

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 22, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Docket No.: 2013-1392-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
Stage I Testing Requirements Rule Revision
Rule Project No. 2013-022-115-AI

Background and reason(s) for the rulemaking:

Stage I vapor recovery for filling of gasoline storage tanks at gasoline dispensing facilities (GDF) is a reasonably available control technology (RACT) requirement for ozone nonattainment areas, required under §182 of the Federal Clean Air Act (FCAA) and the Control Techniques Guideline documents for RACT issued by the United States Environmental Protection Agency (EPA). The commission's Stage I rules are included in 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) from Motor Vehicle Fuel Dispensing Facilities. In addition to fulfilling FCAA RACT requirements for ozone nonattainment areas, the commission adopted rule revisions to the Chapter 115 Stage I rules in 1999 implementing the Stage I vapor recovery option of the Texas Clean Air Strategy (TCAS) for certain ozone attainment counties. The revisions were one element of the new TCAS, which included a variety of options that affected areas could implement to meet or maintain the National Ambient Air Quality Standard (NAAQS) for ground-level ozone. The purpose of the strategy was to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas in compliance with the federal ozone standards and to help the ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS.

In 2012, the EPA finalized a rulemaking (published in the May 16, 2012, *Federal Register* (77 FR 28772)) for 40 Code of Federal Regulations (CFR) Part 51, determining that vehicle on-board refueling vapor recovery technology is in widespread use for the purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. As a result, the commission adopted a rule revision (Rule Project Number 2013-001-115-AI) and an accompanying state implementation plan (SIP) revision authorizing the decommissioning of Stage II gasoline vapor recovery systems at GDFs in nonattainment areas classified as serious and above for the ozone NAAQS. During the development of these two projects, staff identified testing requirements, TXP-101 and TXP-102, in the Stage II rules that are necessary to ensure there are no leaks in the Stage I petroleum storage tank's (PST) vapor recovery system. With the decommissioning of Stage II vapor

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recovery controls, the rules requiring testing the Stage I system on these PSTs would no longer apply. To preserve existing Stage I testing requirements in ozone nonattainment and ozone maintenance counties, the commission proposed revisions to the Stage I testing requirements.

Currently, the Stage I testing requirement will no longer be applicable when Stage II decommissioning occurs at the GDF. The owners or operators of GDFs in the 95 counties, including the ozone nonattainment counties of Ellis, Johnson, Kaufman, Parker, and Rockwall that do not have Stage II but are subject to the state Stage I rule requirements are required to inspect for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer from the transport vessel to the PST. The remaining 143 counties must comply with the federal Stage I testing requirements and are required to perform the California Air Resource Board (CARB) Vapor Recovery Test Procedures TP-201.3 and TP-201.1E. These CARB testing requirements are similar to the TXP-101 and TXP-102 testing requirements. However, the CARB TP 201.1E test is more stringent than the TXP-102 test because the CARB TP-201.1E test requires testing the pressure and vacuum thresholds of the pressure/vacuum (P/V) valve while the TXP-102 only requires testing the pressure threshold of the P/V valve.

The Stage I vapor recovery rule ozone nonattainment area requirements apply to GDFs in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties), and Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties). The Beaumont-Port Arthur area (Hardin, Jefferson, and Orange Counties), and El Paso County, which are under ozone nonattainment maintenance plans as part of the 1997 ozone standard are also subject to the Stage I vapor recovery requirements. Chapter 115 Stage II vapor recovery requirements also apply in 16 (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller) of these 21 counties; Stage II is not required in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties of the DFW area. These rules regulate the filling of gasoline storage tanks at GDFs by tank trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks that would otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank truck, and the vapors are processed by a vapor control system when the tank truck is subsequently refilled at a gasoline terminal or gasoline bulk plant.

Compliance with Stage I vapor recovery rules is currently dependent on the geographical location of the GDF within the state and the volume of fuel dispensed. GDFs within the 95 counties that are located in the eastern part of the state must comply with state requirements found in Chapter 115, Subchapter C, Division 2. GDFs located within any county not covered by the state Stage I requirements are covered under the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Stage I requirements in 40 CFR Part 63, Subpart CCCCC. For both the state and federal Stage I

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regulations, the gallons of gasoline dispensed per month and the county where the GDF is located determines if the owner or operator of a GDF is required to install Stage I equipment. Owners of GDFs with multiple locations throughout an area in the state with similar monthly gasoline throughput amounts could be subject to different equipment and testing requirements depending on their geographical location.

