

The Texas Natural Resource Conservation Commission (commission) proposes new §114.452, Control Requirements, and §114.459, Affected Counties and Compliance Dates. The commission proposes these revisions to add new Division 6, Lawn Service Equipment Operating Restrictions, to Subchapter I, Non-road Engines; Chapter 114, Control of Air Pollution from Motor Vehicles; and to the associated state implementation plan (SIP). The commission proposes these amendments to Chapter 114 and corresponding revisions to the SIP in order to control ground-level ozone in the Houston/Galveston (HGA) ozone nonattainment area. The proposed revisions are one element of the control strategy for the proposed HGA Post-1996 Rate-of-Progress (ROP)/Attainment Demonstration SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The HGA ozone nonattainment area is classified as Severe-17 under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 et seq.), and therefore is required to attain the one-hour ozone standard of 0.12 parts per million (ppm) by November 15, 2007. The HGA area, defined by Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, has been working to develop a demonstration of attainment in accordance with 42 USC, §7410. On January 4, 1995, the state submitted the first of its Post-1996 SIP revisions for HGA.

The January 1995 SIP consisted of urban airshed model (UAM) modeling for 1988 and 1990 base-case episodes, adopted rules to achieve a 9% ROP reduction in volatile organic compounds (VOC), and a commitment schedule for the remaining ROP and attainment demonstration elements. At the same time, but in a separate action, the State of Texas filed for the temporary nitrogen oxides (NO_x) waiver allowed by 42 USC, §7511a(f). The January 1995 SIP and the NO_x waiver were based on early base-

case episodes which marginally exhibited model performance in accordance with the United States Environmental Protection Agency (EPA) modeling performance standards, but which had a limited data set as inputs to the model. In 1993 and 1994, the commission was engaged in an intensive data-gathering exercise known as the COAST study. The state believed that the enhanced emissions inventory, expanded ambient air quality and meteorological monitoring, and other elements would provide a more robust data set for modeling and other analysis, which would lead to modeling results that the commission could use to better understand the nature of the ozone air quality problem in the HGA area.

Around the same time as the 1995 submittal, EPA policy regarding SIP elements and timelines went through changes. Two national programs in particular resulted in changing deadlines and requirements. The first of these programs was the Ozone Transport Assessment Group. This group grew out of a March 2, 1995 memo from Mary Nichols, former EPA Assistant Administrator for Air and Radiation, that allowed states to postpone completion of their attainment demonstrations until an assessment of the role of transported ozone and precursors had been completed for the eastern half of the nation, including the eastern portion of Texas. Texas participated in this study, and it has been concluded that Texas does not significantly contribute to ozone exceedances in the Northeastern United States. The other major national initiative that has impacted the SIP planning process is the revisions to the national ambient air quality standard (NAAQS) for ozone. The EPA promulgated a final rule on July 18, 1997 changing the ozone standard to an eight-hour standard of 0.08 ppm. In November 1996, concurrent with the proposal of the standards, the EPA proposed an interim implementation plan (IIP) that it believed would help areas like HGA transition from the old to the new standard. In an attempt to avoid

a significant delay in planning activities, Texas began to follow this guidance, and readjusted its modeling and SIP development timelines accordingly. When the new standard was published, the EPA decided not to publish the IIP, and instead stated that, for areas currently exceeding the one-hour ozone standard, that standard would continue to apply until it is attained. The FCAA requires that HGA attain the standard by November 15, 2007.

The EPA issued revised draft guidance for areas such as HGA that do not attain the one-hour ozone standard. The commission adopted on May 6, 1998 and submitted to the EPA on May 19, 1998 a revision to the HGA SIP which contained the following elements in response to EPA's guidance: UAM modeling based on emissions projected from a 1993 baseline out to the 2007 attainment date; an estimate of the level of VOC and NO_x reductions necessary to achieve the one-hour ozone standard by 2007; a list of control strategies that the state could implement to attain the one-hour ozone standard; a schedule for completing the other required elements of the attainment demonstration; a revision to the Post-1996 9% ROP SIP that remedied a deficiency that the EPA believed made the previous version of that SIP unapprovable; and evidence that all measures and regulations required the Subpart 2 of Title I of the FCAA to control ozone and its precursors have been adopted and implemented, or are on an expeditious schedule to be adopted and implemented.

