local government with jurisdiction where the gasoline dispensing facility is located no later than ten calendar days after completion of all decommissioning activity at the gasoline dispensing facility. Notification must include:

(A) gasoline dispensing facility name and location address;

(B) owner name, address, and phone number;

(C) operator name, address, and phone number;

(D) a certified and signed document with the name, address, and the Class A or Class A/B license number of the on-site supervisor who directed the decommissioning;

(E) name, address, and the Class A or Class A/B license number of the on-site supervisor who directed the testing to ensure that no leaks have been detected; and

(F) copies TX-102 and TX-103 Procedure test results.

(c) The owner or operator shall comply with the following decommissioning deadlines.

(1) The owner or operator shall complete all decommissioning activity at a gasoline dispensing facility location within 30 calendar days after the date decommissioning activity was initiated.

(2) Owners or operators of all gasoline dispensing facilities, regardless of location in the state, shall have completed the decommissioning of all Stage II vapor recovery control equipment no later than August 31, 2018.

§115.242. Control Requirements.

(a) After May 16, 2012, the owner or operator of a newly constructed gasoline dispensing facility is no longer required to install Stage II vapor controls on its gasoline dispensing equipment in any county in the state of Texas. Gasoline dispensing facilities that did not have Stage II vapor controls as of May 16, 2012 due to a confirmed exemption because of low monthly throughput or low average monthly throughput are not subject to the requirements of this division.

(b) The owner or operator of every gasoline dispensing facility that has installed Stage II vapor controls shall complete decommissioning of Stage II vapor controls no later than August 31, 2018.

(c) All owners or operators of gasoline dispensing facilities decommissioning installed Stage II vapor controls shall comply with the requirements of §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment).

(d) Until the owner or operator of a gasoline dispensing facility decommissions Stage II vapor recovery controls that are installed at the gasoline dispensing facility, the owner or operator shall be subject to the following requirements of this section as well as the requirements of this division.

(1) All installed Stage II vapor recovery systems must be certified by a California Air Resources Board (CARB) Executive Order in effect as of January 1, 2002 (as specified in §115.240(b) of this title (relating to Stage II Vapor Recovery Definitions and List of California Air Resources Board Certified Stage II Equipment)); or certified by a CARB Executive Order in effect after January 1, 2002, except that the executive director reserves the right to continue to recognize any CARB Executive Orders

decertified after January 1, 2002; or certified by an alternative procedure that meets the requirements specified in §115.243 of this title (relating to Alternate Control Requirements). In addition:

(A) Stage II vapor recovery balance systems that include vapor check valves in a location other than the nozzle may not be installed;

(B) Stage II vapor recovery systems that include dual-hang (non-coaxial) hoses may not be installed; and

(C) all Stage II vapor recovery systems must be onboard refueling vapor recovery (ORVR) compatible, as defined in §115.240 of this title.

(2) All underground piping must be installed by a person holding a valid License A as defined in §§334.401, 334.407, and 334.424 of this title (relating to License and Registration Required; Other Requirements for an Underground Storage Tank Contractor ; and Other Requirements for an On-Site Supervisor). Piping specifications must be in compliance with the applicable CARB Executive Order(s) or third-party certification for the Stage II vapor recovery system. For any facility newly constructed after November 15, 1993, or at any facility undergoing a major modification to the Stage II vapor recovery system after November 15, 1993, the following requirements apply

where piping specifications are not provided in the applicable CARB Executive Order(s) or third-party certification.

(A) All underground piping must be constructed of rigid material and conform to the applicable portions of the technical standards for new piping defined by §334.45(c) and (e) of this title (relating to Technical Standards for New Underground Storage Tank Systems).

(B) Noncorrodible piping or cathodically protected metallic piping must be used. In the event metallic piping is used, the applicable portions of the general requirements for corrosion protection defined by §334.49(a)(1) - (5) and (c)(1) - (4) of this title (relating to Corrosion Protection) apply.

(C) Minimum slope on vapor piping must be 1/8 inch per foot from the dispenser to the storage tank. Piping installed after January 1, 2002 must not include liquid collection points (condensate traps) unless the associated underground storage tanks:

(i) were installed prior to November 15, 1992; and

(ii) are not at sufficient depth to allow for minimum slope requirements.

