

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.400, Definitions; §114.402, Control Requirements; §114.406, Reporting and Recordkeeping Requirements; and §114.409, Affected Counties and Compliance Schedules; and corresponding revisions to the state implementation plan (SIP). The repeals are adopted *without changes* as published in the April 6, 2001 issue of the *Texas Register* (26 TexReg 2630).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE REPEALED RULES

The rules were originally adopted on April 19, 2000 as part of the SIP control strategy for the Dallas/Fort Worth (DFW) ozone nonattainment area to achieve attainment with the national ambient air quality standard (NAAQS) for ozone. When the rules were implemented, they would have resulted in nitrogen oxides (NO<sub>x</sub>) emissions reductions through the conversion of airport ground support equipment (GSE) to lower emission equipment. Similar GSE rules were proposed on August 9, 2000 for the Houston/Galveston ozone nonattainment area, but were never adopted because the emission reduction commitments were achieved through federally enforceable agreements among the commission, the major airlines, and the City of Houston.

The commission developed agreements with the City of Dallas (Dallas); the City of Fort Worth (Fort Worth); the DFW International Airport Board (the Board); American Airlines and American Eagle Airlines, Inc. (American); Delta Air Lines, Inc. (Delta); and Southwest Airlines, Co. (Southwest) making federally enforceable certain reductions of local ozone precursor emissions of NO<sub>x</sub> from sources at Alliance Airport, DFW International Airport, Love Field, and Meacham Airport. These agreements will replace the existing rules and result in a similar level of emission reductions. Therefore, the NO<sub>x</sub>

reductions previously claimed in the DFW Attainment Demonstration SIP will, as a result of this rulemaking, be achieved through an alternate, but equivalent federally enforceable mechanism.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The staff reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The repealed rules were intended to protect the environment and reduce risks to human health from environmental exposure to ozone and would have affected, in a material way, a sector of the economy, competition, and the environment.

This rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the repealed rules are being replaced by federally enforceable agreements which will result in NO<sub>x</sub> emission reductions similar to the NO<sub>x</sub> reductions that would have been achieved by the rules. These agreements will protect the environment and reduce risks to human health from environmental exposure to ozone. Therefore, there will be no adverse effect as a result of these repeals.

#### TAKINGS IMPACT ASSESSMENT

Staff prepared a takings impact assessment for the repealed rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal §§114.200, 114.202, 114.206, and 114.209 which will be replaced by federally enforceable agreements which will obtain the similar NO<sub>x</sub> reductions necessary for the DFW ozone nonattainment area to meet the NAAQS established under federal law. The repeal of these rules will not burden private real property, which is the subject of the rules, because these rules will be replaced by the agreements and therefore not used by the commission.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

When DFW airport GSE rules were originally adopted, the commission determined that the rulemaking related to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the previous adoption action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action was consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking action was the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants

were authorized and NO<sub>x</sub> air emissions were anticipated to be reduced as a result of these rules. The CMP policy applicable to the rulemaking action was the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The rulemaking action complied with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the rulemaking action was consistent with CMP goals and policies.

The repeal of these rules will not invalidate the determination that the previous rulemaking action was consistent with CMP goals and policies, because the repealed rules are being replaced by federally enforceable agreements which will result in NO<sub>x</sub> emission reductions similar to the NO<sub>x</sub> reductions that would have been achieved by the rules. Therefore, this rulemaking action is also consistent with CMP goals and policies.

#### HEARINGS AND COMMENTERS

The commission held a public hearing in Arlington on January 4, 2001 to receive public comment on the agreements with Fort Worth, American, and the Board. The first comment period closed on January 4, 2001.

The commission held a second public hearing in Arlington on April 27, 2001 to receive public comment on the agreements with Dallas, Southwest, and Delta, and on the proposed repeal of the rules. The

second comment period closed on April 27, 2001. No comments were received during the second comment period.

Fort Worth and the North Central Texas Council of Governments (NCTCOG) provided oral comments at the January 4, 2001 hearing. The United States Environmental Protection Agency (EPA) submitted written comments by the January 4, 2001 deadline.

Fort Worth and the NCTCOG generally supported the agreements and the EPA requested clarification of some points of the agreements.

#### RESPONSE TO COMMENTS

Fort Worth supported the agreement between the commission and the city relating to reductions at Meacham and Alliance airports. NCTCOG also expressed support at the flexible approach that all of the agreements provide in reaching the emission reduction goals.

#### **The commission appreciates the support.**

The EPA requested clarification of one of the points of the agreements. The agreements state that airlines may comply with their commitments through the use of NO<sub>x</sub> emission control measures which have been achieved within the nonattainment area. The EPA stated that all signatories must be aware that these control measures cannot be duplicative and must be in addition to strategies already credited in the SIP.

**The agreements between the commission and American (Section VII - Alternate Means of Compliance) and between the commission and Fort Worth (Section V - Obligation of Parties) already contain language which clarifies that strategies proposed by the signatories cannot be duplicative of strategies relied upon in the SIP. However, the commission agrees that the agreement with the Board does not contain the same clarifying language. The commission felt that the language was unnecessary in this agreement because: 1) the Board has already implemented the majority of the strategies necessary to obtain its required reductions; 2) the language of the agreement requires that such strategies be creditable under the banking program which in turn requires that they not be duplicative; and 3) the commission believed that this aspect of the agreement was already understood by all parties. However, the commission sent a letter to the Board requesting a written statement that the Board understands and concurs with this concept. The Board replied by letter, dated April 27, 2001, to the commission.**

The EPA commented that the state should also clarify what happens upon termination of the agreements regarding emission reductions required by the state GSE rules.

**Termination of the agreements will not occur before 2007, which is the attainment year for the DFW area. At that point the commission will be drafting the maintenance plan for the DFW area. The commission will consider at that time whether it is necessary to negotiate renewal of these agreements or to find reductions through alternative measures.**

The EPA also made reference to the portion of the American agreements which states that if the commission does not reach similar agreements with carriers owning or operating the majority of GSE at Love Field, American can terminate its agreement. The EPA requested to be kept informed of the status of the other Love Field agreements.

**The agreements regarding emission reductions at Love Field have been signed and approved by all parties.**

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. These repeals are also adopted under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of TCAA.

**SUBCHAPTER I: NON-ROAD ENGINES**

**DIVISION 1: AIRPORT GROUND SUPPORT EQUIPMENT**

**§§114.400, 114.402, 114.406, 114.409**

**§114.400. Definitions.**

**§114.402. Control Requirements.**

**§114.406. Reporting and Recordkeeping Requirements.**

**§114.409. Affected Counties and Compliance Schedules.**