

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.: 2013-1869-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
Low RVP Gasoline Program Rule Revisions
Rule Project No. 2014-002-114-AI

Background and reason(s) for the rulemaking:

The current state regulations for the Regional Low Reid Vapor Pressure (RVP) Gasoline Program, as specified under the Chapter 114 gasoline volatility rules in §114.301, prohibit the sale of all gasoline from gasoline-dispensing facilities that has a RVP greater than 7.8 pounds per square inch (psi) within the 95 central and eastern Texas counties affected by these regulations from June 1 through October 1 of each year. This prohibition applies to all other affected entities in the affected 95 counties from May 1 through October 1 of each year. These rules also prohibit the increased use of methyl-tertiary-butyl-ether (MTBE) in gasoline to comply with the low RVP gasoline requirements during the period of May 1 through October 1 each year over that used in the period May 1 through October 1, 1998, on an average per gallon basis.

Low RVP gasoline is refined to have a lower evaporation rate and lower volatility than conventional gasoline. Low RVP gasoline reduces the evaporative emissions generated during vehicle refueling and therefore decreases the emissions of volatile organic compounds (VOC) and other ozone-forming emissions.

The Regional Low RVP Gasoline Program rules, as specified in §114.304, also require all gasoline producers and importers that supply gasoline to the affected counties to register with the Texas Commission on Environmental Quality (TCEQ). In addition, all registered gasoline producers and importers are required, as specified in §114.306, to submit an annual report certifying that the use of MTBE in the gasoline supplied to the affected counties, from May 1 through October 1 of the current reporting year, has not increased on an average per gallon basis from that used during the period of May 1 through October 1, 1998.

The following 95 Texas counties, as specified in §114.309, are affected by the Regional Low RVP Gasoline Program regulations: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe,

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Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

The use of MTBE as an oxygenate for compliance with federal reformulated gasoline regulations (RFG) and as a gasoline octane enhancing additive was common when the Regional Low RVP Gasoline Program regulations in Chapter 114 were originally adopted in June 1999. Concerns over the potential MTBE contamination of groundwater and surface water led the commission to adopt the MTBE prohibition specified in §114.301(c) in April 2000 to prevent gasoline producers from increasing the use of MTBE in gasoline to conform to the low RVP requirements. The gasoline producer and importer registration requirements in §114.304 and the annual reporting requirements specified in §114.306(c) were also adopted in April 2000 to enhance the enforceability of the MTBE prohibition specified in §114.301(c). The United States Environmental Protection Agency (EPA) approved the Low RVP Gasoline Program rules in Chapter 114 as a state implementation plan (SIP) control strategy for the one-hour ozone National Ambient Air Quality Standard (NAAQS) in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas on April 26, 2001 (66 FR 20927).

Subsequently, with the passage of the Energy Policy Act in 2005, the federal regulations requiring the use of oxygenates, such as MTBE, in RFG were repealed and a new federal renewable fuel standard requiring the use of ethanol in gasoline was enacted. As a result, gasoline producers began to blend ethanol into gasoline to meet the new federal renewable fuel standard and MTBE was effectively removed from general use as a gasoline additive by the gasoline refining industry, primarily due to growing concerns over the MTBE contamination of groundwater and surface water. Samples of gasoline collected statewide in 2011 for a summer fuel field study conducted by the TCEQ showed only trace amounts of MTBE in some samples, i.e., less than 0.1% by volume, while every gasoline sample collected contained ethanol ranging from 1.99% to 9.44% by volume. The adopted amendments to the Regional Low RVP Gasoline Program rules will remove obsolete requirements that provide no benefit to the state and are no longer necessary for the implementation and enforcement of the primary gasoline volatility control requirements of the rule. In addition, the adoption will provide regulatory consistency between the Chapter 114 gasoline volatility requirements and the El Paso Low RVP Gasoline requirements specified in the 30 Texas Administrative Code (TAC) Chapter 115 regulations in §§115.252, 115.253, 115.255 – 115.257, and 115.259, which do not prohibit the use of MTBE and do not require registration and annual reporting.

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Scope of the rulemaking:

The adopted rule revision will amend Chapter 114 as follows:

- amend §114.301 to remove the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements;
- repeal §114.304 to remove the registration requirements for gasoline producers and importers that supply low RVP gasoline to the affected 95 counties;
- amend §114.306 to remove the annual reporting and certification requirements on the use of MTBE in the low RVP gasoline and to make clarifying changes to the section heading as needed for accuracy and consistency with the adopted changes to the section; and
- amend §114.307 and §114.309 to make non-substantive clarifying changes as needed for accuracy and consistency with the adopted changes to §114.306.

A.) Summary of what the rulemaking will do:

The adopted rulemaking will remove the prohibition on the increased use of MTBE in gasoline to conform to the low RVP gasoline requirements; remove the registration requirements for gasoline producers and importers that supply low RVP gasoline to the affected counties; remove the annual reporting and certification requirements on the use of MTBE in low RVP gasoline; and make other non-substantive clarifying changes as needed for accuracy and consistency.

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 amendments and repeal are adopted under Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §28.011, concerning Underground Water: Regulations, which provides the commission with the authority to adopt and enforce rules to protect and preserve underground water quality. The amendments and repeal are also adopted under Texas Health and Safety Code (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; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the

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quality of the state's air; THSC, §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; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004.

The amendments implement THSC, §§382.002, 382.011, 382.012, 382.017, and 382.202.

Effect on the:

A.) Regulated community:

The adoption will have a beneficial effect on the regulated gasoline producers and importers since it will remove obsolete administrative requirements, such as annual reporting to certify no increase in the use of MTBE in gasoline, which has not been an issue since 2005.

B.) Public:

The adoption will have no effect on the public since the primary controls specified in the rules that require the sale of low RVP gasoline during the ozone season will remain unchanged.

C.) Agency programs:

The adoption will have a beneficial effect on current agency programs by allowing staff resources allocated to administer the registration and annual MTBE reporting provisions of the Regional Low RVP Gasoline Program to be assigned to different tasks.

Stakeholder meetings:

None.

Public comment:

The commission offered a public hearing on May 8, 2014, in Austin, Texas. The hearing was 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 Texas Food and Fuel Association (TFFA) and the Texas Oil and Gas Association (TXOGA). Both commenters were in support of the rule changes.

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Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

Although the adopted revisions primarily address administrative requirements, the EPA may require further documentation to demonstrate compliance with the anti-backsliding provisions of Section 110(l) of the Federal Clean Air Act. In addition, the adopted removal of the prohibition on the increased use of MTBE to meet low RVP gasoline requirements may generate concern from the public that this removal could cause an increase in the use of MTBE in all gasoline as a result, especially if there was any change to the current federal ethanol mandates. However, gasoline producers are already allowed to add MTBE to gasoline for other reasons, such as octane enhancement, under the current regulations. An increased use of MTBE is unlikely due to concerns by gasoline producers with their lack of liability protection under federal law for potential MTBE contamination of groundwater and surface water.

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

This adopted rulemaking will have no significant effect on any current policy nor will it require any new policies to be developed.

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

1. Refrain from rulemaking and maintain the status quo of requiring the submission of annual MTBE reports and the registration of new gasoline producers and importers.
2. Exercise enforcement discretion for annual MTBE reporting and for any new registration.

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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Agency contacts:

Morris Brown, Rule Project Manager, (512) 239-1438, Air Quality Division
Terry Salem, Staff Attorney, (512) 239-0469
Bruce McAnally, Texas Register Coordinator, (512) 239-2141

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Pattie Burnet
Office of General Counsel
Morris Brown
Bruce McAnally