(D) Vapor piping on balance systems must be two inches or greater in diameter, and when there are more than four fueling points connected to one vapor line, the minimum vapor piping size must be three inches in diameter. For the purposes of this paragraph, a single nozzle dispenser constitutes one fueling point and a multi-nozzle dispenser constitutes two fueling points.

(E) Riser piping must have a minimum inside diameter of one inch and must slope towards the storage tank at all points. Riser piping is defined as the predominantly vertically oriented vapor recovery piping that enters the gasoline dispenser base, which connects the dispenser mounted piping with the buried vapor recovery piping that leads to one or more storage tanks.

(F) If a fire protection agency with jurisdiction requires a vapor shear valve on the vapor return line at the base of a dispenser, the shear valve must be CARB-certified and/or Underwriters Laboratories listed for use in vapor recovery systems.

(3) The owner or operator shall maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order(s) or third-party certification, and free of defects that would impair the effectiveness of the system, including, but not limited to:

(A) absence or disconnection of any component that is a part of the approved system;

(B) a vapor hose that is crimped or flattened such that the vapor passage is blocked, or the backpressure through the vapor system exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(C) a nozzle boot that is torn in one or more of the following ways:

(i) a triangular-shaped or similar tear more than 1/2 inch on a side;

(ii) a hole more than 1/2 inch in diameter; or

(iii) a slit more than one inch in length;

(D) for balance nozzles, a faceplate that is damaged such that the capability to achieve a seal with a fill pipe interface is affected for a total of at least one-fourth of the circumference of the faceplate;

(E) for booted nozzles in vacuum assist type systems, a flexible cone for which a total of at least one-fourth of the cone is damaged or missing;

(F) a nozzle shut-off mechanism that malfunctions in any manner;

(G) vapor return lines, including such components as swivels, anti-recirculation valves, and underground piping, that malfunction, are blocked, or are restricted such that the pressure decay and/or dynamic backpressure through the line exceeds the value as certified in the approved system's CARB Executive Order(s) or third-party certification;

(H) a vapor processing or control unit that is inoperative or defective;

(I) a vacuum producing device that is inoperative or defective;

(J) pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective;

(K) a system monitor or printer that is malfunctioning or out of paper;

(L) a nozzle, hose, break-away, or any other component that is not approved for use with the certified vapor recovery system in use; and

(M) any equipment defect that is identified in the certification of an approved system as substantially impairing the effectiveness of the system in reducing refueling vapor emissions.

(4) No gasoline leaks, as detected by sampling, sight, sound, or smell, exist anywhere in the dispensing equipment or Stage II vapor recovery system.

(5) Upon identification of any of the defects described in paragraphs (3) and (4) of this section, the owner or operator or his or her representative shall remove from service all dispensing equipment for which vapor recovery has been impaired. The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. Once repaired, the

equipment may be returned to service by the owner or operator or his or her representative.

(6) Upon identification of any of the defects described in paragraphs (3) and (4) of this section, any inspector with jurisdiction shall tag the impaired equipment out-of-order. The "Out-of-Order" tag must state "use of this device is prohibited under state law, and unauthorized removal of this tag or use of this equipment will constitute a violation of the law punishable by a maximum civil penalty of up to $25,000 per day or a maximum criminal penalty of $50,000 and/or up to 180 days in jail." The impaired equipment must remain out of service until such time as the equipment has been properly repaired, replaced, or adjusted, as necessary. After repairs are completed and verbal notification is given to the agency that originally tagged the equipment out of service, the "Out-of-Order" tag may be removed by the owner or operator or the facility representative and the equipment may be returned to service. Within ten days of placing the equipment back in service, written notification that the equipment has been returned to service must be provided by the owner or operator or the facility representative to the agency that originally tagged the equipment out-of-service. For the purposes of this paragraph, "facility representative" has the meaning ascribed to it in §115.248(1) of this title (relating to Training Requirements).

(7) No person shall repair, modify, or permit the repair or modification of the Stage II vapor recovery system or its components such that they are different from their approved configuration, and only original equipment manufacturer (OEM) parts or CARB-certified non-OEM aftermarket parts shall be used as replacement parts.

(8) No person shall tamper with, or permit tampering with, any part of the Stage II vapor recovery system in a manner that would impair the operation or effectiveness of the system.

