

The Texas Commission on Environmental Quality (commission) adopts amendments to §§115.227, 115.229, 115.412, 115.413, 115.415 - 115.417, 115.419, 115.512, 115.516, 115.517, and 115.519. Section 115.229 is adopted *with change* to the proposed text as published in the July 30, 2004 issue of the *Texas Register* (29 TexReg 7272). Sections 115.227, 115.412, 115.413, 115.415 - 115.417, 115.419, 115.512, 115.516, 115.517, and 115.519 are adopted *without changes* to the proposed text and will not be republished.

These amended sections and corresponding revisions to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

The commission adopts these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, in order to reduce ozone precursors in the four counties in the San Antonio Early Action Compact (EAC) area (Bexar, Comal, Guadalupe, and Wilson Counties) and the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties). The reduction of ozone precursors in these counties will enable the EAC areas to attain and maintain the eight-hour ozone national ambient air quality standards by the agreed upon deadline of 2007.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Texas has a history of proactive air quality initiatives. Since 1996, the Texas Legislature has provided funding to the near-nonattainment areas (San Antonio, Austin, Northeast Texas, Corpus Christi, and Victoria) for use in performing planning functions related to the reduction of ozone concentrations in each area. The areas have conducted ambient air monitoring, following EPA guidelines, that is beyond

that performed by the commission, including installing and maintaining supplementary monitors. The areas developed emissions inventories and photochemical modeling episodes, and the modeling episode results have been used for air quality planning and to develop clean air action plans. In response to the promulgation of the new eight-hour ozone national ambient air quality standard, the local elected officials and air quality planners in central Texas proposed an “accelerated attainment area” concept to the commission and to the EPA. This concept, which was designed to help voluntarily achieve the eight-hour ozone standard, eventually developed into an “early implementation plan.” Neither concept was endorsed by EPA, although in 2001, EPA proposed an “ozone flex” program to allow areas to create voluntary plans to address the one-hour ozone standard. The state was among the first in the nation to adopt an “ozone flex agreement.” A precursor to the EAC program, “ozone flex agreements” were designed to help maintain compliance with the one-hour ozone standard.

The commission continued to be committed to the concept of voluntary, early action toward the eight-hour standard, however, and continued to work with EPA and members of the environmental community toward that end. In March 2002, the commission approached EPA for approval of the concept of an “early action plan” to be established through a compact between local, state, and EPA officials for areas that are in attainment (including no monitored violations) of the one-hour ozone standard, but that are approaching or monitoring exceedances of the eight-hour standard.

This concept of an early, voluntary eight-hour air quality plan, or EAC, was endorsed by EPA Region 6 in June 2002, then slightly modified and made available nationally in November. The EACs include all the necessary elements of a comprehensive air quality plan, but are tailored to local needs and driven

by local decisions. An EAC is designed to develop and implement control strategies, account for growth, and achieve and maintain the eight-hour ozone standard. This approach offers a more expeditious time line to achieve emission reductions earlier than the EPA's eight-hour implementation rulemaking, while providing "fail-safe" provisions for the area to revert to the traditional SIP process if specific milestones are not met.

The principles of a tri-party EAC, to be executed by local, state, and EPA officials, are: 1) early planning, implementation, and emission reductions leading to expeditious attainment and maintenance of the eight-hour ozone standard; 2) local control of the measures to be employed, with broad based public input; 3) state support to ensure technical integrity of the EAC; 4) formal incorporation of the EAC into the SIP; 5) deferral of the effective date of nonattainment designation and related requirements, provided all EAC terms and milestones are met; and 6) safeguards to return areas to traditional SIP requirements should EAC terms and/or milestones be unfulfilled, with appropriate credit given for emission reduction measures implemented. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC will implement every measure. Should an EAC area miss a milestone at any time during the agreement, including attaining the eight-hour standard by 2007, it would forfeit its participation and rejoin the eight-hour implementation process in progress. The EAC area would then be subject to the same requirements and deadlines that would have been effective had it not participated in this program, with no delays or exemptions from EPA rules.