The effectiveness of Stage I vapor recovery rules relies on the captured vapors being: effectively contained within the gasoline tank truck during transit; and controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the GDF will simply be emitted during transit or when the transport vessel is refilled, resulting in no reduction in volatile organic compound (VOC) emissions despite the Stage I requirements.

Scope of the rulemaking:

In researching the Stage I testing requirements that facilities in ozone nonattainment areas will have to comply with once Stage II vapor recovery equipment has been decommissioned, the commission determined that additional revisions related to testing requirements were necessary to improve clarity and consistency in compliance and program administration for the affected industry and the agency. The adopted revisions will improve the consistency of required equipment and testing for owners of GDFs in areas that currently have different requirements. These adopted revisions will also eliminate confusion concerning testing requirements within the industry by improving consistency between the state and federal Stage I rules.

The adopted rule revision will revise Chapter 115 to specify Stage I testing requirements for GDFs located in the 16 counties that will be affected by the Stage II rule revision (decommissioning Rule Project Number 2013-001-115-AI), preserve existing Stage I testing requirements in currently affected counties, and establish testing requirements in Chapter 115 that are more consistent with the testing required in the federal Stage I rule in 40 CFR Part 63, Subpart CCCCC.

The adopted rule revision will address issues of Stage I testing requirements not being uniform within the state program areas or between the state and federal programs. Currently, owners or operators of GDFs in the 16 counties that have implemented Stage II are required to complete the TXP-101 and the TXP-102 test procedures at the time of installation of Stage II vapor recovery equipment and at least once a year thereafter.

The adopted rule revision will apply only to the GDFs located in the 16 counties subject to Stage II requirements and in the 95 counties that are only subject to the Stage I rule.

Wise County in the DFW area has been designated as nonattainment for the 2008 eight-hour ozone standard. The executive director has approved initiation of a rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements, including

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Stage I requirements, for Wise County that are necessary as a result of the designation. These rules are tentatively scheduled for proposal in December 2014.

A.) Summary of what the rulemaking will do:

The adopted rule revision will revise Chapter 115, Subchapter C, Division 2. The adopted rulemaking will amend §§115.10, 115.221, 115.222, 115.224 - 115.227, and 115.229.

The adopted rulemaking will:

- add definitions for “dual-point vapor balance system,” “coaxial system,” and “gasoline dispensing facility”;
- remove language regarding Stage II vapor recovery systems, which are required to be decommissioned;
- require owners and operators of affected GDFs to comply with new testing and inspection procedures for their Stage I vapor recovery system that are consistent with the federal Stage I rule;
- require owners and operators of affected GDFs to maintain compliance with the Stage I vapor recovery requirements through annual testing;
- reduce the throughput level for exemption from Stage I in the 95 affected counties from 125,000 gallons per month to 100,000 gallons per month in covered attainment counties to ensure consistency with the NESHAP requirements and provide owners and operators of GDFs with clarity on compliance with equipment and testing requirements; and
- include minor changes to language such as changing “leak” to “liquid leak, visible vapors, and significant odors” to provide more clarity within the rule language.

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

None.

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

The adopted rulemaking is recommended by staff to ensure Stage I compliance continues at GDFs subject to current Stage II requirements, to provide consistency and clarity, and to help provide administrative consistency throughout the affected industry in areas subject to both the state and federal Stage I rules.

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 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

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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; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §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 THSC, §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 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 United States Code (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 adopted revisions 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 have an effect on the current owners of the GDFs and licensed contractors who install, test, and monitor the Stage I equipment. Owners and operators of affected GDFs may experience an increased cost due to testing being required on an annual basis. Testing costs for the Stage I system range from \$250 to \$275 for annual inspections. Contractors who test the Stage I equipment in the affected areas may be impacted by the tests being required on an annual basis.

B.) Public:

No direct impact is anticipated.

C.) Agency programs:

The TCEQ's Office of Compliance and Enforcement's (OCE) Field Operations Division has investigators that currently monitor and inspect equipment and installations at affected GDFs. The OCE may see its workload change as owners or operators of GDFs make the necessary changes to meet the annual Stage I testing and inspection requirements at facilities that currently are only required to test once every three years.

Stakeholder meetings:

Informal stakeholder meetings on potential revisions to the Stage I testing requirements were held on April 24, 2013 in Arlington, April 25, 2013 in Longview, April 29, 2013 in

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Corpus Christi, April 30, 2013 in Houston, May 1, 2013 in Austin, and May 2, 2013 in El Paso. Commenters present agreed that Stage I testing requirements needed to be uniform across the state and that federally required testing procedures and methods were generally accepted by the industry. Commenters also agreed that testing of Stage I equipment should be performed more frequently to better detect potential issues with the system and improve compliance with testing requirements.

