

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners Date: September 20, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Steve Hagle, P.E., Deputy Director, Office of Air

Docket No.: 2012-2362-RUL

Subject: Commission Approval for Adopted Rulemaking
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
Stage II Decommissioning
Rule Project No. 2013-001-115-AI

Background and reasons for the rulemaking:

In the May 16, 2012 issue of the *Federal Register* (77 FR 28772), the United States Environmental Protection Agency (EPA) finalized a rulemaking for 40 Code of Federal Regulations (CFR) Part 51 determining that vehicle on-board refueling vapor recovery (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 gasoline dispensing facilities (GDF) 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 State Implementation Plan (SIP) showing that the air quality will be maintained after removing the Stage II equipment.

Vehicle ORVR provides greater pollution reduction than Stage II control systems. Given the widespread use of ORVR, the use of Stage II control systems is not cost-effective. Stage II, a volatile organic compounds (VOC) control strategy, is a requirement of Federal Clean Air Act (FCAA), §182(b)(3) that requires the installation of technology at GDFs to prevent gasoline vapors from escaping during the refueling of on-road motor vehicles. Currently, the Stage II program is required in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area; Collin, Dallas, Denton, and Tarrant Counties in the Dallas-Fort Worth (DFW) one-hour ozone nonattainment area; El Paso County (ELP) one-hour nonattainment area; and Hardin, Jefferson, and Orange Counties in the Beaumont-Port Arthur (BPA) one-hour nonattainment area.

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 since 2006, all new light and medium duty gasoline vehicles are equipped with ORVR.

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As originally required by the FCAA, 30 Texas Administrative Code (TAC) Chapter 115, Subchapter C, Division 4 requires all owners or operators of GDFs to install Stage II vapor recovery equipment unless construction began prior to November 15, 1992 and the GDF has a monthly throughput of less than 10,000 gallons of gasoline. Owners or operators of GDFs are exempt from Stage II requirements when 95% or more of the motor vehicle fleet being fueled on site is equipped with ORVR equipment or if no gasoline is dispensed to on-road vehicles.

Scope of the rulemaking:

The rule revision proposed for adoption revises 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 allow existing GDFs in the current program areas to properly decommission Stage II equipment. Owners and operators of GDFs will be authorized to begin removing the Stage II equipment 30 calendar days after the effective date of EPA's approval of the adopted rules and corresponding SIP revision or may continue with the program until August 31, 2018 when all Stage II equipment must be properly decommissioned. The adopted rule revision provides procedures for owners and operators of GDFs to notify the Texas Commission on Environmental Quality (TCEQ or commission) of their intent to begin decommissioning activities, applicable decommissioning activities that must be completed, and recordkeeping requirements.

A corresponding SIP revision is being adopted with this rulemaking to incorporate the rule revisions to the Stage II program (SIP Project No.2013-002-SIP-NR). Upon the adoption of this rule revision, both the revised rule and SIP revision will be submitted to the EPA for approval. According to the EPA's guidance document¹ for decommissioning Stage II, it is necessary for the executive director to demonstrate under FCAA, §110(l) that air quality is not affected by the decommissioning of, or failure to install, Stage II equipment. An assessment has been performed of the exact amount of benefit loss from removing Stage II and any effect on air quality programs in the four Texas ozone air quality planning areas using the method documented in the EPA's guidance document. It was found that removal of Stage II requirements does not interfere with attainment or maintenance of the NAAQS in the Texas air quality plans. A more detailed analysis is included in the corresponding Stage II SIP revision.

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 the 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. If the rule is revision proposed

¹ EPA, 2012. "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures." Air Quality Policy Division, Office of Transportation and Air Quality, United States Environmental Protection Agency, EPA-457/B-12-001, August 7, 2012.

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for adoption concerning decommissioning is adopted by the commission, 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.

A.) Summary of what the rulemaking will do:

This rulemaking revises Chapter 115, Subchapter C, Division 4 to amend §§115.240, 115.242 - 115.246, to add new §115.241, and to repeal §§115.241, 115.247, and 115.249.