On December 9, 2002, the cities of Floresville, New Braunfels, San Antonio, and Seguin; the counties of Bexar, Comal, Guadalupe, and Wilson; the commission; and EPA entered into an EAC for the San Antonio metropolitan statistical area (MSA). The San Antonio EAC area applies to Bexar, Comal, Guadalupe, and Wilson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the San Antonio EAC elected to use the MSA at the time of the agreement for the EAC and the clean air action plan. In accordance with the commitments made in the San Antonio EAC, the area prepared and submitted by March 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA designated as nonattainment the San Antonio EAC area counties of Bexar, Comal, and Guadalupe based on the 2001 - 2003 design value of 89 parts per billion. Wilson County was designated attainment.

On December 18, 2002, the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos; the counties of Bastrop, Caldwell, Hays, Travis, and Williamson; the commission; and EPA entered into an EAC for the MSA. The Austin EAC area applies to the five counties included in the MSA, which are Bastrop, Caldwell, Hays, Travis, and Williamson Counties. The EPA default assumption in defining nonattainment area boundaries is the MSA boundaries; therefore, the Austin EAC elected to use the MSA for the EAC and the clean air action plan. In accordance with the commitments made in the Austin EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Monitoring data from the 2004 ozone season, which has not yet

been validated, indicates that the 2002 - 2004 average will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

On December 20, 2002, the cities of Gilmer, Henderson, Kilgore, Longview, Marshall, and Tyler; the counties of Gregg, Harrison, Rusk, Smith, and Upshur; the commission; and EPA entered into an EAC for the Northeast Texas area. The Northeast Texas area applies to the five counties of Gregg, Harrison, Rusk, Smith, and Upshur. In accordance with the commitments made in the Northeast Texas area EAC, the area prepared and submitted in March of 2004 a clean air action plan that demonstrates attainment of the eight-hour standard in the area by 2007 and maintenance of the standard until at least 2012. On April 15, 2004, EPA promulgated nonattainment designations under the eight-hour ozone standard. Based on the 2001 - 2003 design value of 84 parts per billion, the Northeast Texas area EAC was designated attainment. This rulemaking implements measures contained in the Austin and San Antonio EAC plans only. These measures are not part of the Northeast Texas EAC plan, therefore, no further mention will be made of the Northeast Texas EAC in this preamble.

Adopted amendments to Chapter 115, Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons in a calendar month to 25,000 gallons of gasoline in a calendar month in the four counties in the San

Antonio EAC area (Bexar, Comal, Guadalupe, and Wilson Counties) and in the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties).

Adopted amendments to Chapter 115, Subchapter E, Solvent-Using Processes, Division 1, Degreasing Processes extend the control requirements to the four counties in the San Antonio EAC area and to the five counties in the Austin EAC area.

Adopted changes to Chapter 115, Subchapter F, Miscellaneous Industrial Sources, Division 1, Cutback Asphalt extend the control requirements to the five counties in the Austin EAC area.

As previously discussed, these changes were requested by local governments in the affected counties as part of the EACs for the San Antonio and Austin areas. Under the EAC program, EPA issued to the San Antonio area counties of Bexar, Guadalupe, and Comal a deferral of the effective date of their designation of nonattainment with the eight-hour ozone standard. EPA will continue to defer the effective date until September 30, 2005 as long as the milestones of the compact continue to be met, including a SIP revision that demonstrates attainment by 2007. The SIP revision is due to EPA by December 31, 2004. The adopted rules are part of the attainment demonstration. Prior to the September 30, 2005 expiration of this deferral, EPA has indicated that it intends to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for these counties as long as they continue to meet EAC obligations and milestones. Monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average in the Austin area will result in a design value indicative of nonattainment for the area.

Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations.