Public comment:

The commission scheduled public hearings in Austin on May 1, 2014, in Fort Worth on April 29, 2014, and in Houston on May 6, 2014. The hearings were not officially opened because no one registered to provide oral comments. The comment period closed on May 12, 2014. The commission received written comments from the EPA and the Texas Food and Fuels Association (TFFA). The EPA and the TFFA expressed overall support for the proposed rule change, and changes to the rule were suggested by the TFFA. Significant public comments are summarized as follows.

- The EPA expressed concern that the rule revision does not account for the designation of Wise County as nonattainment within the DFW ozone nonattainment area under the 2008 eight-hour ozone standard. The EPA also commented that there is a non-substantive variation between the proposed revisions to the first sentence of §115.10(11) submitted to the EPA in letter form and those posted on the TCEQ website. *Wise County in the DFW area has been designated nonattainment for the 2008 eight-hour ozone standard. The executive director has approved initiation of a separate rulemaking project (Rule Project No. 2013-048-115-AI) to address VOC RACT requirements including Stage I requirements for Wise County that are necessary as a result of the nonattainment designation. The commission has determined that including all applicable RACT requirements for Wise County in one rulemaking would provide the best notice to the public of additional requirements in Wise County due to its inclusion in the DFW nonattainment area for the 2008 eight-hour ozone standard. There is no anticipated impact on the revisions in this current rulemaking as a result of the future Rule Project No. 2013-048-115-AI. In addition, this current rulemaking will be adopted before the DFW RACT Rulemaking, which is tentatively scheduled for proposal in December 2014. No change to the rule has been made in response to this comment.*
- The TFFA commented that it questions the benefits of the change to the federally required test method in §115.225 for testing consistency and ease of compliance issues as outlined in the preamble. *This revision will minimize confusion within the industry regarding the type of test required in different geographical areas of East Texas and the frequency of the tests. The revision would also provide consistency in compliance and enforcement activities by the commission by more clearly defining the testing schedule and testing procedures. The improvement of consistency in compliance requirements is a benefit for the state and affected stakeholders and strengthens the benefits of this clean air strategy included in the*

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SIP. Without further information regarding the TFFA's specific concerns, the commission cannot address them. No changes to the rule have been made in response to this comment.

- The TFFA also commented that it does not support the proposed revisions to §115.226 that require records to be kept on site, nor does it support the current requirement to do so found in §115.226(2). The TFFA urges the commission to remove the entire provision of §115.226(1) and requests that the commission not adopt the revision to §115.226(2)(B) requiring records to be immediately available on site. The TFFA commented that the commission has placed an unjustified and expensive recordkeeping provision on the GDF because the same records are being kept by the owner or operator of the tank truck. *The commission acknowledges that the proposed language may be confusing as to the records that shall be kept on site at the affected GDF. The commission did not intend to propose that any additional records be kept on site other than those records already required in current §115.226. Paragraph (1) specifies records that must be maintained at the facility site. Records required under paragraph (2) must be made available at the site during an inspection already applies to all the records required under §115.226(2) via subparagraph (C). The commission's intent with the change was to streamline rule language but retain this requirement because subparagraph (C) was proposed for deletion. The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site but instead clarifying that records must be provided on site during an inspection.*

Significant changes from proposal:

The commission has revised the rule language to clarify that no additional records are being proposed to be kept on site but instead clarifying that records must be provided on site during an inspection. The commission has made this change in response to the TFFA's concern regarding recordkeeping requirements found in §115.226.

Potential controversial concerns and legislative interest:

No controversial concerns or legislative interests are anticipated.

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

This adopted rulemaking is not anticipated to affect any current policies or require development of new policies.

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

Owners or operators of GDFs subject to Stage II will no longer be required to perform the annual inspection procedures after the Stage II equipment has been decommissioned, which may result in decreased effectiveness of the Stage I equipment. Additionally, owners

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or operators of GDFs in counties subject to the Chapter 115 Stage I rule will continue to have requirements that are inconsistent with the federal Stage I rule.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: April 11, 2014

Anticipated *Texas Register* adoption publication date: September 26, 2014

Anticipated effective date: October 2, 2014

Six-month *Texas Register* filing deadline: October 13, 2014

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Attachments

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