In November 1998, the SIP revision submitted to the EPA in May 1998 became complete by operation of law. However, the EPA stated that it could not approve the SIP until specific control strategies were modeled in the attainment demonstration. The EPA specified a submittal date of November 15, 1999

for this modeling. In a letter to the EPA dated January 5, 1999, the state committed to model two strategies showing attainment.

As the HGA modeling protocol evolved, the state eventually selected and modeled seven basic modeling scenarios. As part of this process, a group of HGA stakeholders worked closely with commission staff to identify local control strategies for the modeling. Some of the scenarios for which the stakeholders requested evaluation included options such as California-type fuel and vehicle programs as well as an acceleration simulation mode equivalent motor vehicle inspection and maintenance program. Other scenarios incorporated the estimated reductions in emissions that were expected to be achieved throughout the modeling domain as a result of the implementation of several voluntary and mandatory statewide programs adopted or planned independently of the SIP. It should be made clear that the commission did not propose that any of these strategies be included in the ultimate control strategy submitted to the EPA in 2000. The need for and effectiveness of any controls which may be implemented outside the HGA eight-county area will be evaluated on a county-by-county basis.

The SIP revision was adopted by the commission on October 27, 1999, submitted to the EPA by November 15, 1999, and contained the following elements: photochemical modeling of potential specific control strategies for attainment of the one-hour ozone standard in the HGA area by the attainment date of November 15, 2007; an analysis of seven specific modeling scenarios reflecting various combinations of federal, state, and local controls in HGA (additional scenarios H1 and H2 build upon Scenario VI(f)); identification of the level of reductions of VOC and NO_x necessary to attain the one-hour ozone standard by 2007; a 2007 mobile source budget for transportation conformity;

identification of specific source categories which, if controlled, could result in sufficient VOC and/or NO_x reductions to attain the standard; a schedule committing to submit by April 2000 an enforceable commitment to conduct a mid-course review; and a schedule committing to submit modeling and adopted rules in support of the attainment demonstration by December 2000.

The April 19, 2000 SIP revision for HGA contained the following enforceable commitments by the state: to quantify the shortfall of NO_x reductions needed for attainment; to list and quantify potential control measures to meet the shortfall of NO_x reductions needed for attainment; to adopt the majority of the necessary rules for the HGA attainment demonstration by December 31, 2000, and to adopt the rest of the shortfall rules as expeditiously as practical, but no later than July 31, 2001; to submit a Post-99 ROP plan by December 31, 2000; to perform a mid-course review by May 1, 2004; and to perform modeling of mobile source emissions using the EPA mobile source emissions model (MOBILE6), to revise the on-road mobile source budget as needed, and to submit the revised budget within 24 months of the model's release. In addition, if a conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 release, the state will revise the motor vehicle emissions budget (MVEB) so that the conformity analysis and the SIP MVEB are calculated on the same basis.

In order for the state to have an approvable attainment demonstration, EPA has indicated that the state must adopt those strategies modeled in the November submittal and then adopt sufficient controls to close the remaining gap in NO_x emissions. The modeling included in this proposal indicates a gap of an additional 77.98 tons per day (tpd) of NO_x reductions is necessary for an approvable attainment demonstration. The commission estimates that this measure will achieve a minimum of 0.58 tpd delay

of NO_x until after noon. There will also be a 20.6 tpd delay in VOC emissions until after noon.

Because the emission of NO_x and VOC, both precursors to the formation of ozone, will be delayed until after noon, this delay will lead to a reduction in ozone that is equal to 7.7 tpd NO_x reduced. These reductions are a necessary measure to consider for closing the gap and successfully demonstrating attainment.

The emission reduction requirements included as part of this SIP revision represent substantial, intensive efforts on the part of stakeholder coalitions in the HGA area. These coalitions, involving local governmental entities, elected officials, environmental groups, industry, consultants, and the public, as well as the commission and the EPA, have worked diligently to identify and quantify potential control strategy measures for the HGA attainment demonstration. Local officials from the HGA area have formally submitted a resolution to the commission, requesting the inclusion of many specific emission reduction strategies.

The current SIP revision contains rules, enforceable commitments, and photochemical modeling analyses in support of the HGA ozone attainment demonstration. In addition, this SIP contains Post-1999 ROP plans for the milestone years 2002 and 2005, and for the attainment year 2007. The SIP also contains enforceable commitments to implement further measures, if needed, in support of the HGA attainment demonstration, as well as a commitment to perform and submit a mid-course review.