(9) The owner or operator of a gasoline dispensing facility shall post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system. These instructions, at a minimum, include:

(A) a clear description of how to correctly dispense gasoline using the system; and

(B) a warning against attempting to continue to refuel after initial automatic shutoff of the system (an indication that the vehicle fuel tank is full).

§115.243. Alternate Control Requirements.

Alternate methods of complying with §115.242(d)(1) of this title (relating to Control Requirements) may be approved by the executive director if:

(1) emission reductions are demonstrated to be equivalent or greater than those afforded by the requirements in §115.242(d)(1) of this title; and

(2) the Stage II vapor recovery system is capable of meeting the applicable performance requirements prescribed in this division as certified by third-party evaluation conducted by a qualified independent testing organization using a code or standard of practice, acceptable to the executive director, which has been developed by a nationally recognized agency, association, or independent testing laboratory.

§115.244. Inspection Requirements.

The owner or operator of any gasoline dispensing facility subject to the control requirements of this division shall conduct daily inspections of the Stage II vapor recovery system for the defects specified in §115.242(d)(3) and (4) of this title (relating to Control Requirements) as follows.

(1) For all systems, the daily inspections must include the applicable portions of §115.242(d)(3)(A) - (F), (H), and (K), and (4) of this title.

(2) For assist systems that use a processor, indicating mechanisms designed by the Stage II vapor recovery equipment manufacturer to verify proper operation must be inspected daily. Examples of these indicating mechanisms include flame detection sensors, remote (from the processor) visual or audible displays indicating system operation, or other means as described in the applicable Executive Order for the system.

(3) For all systems, the components listed in §115.242(d)(3)(J) of this title must be inspected at least monthly.

(4) For all systems, the components listed in §115.242(d)(3)(G) of this title must be inspected at least annually.

§115.245. Testing Requirements.

Prior to the decommissioning deadline of August 31, 2018, owners or operators of gasoline dispensing facilities that have not yet decommissioned Stage II vapor controls

in compliance with the requirements of this division shall repair, replace, or retain Stage II vapor controls as follows.

(1) Within 30 days of installation, at least once every 36 months thereafter, and upon major system replacement or modification, Stage II vapor recovery systems must successfully meet the performance criteria proper to the system by successfully completing the following testing requirements using the test procedures as found in the commission's Vapor Recovery Test Procedures Handbook (test procedures handbook) (RG-399, November 2002).

(A) For balance and assist systems:

(i) the manifolding or interconnectivity of the vapor space must be consistent with the Executive Order or third-party certification requirements for the installed system (Texas test procedure TXP-101 or equivalent);

(ii) the sum of the vapor leaks in the system must not exceed acceptable limits for the system as defined in the pressure decay test (Texas test procedure TXP-102 or equivalent);

(iii) the maximum acceptable backpressure through a given vapor path must not exceed the limits as found in the backpressure/liquid blockage test applicable for the vapor path for the system (Texas test procedure TXP-103 or equivalent); and

(iv) the maximum gasoline flow rate through the nozzle must not exceed the limits found in the Executive Order or third-party certification for the system (Texas test procedure TXP-104 or equivalent).

(B) For bootless nozzle assist systems, the volume-to-liquid ratio (V/L ratio) or air-to-liquid ratio (A/L ratio) must be within acceptable limits (Texas test procedure TXP-106 or equivalent).

(C) Each system must meet minimum performance criteria specific to the individual system as defined in the California Air Resources Board (CARB) Executive Order or third-party certification. The criteria and test methods contained in the test procedures handbook, specified in this paragraph, must take precedence for applicable tests where performance criteria exist in both the Executive Order and the test procedures handbook; otherwise, the Executive Order specific criteria must take precedence.

(2) Verification of proper operation of the Stage II equipment must be performed in accordance with the test procedures referenced in paragraph (1) of this section at least once every 12 months. The verification must include all functional tests that were required for the initial system test, except for TXP-101, Determination of Vapor Space Manifolding of Vapor Recovery Systems at Gasoline Dispensing Facilities, and TXP-103, Determination of Dynamic Pressure Performance (Dynamic Back-Pressure) of Vapor Recovery Systems at Gasoline Dispensing Facilities, which must be performed at least once every 36 months.

