

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 4, 2013

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

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

Docket No.: 2013-0413-RUL

Subject: Commission Approval for Rulemaking Adoption
30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution
from Volatile Organic Compounds
Surface Coating Application Systems Revision
Rule Project No. 2013-012-115-AI

Background and reason(s) for the rulemaking:

For nonattainment areas classified as moderate and above, Federal Clean Air Act (FCAA), §182(b)(2) requires the state to submit a state implementation plan (SIP) revision that implements reasonably available control technology (RACT) for sources of volatile organic compounds (VOC) addressed in a control techniques guidelines (CTG) document issued by the United States Environmental Protection Agency (EPA) between November 15, 1990 and the area's attainment date. Under the 1997 eight-hour ozone National Ambient Air Quality Standard, the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) is currently classified as a serious nonattainment area and the Houston-Galveston-Brazoria (HGB) eight-hour ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) is currently classified as a severe nonattainment area. In December 2011, the commission adopted rules (Rule Project No. 2010-016-115-EN) to implement the EPA's RACT recommendations in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG (EPA 453/R-08-003) in the DFW and HGB 1997 eight-hour ozone nonattainment areas.

Adopted §115.453(c), concerning Control Requirements, requires the use of one of the approved coating application systems listed or another application system capable of achieving a transfer efficiency equivalent to or better than the transfer efficiency of high-volume, low-pressure (HVLP) spray, which is assumed to be 65% for the purpose of this rule. Although the EPA's 2008 CTG recommended airless spray and air-assisted airless spray application systems as RACT, the 2011 rulemaking omitted these two types of systems from the list of approved application systems under the consideration that companies using these systems could demonstrate equivalency to HVLP systems. However, demonstrating equivalency to HVLP systems may be more difficult for airless spray and air-assisted airless spray application systems than anticipated in the 2011 rulemaking.

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This rulemaking revises the list of approved coating application systems in §115.453(c) to include airless spray and air-assisted airless spray coating application systems. The adopted rulemaking is consistent with the EPA's 2008 Miscellaneous Metal and Plastic Parts Coatings CTG recommendations and implements RACT as intended by the December 2011 rulemaking. The adopted revision eliminates the unnecessary testing of airless spray and air-assisted airless spray systems or purchase of new application equipment in order to demonstrate compliance with the rule. If adopted, staff will submit the amended rule to the EPA as a SIP revision.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking revises the list of approved coating application systems in §115.453(c) to include airless and air-assisted airless spray application systems for the coating of miscellaneous metal parts and products, miscellaneous plastic parts and products, and automotive/transportation and business machine plastic parts, and for the application of motor vehicle materials in the DFW and HGB 1997 eight-hour ozone nonattainment areas.

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

For nonattainment areas classified as moderate and above, FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for VOC emission sources addressed in a CTG document issued by the EPA between November 15, 1990 and the area's attainment date.

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

None.

Statutory authority:

The amended section is 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 TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; 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 amended section is 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; and §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. The amended section is also adopted under THSC §382.016, concerning Monitoring

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Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017, 382.021, and FCAA, 42 USC, §§7401 *et seq.*

Effect on the:

A.) Regulated community:

The adopted rulemaking eliminates the need for affected owners and operators to perform testing or to purchase a new application system in order to demonstrate compliance with the coating application system requirements in §115.453(c).

B.) Public:

The adopted rulemaking benefits the public through continued protection of air quality.

C.) Agency programs:

The adopted rulemaking will not affect agency programs.

Stakeholder meetings:

No stakeholder meetings were held for this adopted rulemaking.

Public comment:

Public hearings were held in Austin, in the DFW area, and in the HGB area. No oral comments were presented at these public hearings. One written comment was received from the EPA supporting the rule revision to §115.453(c).

Significant changes from proposal:

No substantive changes were made from proposal. One non-substantive revision was made to §115.453(a)(1) to conform to *Texas Register* formatting and style requirements.

Potential controversial concerns and legislative interest:

Staff does not expect the EPA will object to the adopted rule revision because it submitted comments in support of the change and because airless and air-assisted airless spray coating application systems are included in its 2008 Miscellaneous Metal and Plastic Parts Coating CTG RACT recommendations. Since the rule was not revised prior to the March 1,

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2013 compliance date, staff issued a memo to provide interim guidance on the requirements for airless spray and air-assisted airless spray application systems.

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

No.

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

The commission could decide to not proceed with rulemaking. The existing rule allows the use of airless spray and air-assisted airless spray application systems if testing demonstrates the transfer efficiency of these systems is equivalent to that of an HVLP system.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** June 7, 2013

Anticipated *Texas Register* adoption publication date: November 8, 2013

Anticipated effective date: November 14, 2013

Six-month *Texas Register* filing deadline: December 9, 2013

Agency contacts:

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Attachments

None.

cc: Chief Clerk, 2 copies
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