SECTION BY SECTION DISCUSSION

Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

§115.227, Exemptions

The adopted amendment to §115.227(3) specifies that the exemption for motor vehicle fuel dispensing facilities which have dispensed less than 125,000 gallons of gasoline in any calendar month does not apply to the counties in the San Antonio and Austin EAC areas. A new exemption, §115.227(4), specifies a lower exemption level of 25,000 gallons per month for facilities in the San Antonio and Austin EAC counties. The existing exemption in §115.227(4) has been renumbered to §115.227(5) to accommodate addition of the new §115.227(4). This change has been requested by the San Antonio and Austin areas in order to secure volatile organic compound (VOC) emission reductions as part of their EAC attainment demonstrations.

§115.229, Counties and Compliance Schedules

Adopted new §115.229(c) is added to specify that facilities in the San Antonio and Austin EAC areas (Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties) that become subject to control requirements as a result of the change in the exemption level for these

counties must comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

The words “or more” were removed from the proposed version of §115.229(c) because these words are redundant.

Subchapter E, Solvent-Using Processes, Division 1, Degreasing Processes

§115.412, Control Requirements

The adopted amendment to §115.412 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the control requirements for cold solvent cleaning, open-top vapor degreasing, and conveyORIZED degreasing. This change has been requested by the San Antonio and Austin areas in order to secure VOC emission reductions as part of their EAC attainment demonstrations.

§115.413, Alternate Control Requirements

The adopted amendment to §115.413 adds the counties in the San Antonio and Austin EAC areas to the counties for which alternate control requirements for degreasing processes are specified. This change is necessary to allow alternatives for the counties that are being made subject to the control requirements in §115.412.

§115.415, Testing Requirements

The adopted amendment to §115.415 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the testing requirements for degreasing processes. This change is necessary to specify applicable testing requirements for the counties that are being made subject to the control requirements in §115.412.

§115.416, Recordkeeping Requirements

The adopted amendment to §115.416 adds the counties in the San Antonio and Austin EAC areas to the counties specified as subject to the recordkeeping requirements for degreasing processes. This change is necessary to specify applicable recordkeeping requirements for the counties that are being made subject to the control requirements in §115.412.

§115.417, Exemptions

The adopted amendment to §115.417 adds the counties in the San Antonio and Austin EAC areas to the counties for which exemptions from control requirements for degreasing processes are specified. This change is necessary to allow the counties that are being made subject to the control requirements in §115.412 to use the exemptions that are specified in §115.417.

§115.419, Counties and Compliance Schedules

The adopted amendment to §115.419 designates the existing text in §115.419 as §115.419(a) and adds a new subsection (b), to specify that degreasing facilities in the San Antonio and Austin EAC areas must

comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

Subchapter F, Miscellaneous Industrial Sources, Division 1, Cutback Asphalt

§115.512, Control Requirements

The adopted amendment to §115.512 adds the counties in the Austin EAC area to the counties specified as subject to the control requirements for cutback asphalt. This change has been requested by the Austin area in order to secure VOC emission reductions as part of its EAC attainment demonstration. The San Antonio area did not request that cutback asphalt rules become effective in its area; thus, the San Antonio area counties are not being added.

§115.516, Recordkeeping Requirements

The adopted amendment to §115.516 adds the counties in the Austin EAC area to the counties specified as subject to the recordkeeping requirements for this division. This change is necessary to specify applicable recordkeeping requirements for the counties that are being made subject to the control requirements in §115.512.

§115.517, Exemptions

The adopted amendment to §115.517 adds the counties in the Austin EAC area to the counties for which exemptions from control requirements for cutback asphalt use are specified. This change is necessary to allow the counties that are being made subject to the control requirements in §115.512 to use the exemptions that are specified in §115.517.

