

Effective: March 5, 2000

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
Permanent Rule Change

Rule Log No. 1999-026-118-AI
Quadrennial Review of Chapter 118

Chapter 118
Control of air Pollution Episodes

1. Purpose. This change transmittal provides the page(s) that reflect changes and addition to the Texas Natural Resource Conservation Commission (commission) Volume of Permanent Rules.
2. Explanation of Change. On February 9, 2000, the commission adopted amendments to §§118.1-118.6, relating to Control of Air Pollution Episodes. Sections 118.1, 118.3, and 118.4 are adopted with changes to the proposed text as published in the October 15, 1999 issue of the *Texas Register* (24 TexReg 8913). Sections 118.2, 118.5, and 118.6 are adopted without changes and will not be republished. The revisions update references and statutory citations, make various wording changes in all six sections to improve readability, and remove unnecessary wording. The amendments are adopted as a revision to the Texas State Implementation Plan (SIP). Also, the commission is adopting the rules review of and readopting Chapter 118 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The notice of adopted review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

Chapter 118 implements the requirements of the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.026, concerning Orders Issued Under Emergencies and the Texas Water Code (TWC), §5.514, concerning Order Issued Under Air Emergency. In addition, Chapter 118 is the state's means of complying with the federal requirements of 40 Code of Federal Regulations (CFR) 51, Subpart H, relating to Air Pollution Emergency Episodes; and is a part of the SIP to attain the federal national ambient air quality standard (NAAQS) for ozone under 40 CFR §52.2270 which implements the Federal Clean Air Act (FCAA), §110, concerning Implementation Plans and §303, concerning Emergency Powers.

Chapter 118 specifies conditions and establishes actions to be taken by the commission and man-made emissions sources to protect human health and safety in response to an air emergency ranging from generalized air pollution episodes to localized air pollution episodes. Under such conditions, the commission or the executive director, with the governor's concurrence, could request or order any contributing source immediately to reduce or discontinue the emission of air contaminants. The rules also establish administrative procedures for review of any order issued under these rules. The rules contain requirements for certain major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties to prepare and maintain Emission Reduction Plans. Finally, the rules require the commission to prepare a contingency plan for communications regarding actual or impending air pollution episodes.

The changes to §§118.1, 118.3, and 118.4 simply correct the reference to state law from TCAA, §382.026, to TWC, §5.514, in response to the reorganization of certain commission authorities relating to emergency orders into the TWC. Sections 118.1 and 118.2 implement the provisions of

the TWC, §5.514(a), and contain episode criteria recommended in 40 CFR 51, Appendix L, concerning Example Regulations for Prevention of Air Pollution Emergency Episodes. Sections 118.2 and 118.3 satisfy the FCAA, §110(a)(2)(G), by providing authority comparable to that given the United States Environmental Protection Agency (EPA) administrator in the FCAA, §303, to stop the emission of air pollutants causing or contributing to an episode. Also, §118.3 implements the provisions of the TWC, §5.514(b), relating to localized episodes. Section 118.4 satisfies requirements of the TWC, §5.514(c) and (d), relating to notice of a hearing to be held before the commission. Section 118.5 conforms to the EPA recommendations for emission reduction standby plans to be prepared, approved, and maintained on-site by sources which are likely to contribute to an episode. Section 118.6 satisfies a requirement of the FCAA, §110(a)(2)(G), for the SIP to provide a contingency plan to implement the state's authority specified in the FCAA, §303. Also, §118.6 satisfies the requirement for a state plan under 40 CFR 51, Subpart H.

On February 9, 2000, the commission adopted the review of and readopts 30 TAC Chapter 118, Control of Air Pollution Episodes. This review was conducted under Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999. The proposed notice of review was published in the October 15, 1999 issue of the *Texas Register* (24 TexReg 9059).

The Texas Government Code and the General Appropriations Act require state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. Reviews must include an assessment that the reasons for the rules continue to exist. The commission has determined that the need for these rules continues to exist. Chapter 118 implements the requirements of the Health and Safety Code, Texas Clean Air Act (TCAA), §382.026, concerning Orders Issued Under Emergencies and the Texas Water Code (TWC), §5.514, concerning Order Issued Under Air Emergency. In addition, Chapter 118 is the state's means of complying with the federal requirements of 40 Code of Federal Regulations (CFR) 51, Subpart H, relating to Air Pollution Emergency Episodes; and is a part of the state implementation plan (SIP) to attain the federal national ambient air quality standard (NAAQS) for ozone under 40 CFR §52.2270 which implements the Federal Clean Air Act (FCAA), §110, concerning Implementation Plans and §303, concerning Emergency Powers.

Chapter 118 specifies conditions and establishes actions to be taken by the commission and man-made emissions sources to protect human health and safety in response to air emergencies ranging from generalized air pollution episodes to localized air pollution episodes. Under such conditions, the commission or the executive director, with the governor's concurrence, could request or order any contributing source immediately to reduce or discontinue the emission of air contaminants. The rules also establish administrative procedures for review of any order issued under these rules. The rules contain requirements for certain major stationary sources in El Paso, Galveston, Harris, Jefferson, and Orange Counties to prepare and maintain Emission Reduction Plans. Finally, the rules require the commission to prepare a contingency plan for communications regarding actual or impending air pollution episodes.

The public comment period for the review closed November 15, 1999. No comments were received concerning the rules review of Chapter 118.

The commission concurrently adopts amendments to Chapter 118 in the Adopted Rules section of this issue of the *Texas Register*. The amendments are a result of the commission's review of the rules and primarily address the commission's regulatory reform goals by improving readability and

updating references and citations.