(3) The owner or operator, or his or her representative, shall provide written notification to the appropriate regional office and any local air pollution program with jurisdiction of the testing date and time and of whom will conduct the test. The notification must be received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days in advance of the test, and the notification must contain the information and be in the format as found in the test procedures handbook. Notification may take the form of a facsimile or telecopier transmission, as long as the facsimile is received by the appropriate regional office and any local air pollution program with jurisdiction at least ten working days prior to the test and it is followed up within two weeks of the transmission with a written notification. The owner or operator, or his or her representative, shall give at least 24-hour notification to the appropriate regional office and any local air pollution program

with jurisdiction if a scheduled test is cancelled. In the event that the test cancellation is not anticipated prior to 24 hours before the scheduled test, the owner or operator, or his or her representative, shall notify the appropriate regional office and any local air pollution program with jurisdiction as soon in advance of the scheduled test as is practicable.

(4) Minor modifications of these test methods may only be used if they have been approved by the executive director.

(5) All required tests must be conducted either in the presence of a Texas Commission on Environmental Quality or local program inspector with jurisdiction, or by a person who is registered with the executive director to conduct Stage II vapor recovery tests. The requirement to be registered begins on November 15, 1993, or 60 days after the executive director has established the registry, whichever occurs later. The executive director may remove an individual from the registry of testers for any of the following causes:

(A) the executive director can demonstrate that the individual has failed to conduct the test(s) properly in at least three separate instances; or

(B) the individual falsifies test results for tests conducted to fulfill the requirements of this section.

(6) The owner or operator, or his or her representative, shall submit the results of all tests required by this section to the appropriate regional office and any local air pollution control program with jurisdiction within ten working days of the completion of the test(s) using the format specified in the test procedures handbook. For purposes of on-site recordkeeping, the Test Procedures Results Cover Sheet, properly completed with the summary of the testing, is acceptable. The detailed results from each test conducted along with a properly completed summary sheet, as provided for in the test procedures handbook, must be submitted to the appropriate regional office and any local air pollution control program with jurisdiction.

§115.246. Recordkeeping Requirements.

(a) The owner or operator of any gasoline dispensing facility subject to the control requirements of this division shall maintain the following records:

(1) a copy of the California Air Resources Board (CARB) Executive Order(s) or third-party certification(s) for the Stage II vapor recovery system and any related components installed at the facility;

(2) a copy of any owner or operator request for executive director approval under §115.243 of this title (relating to Alternate Control Requirements) and any executive director approval issued under §115.243 of this title;

(3) a record of any maintenance conducted on any part of the Stage II equipment, including a general part description, the date and time the equipment was taken out of service, the date of repair or replacement, the replacement part manufacturer's information, a general description of the part location in the system (e.g., pump or nozzle number, etc.), and a description of the problem;

(4) proof of attendance and completion of the training specified in §115.248 of this title (relating to Training Requirements), with the documentation of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility;

(5) a record of the results of testing conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.245 of this title (relating to Testing Requirements);

(6) a record of the results of the daily inspections conducted at the gasoline dispensing facility in accordance with the provisions specified in §115.244 of this title (relating to Inspection Requirements);

(7) copies of all notifications and records sufficient to demonstrate compliance with the applicable decommissioning steps listed in §115.241 of this title (relating to Decommissioning of Stage II Vapor Recovery Equipment), including all required test results, kept on site for five years following the completion of the decommissioning activity.

(b) All records required under subsection (a) of this section must be maintained and made available as follows.

(1) Records required under subsection (a)(1), (2), (5), and (7) of this section must be maintained until five years following the date of decommissioning completion. Records required under subsection (a)(3), (4), and (6) of this section must be maintained for at least two years.

(2) Records must be kept on site at facilities ordinarily manned during business hours and made immediately available for review upon request by authorized

representatives of the executive director, United States Environmental Protection Agency (EPA) or any local air pollution control program with jurisdiction; or

(3) Records for gasoline dispensing facilities unmanned at the time of inspection, must be made available at the site within 48 hours after being requested by authorized representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR VEHICLE FUEL DISPENSING FACILITIES
§§115.241, 115.247, 115.249

Statutory Authority

The repealed sections are adopted under Texas Water Code (TWC), §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 TWC; and under the Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed sections are also adopted under THSC, §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 control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016,

382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq*.

§115.241. Emissions Specifications.

§115.247. Exemptions.

§115.249. Counties and Compliance Schedules.