§115.519, Counties and Compliance Schedules

The adopted amendment to §115.519 designates the existing text in §115.519 as §115.519(a) and adds a new subsection (b), to specify that affected persons in the Austin EAC areas must comply with the requirements as soon as practicable, but no later than December 31, 2005. This date is the deadline specified in the EAC for control measures to be in place.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because although the rulemaking meets the definition of a “major environmental rule” as defined in that statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of §2001.0225 only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this adopted rulemaking subjects the San Antonio EAC and Austin EAC counties to the emission limitations and control requirements that were developed in order to meet the eight-hour ozone standard set by EPA under Federal Clean Air Act (FCAA), §109. States are primarily responsible for ensuring attainment and maintenance of the eight-hour ozone standard once it is established by EPA. Under FCAA, §110, states must submit to EPA for approval SIPs that provide for the attainment and maintenance of the ozone standard through control programs directed to sources

of the pollutants involved. This rulemaking is not an express requirement of state law, but was developed in order to meet the federal air quality standard. This rulemaking is intended to help bring the San Antonio EAC area into compliance with the ozone standard and to help keep the Austin EAC area from going into nonattainment. This rulemaking does involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the adopted amendments to Chapter 115 do not exceed the requirements of the compacts. The rulemaking was requested by local governments in the Austin and San Antonio EAC areas as part of their plan to comply with the eight-hour ozone standard set by EPA. This adopted rulemaking helps the EAC areas continue to meet the milestones of the compacts and to demonstrate attainment of the eight-hour ozone standard by 2007. This rulemaking was not developed solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rulemaking action and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The analysis indicates this action is reasonably being taken to fulfill an obligation mandated by federal law, and therefore is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to lower the exemption level for facilities subject to Stage I vapor recovery controls from 125,000 gallons to 25,000 gallons of gasoline in a calendar month in the four counties in the San Antonio EAC area (Bexar, Comal, Guadalupe, and Wilson Counties) and in the five counties in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties); extend the control requirements for cold solvent cleaning, open-top vapor degreasing, and conveyorized degreasing to the four counties in the San Antonio EAC area and to the five counties in the Austin EAC area; and extend the control requirements for cutback asphalt to the

five counties in the Austin EAC area. These changes were requested by local governments in the affected counties as part of the EACs for the San Antonio and Austin areas. Under the EAC program, EPA issued a deferral of the effective date of the designation of nonattainment with the eight-hour ozone standard to Bexar, Comal, and Guadalupe Counties. The deferral will continue as long as the milestones of the compact continue to be met, including a SIP revision that demonstrates attainment by 2007. The adopted rules are part of the attainment demonstration. Monitoring data from the 2004 ozone season, which has not yet been validated, indicates that the 2002 - 2004 average in the Austin area will result in a design value indicative of nonattainment for the area. Once the 2004 ozone season data is validated it could form the basis for EPA to designate the Austin area as nonattainment. However, for such EAC areas, EPA has committed to not revise its April 2004 attainment designation to nonattainment if the Austin EAC region continues to meet EAC milestones and obligations. Certain sources in the EAC areas are required to install Stage I vapor recovery equipment, install or implement controls on degreasing operations, and restrict use of cutback asphalt and meet corresponding recordkeeping and/or reporting obligations for these newly applicable requirements. These requirements could conceivably place a burden on private, real property.

Although the amendments to Chapter 115 do not directly prevent a nuisance, prevent a grave and immediate threat to life or property, and do not prevent a real and substantial threat to public health and safety, Texas Government Code, §2007.003(b)(4) provides that Chapter 2007 does not apply to these adopted amendments because they are reasonably taken to fulfill an obligation mandated by federal law. This rulemaking subjects the San Antonio EAC and Austin EAC counties to the emission limitations and control requirements that were developed in order to meet the eight-hour ozone standard set by EPA under FCAA, §109. States are primarily responsible for ensuring attainment and maintenance of

the ozone standard once it is established by EPA. Under FCAA, §110, states must submit to EPA for approval SIPs that provide for the demonstration of attainment and maintenance of the ozone standard through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to meet and maintain the federal ozone standard. Meeting the milestone requirements of the EAC in the San Antonio EAC area, including demonstration of attainment of the federal standard, will require reductions in VOC emissions from filling of storage tanks at gasoline dispensing facilities and degreasing operations. These reductions, as well as reductions from cutback asphalt use restrictions, will help the Austin EAC area meet its compact milestones and thus defer a nonattainment designation.