This rulemaking will:

- add definitions for “decommissioning” and “gasoline dispensing facilities”;
- establish that owners and operators of GDFs are no longer required to install Stage II equipment after the rule is adopted and the corresponding SIP revision has been approved by the EPA;
- require owners and operators of GDFs electing to continue with Stage II equipment after the proposed rulemaking is adopted and corresponding SIP revision is approved by the EPA to continue complying with current requirements of Chapter 115;
- require the decommissioning of Stage II equipment at all GDFs by August 31, 2018;
- establish decommissioning notification and recordkeeping requirements that must be performed and completed; and
- repeal emissions specifications associated with the fueling of vehicles at GDFs, exemptions from the installation of Stage II equipment, and Stage II compliance schedules for affected counties.

B.) Scope required by federal regulations or state statutes:

None

C.) Additional staff recommendations that are not required by federal rule or state statute:

None

Statutory authority:

The revisions 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 under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; 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 revisions 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

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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, that 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 revisions are 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 revisions are also adopted under FCAA, 42 USC, §§7401, *et seq.*, that 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 adopted revisions would implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.208 and FCAA, 42 USC, §§7401 *et seq.*

Effect on the:

A.) Regulated community:

The adopted rule revision will affect current owners of the GDFs and licensed contractors who install, uninstall, test, and monitor the Stage II equipment. Removal of the Stage II equipment will cost the owners of the GDFs approximately \$600 per gasoline dispenser with total costs depending on the number of gasoline dispensers at the GDF. Owners of GDFs that remove the Stage II equipment as soon as authorized may realize a positive impact from no longer having to monitor and test the equipment. Testing costs range from \$250 to \$350 for annual inspections and around \$350 for a more comprehensive test required once every three years. Stage II equipment is deteriorating at older GDFs that have participated in the program for the past 20 years, and the cost to maintain and repair Stage II equipment may average up to \$1,000 per year. Businesses that manufacturer, sell, monitor, and test the Stage II equipment may be negatively impacted due to Stage II being decommissioned and monitoring no longer being necessary.

B.) Public:

No direct impact is anticipated.

C.) Agency programs:

The TCEQ's Office of Compliance and Enforcement's (OCE) Field Operations Division employs its own Stage II investigators and contracts with five local government entities to monitor and inspect Stage II equipment and installations. These same programs will be needed to monitor the decommissioning activities but workloads for Stage II activities will decrease as owners or operators of GDFs decommission their equipment.

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Stakeholder meetings:

Informal stakeholder meetings on the widespread use determination of ORVR and potential Stage II decommissioning issues were held in October 2012 in Arlington, El Paso, Houston, Beaumont, and Austin. The stakeholders consisted of industry representatives including installers and testers, owners and operators of GDFs, and local governments with Stage II inspection and monitoring programs funded through contracts with the TCEQ. Stakeholders generally offered acknowledgement that ORVR was in widespread use and offered support of a decommissioning process that could begin as soon as possible and was consistent with industry-recommended procedures.

Public comment:

The commission offered public hearings for the revisions to Chapter 115, Subchapter C, Division 4 and the concurrent revision to the Stage II SIP (SIP Project No.2013-002-SIP-NR) 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. Notice of the public hearings were published in the *Texas Register* and the *El Paso Times*, *Beaumont Enterprise*, *Houston Chronicle*, *Fort Worth Star Telegram*, and *Austin American Statesman* newspapers. The Arlington public hearing was opened to receive comment from Tarrant County. No other hearings were opened as no one signed in to provide oral testimony at any other hearing.

The public comment period opened on May 10, 2013 and closed on June 10, 2013. The commission received comments from Arid Technologies, Buc-see's Ltd. (Buc-ee's), Tarrant County, Texas Chemical Council (TCC), Texas Food and Fuel Association (TFFA), and Texas Oil and Gas Association (TXOGA). A summary of both oral and written comments as well as the TCEQ's responses are provided as part of the rule preamble in the Response to Comments section. Significant public comments are summarized as follows.

General Comments

Arid Technologies opposed the rule change, questioned whether the commission had considered all impacts of decommissioning, and suggested that enhancing Stage II systems is a better alternative to decommissioning. Arid Technologies included in its comment a copy of a recent study conducted by Meszler Engineering and submitted to the Maryland Department of Environment, which reviews the impact of removing Stage II vapor control equipment. *The commission reviewed the study provided by Arid Technologies and determined substantial differences between the Maryland assessment and Texas specific data. A further explanation of the commission's findings are in the Response to Comments section of this rulemaking.*

Decommissioning Requirements

TFFA stated that once a Stage II system has been removed records related to the decommissioned system are not necessary to maintain and suggested amending §115.246, *Control Requirements* to clarify recordkeeping requirements. *In response to this comment the commission revised the proposal language by placing proposed §115.246(1)-(7) requirements under a new subsection (a). The records retention schedule and availability*

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requirements proposed as §115.246(8) are now adopted under a new subsection (b). The records specified under subsection (a)(1), (2), and (5) are existing records that were required to be maintained indefinitely but will now be required to be kept for five years following completion of decommissioning. The records specified in §115.246(a)(3), (4), and (6) are existing records that will continue to be maintained for two years as they are related to events that will cease once decommissioning has been completed.