Therefore, these adopted amendments meet the requirements of §2007.003(b)(4). For this reason, this rulemaking does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and determined that the rulemaking does not affect any Coastal Natural Resource Areas because the rules only affect counties outside the CMP area and are therefore consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 is an applicable requirement under 30 TAC Chapter 122; therefore, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter

122, revise their operating permit to include the revised Chapter 115 requirements at their sites affected by the revisions to Chapter 115.

PUBLIC COMMENT

The commission conducted public hearings on the proposed rules on August 23, 2004 in Austin, August 24, 2004 in Longview, and on August 26, 2004 in San Antonio. Public hearing comments were received from the Judge Samuel T. Biscoe of Travis County (Judge Biscoe), the EAC Taskforce (EACT), and one individual. During the public comment period which closed on August 30, 2004, the commission received written comments from the Alamo Area Council of Governments (AACOG); Central Texas Clean Air Coalition (CAC); Chemical Lime Company; Environmental Protection Agency Region 6 (EPA); and Ray Sanders, Mayor of Lockhart (Mayor Sanders). All commenters, with the exception of the individual, generally expressed support for the proposed rules.

RESPONSE TO COMMENTS

AACOG, Judge Biscoe, Chemical Lime Company, EACT, and Mayor Sanders commented in support of the rulemaking. AACOG and Judge Biscoe noted appreciation of the collaborative nature of the EAC development. EACT stated that the EAC process is a good template for ways to get things done because it takes ideas from the local level and sends them to the state, rather than the reverse.

The commission appreciates these comments in support of the rulemaking.

CAC stated support of the rulemaking, and requested that the time frame for the prohibition on the use, application, sale, or offering for sale of cutback asphalt be changed from April 16 through September

15 to April 1 through October 31. The requested time frame would coincide with the ozone season for the Austin EAC counties and the time frame for the new locally enforced motor vehicle idling rule in Chapter 114, Subchapter J, Division 2.

The requested change would result in the Austin EAC area being subjected to a more stringent control requirement than existing nonattainment areas. For this reason, the commission declines to make the requested change at this time. The commission will reevaluate the time frame as it develops SIPs for the eight-hour standard for current nonattainment areas.

CAC also requested that the preamble to the rules clarify that the Austin area is currently monitoring nonattainment.

The commission modified the preamble to explain that monitoring results obtained since the rulemaking was proposed have shown ozone readings in the Austin area that are above the eight-hour standard. The preamble further explains that these results have not yet been quality-assured, but if verified they could form the basis for EPA designating the Austin area as nonattainment for the eight-hour standard.

Judge Biscoe commented that local elected officials anticipated that the Austin/Round Rock MSA might not meet the new eight-hour national ambient air quality standard, which is why they worked hard to draft the Clean Air Action Plan. He further commented that the 12 jurisdictions that signed the Clean Air Action Plan concluded that region-wide rules are the only reasonable and fair approach to

addressing air pollution, and that because counties do not have ordinance authority in this area, that state rules are necessary.

The commission appreciates this comment in support of the adopted rulemaking and appreciates Judge Biscoe and the other elected officials for contributing their time and efforts towards developing the region-wide Clean Air Action Plan.

CAC and Judge Biscoe supported commission's conclusion that the proposed rules do not exceed a standard set by federal law.

The commission appreciates this comment in support of the rulemaking.

EPA commented that the preamble states "The SIP revision is due to EPA by December 2004." EPA requested that the commission clarify that the date is actually December 31, 2004.

The commission modified the preamble in response to this comment, and changed "December 2004" to "December 31, 2004."

One individual questioned the basis and need for the SIP.

The commission, the local authorities, and EPA have agreed under the EAC that a SIP would be developed. The commission concludes that the proposed control measures will produce emission reductions necessary to address exceedances of the ozone standards.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 2: FILLING OF GASOLINE STORAGE VESSELS

(STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

§115.227, §115.229

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §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; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §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.

§115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has

dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title (relating to Control Requirements);

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks; and

(D) §115.226(2)(B) of this title (relating to Recordkeeping Requirements).

(2) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at motor vehicle fuel dispensing facilities are exempt from the requirements of this division, except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks; and

(C) §115.224(1) of this title as it applies to liquid gasoline leaks.

(3) In the covered attainment counties other than Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999 are exempt from the requirements of this division, except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(C) of this title.

(4) In Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed no more than 25,000 gallons of gasoline in any calendar month after December 31, 2004 are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(C) of this title.

(5) Transfers to the following stationary receiving containers are exempt from the requirements of this division:

(A) containers used exclusively for the fueling of implements of agriculture;

and

(B) storage tanks equipped with external floating roofs, internal floating roofs,

or their equivalent.

§115.229. Counties and Compliance Schedules.

(a) The owner or operator of each motor vehicle fuel dispensing facility in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each motor vehicle fuel dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each motor vehicle fuel dispensing facility in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties that has dispensed at least 25,000 gallons of gasoline but less than 125,000 gallons of gasoline in any calendar month after December 31, 2004, shall comply with this division as soon as practicable, but no later than December 31, 2005.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 1: DEGREASING PROCESSES

§§115.412, 115.413, 115.415 - 115.417, 115.419

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §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; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §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.

§115.412. Control Requirements.

In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties, the following control requirements shall apply.

(1) Cold solvent cleaning. No person shall own or operate a system utilizing a volatile organic compound (VOC) for the cold solvent cleaning of objects without the following controls.

(A) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner. The cover shall be designed for easy one-handed operation if any of the following exists:

(i) the true vapor pressure of the solvent is greater than 0.3 psia (2 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius);

(ii) the solvent is agitated; or

(iii) the solvent is heated.

(B) An internal cleaned-parts drainage facility, for enclosed draining under a cover, shall be provided for all cold solvent cleaners.

(C) A permanent label summarizing the operating requirements in subparagraph (F) of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.

(D) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of ten psig or less as necessary to prevent splashing above the acceptable freeboard.

(E) The system shall be equipped with a freeboard that provides a ratio equal to or greater than 0.7, or a water cover (solvent must be insoluble in and heavier than water). To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/solvent level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/solvent level.

(F) The operating procedures shall be as follows.

(i) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.

(ii) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.

(iii) Parts shall be drained for at least 15 seconds or until dripping ceases.

(iv) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

(2) Open-top vapor degreasing. No person shall own or operate a system utilizing a VOC for the open-top vapor degreasing of objects without the following controls:

(A) a cover that can be opened and closed easily without disturbing the vapor zone;

(B) the following devices which will automatically shut off the sump heat:

(i) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations;

(ii) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and

(iii) a vapor level sensor which will detect if the vapor level rises above acceptable design limits;

(C) a spray safety switch which will shut off the spray pump to prevent spraying above the vapor level;

(D) one of the following controls:

(i) a freeboard that provides a ratio equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft² (1m²), a powered cover. To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/vapor level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/vapor level;

(ii) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions;

(iii) an enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or

(iv) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft² (15m³/min per m²) of air/vapor area (with the cover open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(E) a permanent, conspicuous, label summarizing the operating procedures listed in subparagraph (F) of this paragraph;

(F) the following operating procedures:

- (i) the cover shall be closed at all times except when processing work loads through the degreaser;
- (ii) parts shall be positioned so that complete drainage is obtained;
- (iii) parts shall be moved in and out of the degreaser at less than 11 ft/min (3.3 m/min);
- (iv) the work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases;
- (v) any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone;
- (vi) parts shall be allowed to dry within the degreaser freeboard area for at least 15 seconds or until visually dry;
- (vii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased;
- (viii) work loads shall not occupy more than half of the degreaser open top surface area;