Buc-ee's asked if 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? The commenter also asked if there is effectively a minimum 60-day waiting period from the date of EPA approval before decommissioning activities may commence? *In response to this comment, the commission changed language in §115.241(a) to make clear that owners and operators could begin decommissioning activities 30 calendar days after the effective date of EPA's approval.*

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. *In response to this comment, the commission made a change to the proposed rule clarifying the licensing credentials of the on-site supervisor contracted to oversee the decommissioning.*

Decommissioning Process

Buc-ee's questioned the time frame for when the various requirements of §115.241(b)(4)(A)–(P) should be completed. *In response to this comment, the commission revised §115.241 to require that all decommissioning activity at a specific GDF location be completed within 30-calendar days after the date decommissioning activity was initiated.*

Significant changes from proposal:

§115.241, Decommissioning of Stage II Vapor Recovery Equipment

- Added §115.241(a)(1)(B) to clarify that owners or operators of GDFs will include in the notice of intent to decommission a projected start date for decommissioning activities. 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.
- Added §115.241(a)(1)(C) to clarify that owners or operators of GDFs will include in the notice of intent to decommission identifying information about the facility, the Stage II equipment to be decommissioned, and the on-site supervisor responsible for overseeing the decommissioning process.
- Added §115.241(a)(2)(A) - (D) to specify that the owner or operator will provide notification 24 to 72 hours prior to the beginning of decommissioning activity and

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that the notification will include identifying information about the facility and the planned decommissioning start date.

- Added §115.241(a)(4)(A)-(C) to specify that the owner or operator will include in the decommissioning completion notification identifying information about the facility.
- Amended §115.241(a)(4)(D)-(F) to specify that decommissioning activities must be directed by a Class A or Class A/B licensed on-site supervisor.
- Added §115.241(c)(1) to specify that all decommissioning activity must be completed within 30 calendar days after the date decommissioning activity was initiated.

§115.246, Recordkeeping Requirements

- Added §115.246(b)(1) to specify that certain records relating to the decommissioned Stage II equipment must be maintained at the GDF for five years following completion of decommissioning.

Potential controversial concerns and legislative interest:

The TCEQ must demonstrate to the EPA that removing Stage II equipment does not interfere with attainment and maintenance with the ozone NAAQS. An FCAA, §110(l) demonstration has been developed establishing that the loss of VOC reductions from the decommissioning of Stage II equipment will not have a negative effect on air quality. The EPA requires that Stage II remain in effect for a period of time in order to maintain the ozone NAAQS in the current program areas until an FCAA, §110(l) can be demonstrated.

According to the EPA guidance document mentioned previously in this document, states must continue implementing Stage II until the EPA approves a SIP revision that removes the requirement from the SIP. As stated in its guidance, the EPA may take up to 18 months to review and approve the SIP revision once it is adopted by the commission. However, in response to concerns expressed by some owners and operators of GDFs who have stated they prefer to decommission their Stage II equipment as soon as possible, the EPA has agreed to a parallel review of this rule and corresponding SIP revision.

In addition, this rule revision affects businesses that operate testing and repair services for Stage II equipment.

Will this rulemaking affect any current policies or require development of new policies?

Staff has identified two separate pressure tests related to Stage I components that would no longer be required once Stage II vapor recovery equipment is decommissioned. A separate rulemaking requiring these tests has been initiated to offset the loss of this requirement due to this rulemaking. Additionally, if the rule revision proposed for adoption concerning decommissioning is adopted by the commission, 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.

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What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Owners or operators of new GDFs will be required to install and maintain Stage II equipment that is not cost-effective and that the EPA has ruled can be removed.

Key points in the adoption schedule:

Anticipated adoption date: October 9, 2013

Anticipated Texas Register adoption publication date: October 25, 2013

Anticipated effective date: October 31, 2013

Six-month Texas Register filing deadline: November 12, 2013

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