(ix) solvent shall not be sprayed above the vapor level;

(x) solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made;

(xi) waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(xii) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm per ft² (20 m³/min per m²) of degreaser open area, unless necessary to meet Occupational Safety and Health Administration (OSHA) requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans or other sources of air agitation shall not be used near the degreaser opening;

(xiii) water shall not be visibly detectable in the solvent exiting the water separator.

(3) Conveyorized degreasing. No person shall own or operate a system utilizing a VOC for the conveyorized cleaning of objects without the following controls:

(A) one of the following major control devices:

(i) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions; or

(ii) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft² (15 m³/min/m²) of air/vapor area (when downtime covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(B) a drying tunnel or other means, such as rotating (tumbling) basket if space is available, to prevent solvent liquid or vapor carry-out;

(C) a condenser flow switch and thermostat which will shut off sump heat if the condenser coolant is not circulating or if the condenser coolant discharge temperature exceeds the solvent manufacturer's recommendation;

(D) a spray safety switch which will shut off the spray pump if the vapor level drops more than four inches (ten cm);

(E) a vapor level control thermostat which will shut off the sump heat when the vapor level rises above the designed operating level;

(F) entrances and exits which silhouette work loads so that the average clearance (between parts and edge of the degreaser opening) is either less than four inches (ten cm) or less than 10% of the width of the opening;

(G) downtime covers which close off the entrance and exit during nonoperating hours;

(H) a permanent, conspicuous label near the operator summarizing the operating requirements in subparagraph (I) of this paragraph;

(I) the following operating procedures:

(i) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft^2 ($20 \text{ m}^3/\text{min}/\text{m}^2$) of degreaser opening, unless necessary to meet OSHA requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans shall not be used near the degreaser opening;

(ii) parts shall be positioned so that complete drainage is obtained;

(iii) vertical conveyor speed shall be maintained at less than 11 ft/min (3.3 m/min);

(iv) waste solvent shall not be disposed of, or transferred to another party, such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(v) leaks shall be repaired immediately or the degreaser shall be shut down until repairs are made;

(vi) water shall not be visibly detectable in the solvent exiting the water separator;

(vii) downtime covers shall be placed over entrances and exits of conveyORIZED degreasers immediately after the conveyor and exhaust are shut down and removed just before they are started up;

(viii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

§115.413. Alternate Control Requirements.

The alternate control requirements for degreasing processes in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties are as follows.

(1) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(2) An alternative capture and control system for cold solvent cleaners with a demonstrated overall volatile organic compound (VOC) emission reduction efficiency of 65% or greater may be used in lieu of the requirements of §115.412(1) of this title (relating to Control Requirements), if approved by the executive director.

(3) An alternate capture and control system for open-top vapor or conveyORIZED degreasers with a demonstrated overall VOC emission reduction efficiency of 85% or greater may be used in lieu of the requirements of §115.412(2)(D) or (3)(A) of this title, if approved by the executive director.

§115.415. Testing Requirements.

The testing requirements for degreasing processes in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties are as follows.

(1) Compliance with §115.412(1) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as applicable:

(A) determination of true vapor pressure using American Society for Testing Materials (ASTM) Test Method D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure

(RVP), adjusted for actual storage temperature in accordance with American Petroleum Institute (API) Publication 2517, Third Edition, 1989; or

(B) minor modifications to these test methods and procedures approved by the executive director.

(2) Compliance with §115.412(2)(D)(iv) and (3)(A)(ii) of this title and §115.413(3) of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(C) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(D) Test Methods 25A or 25B (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) minor modifications to these test methods and procedures approved by the executive director.

(3) Test methods other than those specified in paragraphs (1) and (2) of this section may be used if validated by 40 CFR 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute “executive director” each place that Test Method 301 references “administrator.”

§115.416. Recordkeeping Requirements.

The owner or operator of each degreasing process in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director, EPA, or the local air pollution control agency having jurisdiction in the area:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;

(2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(2) of this title (relating to Testing Requirements);

(3) for each degreasing operation in Gregg, Nueces, and Victoria Counties which is exempt under §115.417(5) of this title (relating to Exemptions), records of solvent usage in sufficient detail to document continuous compliance with this exemption.

§115.417. Exemptions.

The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Gregg, Nueces, Victoria, Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties.

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(1)(B) of this title (relating to Control Requirements) and may use an external drainage facility in place of an internal type drainage system, if the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius) or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are exempt from the requirements of §115.412(1)(E) of this title:

(A) a cold solvent cleaning system for which the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), provided that the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius); and

(B) remote reservoir cold solvent cleaners.

(3) Any conveyORIZED degreaser with less than 20 ft² (2 m²) of air/vapor interface is exempt from the requirement of §115.412(3)(A) of this title.

(4) An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 kPa) measured at 100 degrees Fahrenheit (38 degrees Celsius) and which has a drain area less than 16 in² (100 cm²) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(1) of this title.

(5) In Gregg, Nueces, and Victoria Counties, degreasing operations located on any property which can emit, when uncontrolled, a combined weight of VOC less than 550 pounds (249.5 kg) in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title.

§115.419. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller Counties shall continue to comply with applicable sections of this division (relating to Degreasing Processes) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Bexar, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties must comply with applicable sections of this division (relating to Degreasing Processes) as soon as practicable, but no later than December 31, 2005.

SUBCHAPTER F: MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1: CUTBACK ASPHALT

§§115.512, 115.516, 115.517, 115.519

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; Texas Health and Safety Code, §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; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and §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.

§115.512. Control Requirements.

The following control requirements shall apply in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions).

(1) The use of conventional cutback asphalt containing volatile organic compounds (VOC) solvents for the paving of roadways, driveways, or parking lots is restricted to no more than 7.0% of the total annual volume averaged over a two-year period of asphalt used by or specified for use by any state, municipal, or county agency who uses or specifies the type of asphalt application.

(2) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in Bastrop, Caldwell, Hays, Travis, and Williamson Counties, no person shall allow the use, application, sale, or offering for sale of conventional cutback asphalt containing VOC solvents for paving roadways, driveways, or parking lots during the period from April 16 to September 15 of any year.

(3) When asphalt emulsion is used or produced, the maximum VOC content shall not exceed 12% by weight or the following limitations, whichever is more stringent:

(A) 0.5% by weight for seal coats;

(B) 3.0% by weight for chip seals when dusty or dirty aggregate is used;

(C) 8.0% by weight for mixing with open graded aggregate with less than 1.0% by weight of dust or clay-like materials adhering to the coarse aggregate fraction (1/4 inch in diameter or greater); and

(D) 12% by weight for mixing with dense graded aggregate when used to produce a mix designed to have 10% or less voids when fully compacted.

§115.516. Recordkeeping Requirements.

In Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any state, municipal, or county agency who uses or specifies the use of cutback asphalt or asphalt emulsion shall maintain records sufficient to document compliance with applicable restrictions and shall make such records available upon request to representatives of the executive director, EPA, or the local air pollution control agency having jurisdiction in the area.

§115.517. Exemptions.

For persons in Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following are exempt from the provisions of §115.512(2) of this title (relating to Control Requirements):

(1) asphalt concrete made with cutback asphalt, used for patching, which is stored in a long-life stockpile (longer than one-month storage); and

(2) cutback asphalt used solely as a penetrating prime coat.

§115.519. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, and Waller Counties shall continue to comply with applicable sections of this division (relating to Cutback Asphalt) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with applicable sections of this division (relating to Cutback Asphalt) as soon as practicable, but no later than December 31, 2005.