The HGA ozone nonattainment area will need to ultimately reduce NO_x more than 750 tpd to reach attainment with the one-hour standard. In addition, a VOC reduction of about 25% will have to be

achieved. Adoption of the lawn and garden service equipment operating restriction program will contribute to attainment and maintenance of the one-hour ozone standard in the HGA area.

The purpose of these proposed rules is to establish a restriction on the use of handheld and non-handheld spark-ignition lawn and garden service equipment that operate at or below 25 horsepower (hp), 19 kilowatts. This air pollution control strategy would delay the emissions of NO_x from these engines until later in the day, thus limiting ozone production. This control strategy is necessary for the counties included in the HGA nonattainment area to be able to demonstrate attainment with the NAAQS for ozone.

The proposed revisions would implement an operating-use restriction program requiring that the handheld and non-handheld spark-ignition lawn and garden service equipment, rated at 25-hp and below, be restricted from use between the hours of 6:00 a.m. and noon, April 1 through October 31. The affected handheld equipment includes, but is not limited to, trimmers, edgers, chainsaws, leaf blowers/vacuums, and shredders. Non-handheld lawn and garden equipment includes such devices as walk-behind lawnmowers, lawn tractors, tillers, and small generators. The affected area would include the eight-county HGA nonattainment area of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. The effective date would be April 1, 2005.

The intent of these proposed rules is to limit the use of handheld and non-handheld spark-ignition lawn and garden service equipment that operate at or below 25 hp between the hours of 6:00 a.m. and noon. Between these hours this equipment is restricted from operating. Other lawn and garden service work

not requiring the use of handheld and non-handheld spark-ignition lawn and garden service equipment remains unrestricted under these proposed rules. That is, electric or man-powered lawn equipment may be utilized. It should be noted however that the regulated types of lawn and garden service equipment are banned from use during the hours specified regardless of how they are being used.

The amount of NO_x shifted will total 0.58 tpd. The non-road mobile source category is one of the few sources of ozone-causing emissions that are not currently regulated. Federal controls on handheld lawn and garden service equipment such as cleaner-burning engines have been adopted, and will be phased in beginning with the 2002 model year.

The California Air Resources Board (CARB) has stated that “using a commercial chain saw - powered by a two-stroke engine - for two hours produces the same amount of smog-forming hydrocarbon emissions as driving ten 1996 cars about 250 miles each.” By shifting the hours of use for handheld and non-handheld spark-ignition lawn and garden service equipment until after noon, NO_x emissions from such lawn and garden equipment will not mix in the atmosphere with other ozone-causing compounds until later in the day. Ozone is formed through chemical reactions between natural and man-made emissions of VOC and NO_x in the presence of sunlight. Higher ozone levels occur most frequently on hot summer afternoons. The critical time for the mixing of NO_x and VOC is early in the day. By delaying the release of NO_x emissions from lawn and garden service equipment until later in the day, production of ozone will be stalled until optimum conditions no longer exist, thus avoiding the production of higher levels of ozone.

The commission solicits comment on additional flexibilities relating to rule content and implementation which have not been addressed in this or other concurrent rulemakings. These flexibilities may be available for both mobile and stationary sources. Additional flexibilities may also be achieved through innovative and/or emerging technology which may become available in the future. Additional sources of funds for incentive programs may become available to substitute for some of the measures considered here.

The commission is soliciting comments on alternative applications of this rule including: innovative uses of technology, such as incentives to use ultra low emission engines; alternative use restrictions, such as restricting use to every 10th day; and alternative restrictions on commercial use versus residential use, such as limiting the application of the rule to commercial services (which could be at residential property) or activities at commercial (versus residential) properties.

SECTION BY SECTION DISCUSSION

The new Division 6 is proposed regarding lawn and garden service equipment operating restrictions.

The proposed new §114.452 establishes control requirements for lawn and garden service equipment operating-use limitations. The proposal restricts the operation by all persons of all handheld or non-handheld lawn and garden service spark-ignition equipment 25 hp and below, between the hours of 6:00 a.m. and noon, during the time period between April 1 and October 31.

The proposed new §114.459 specifies the counties which are subject to the new requirements. The affected counties include all counties in the HGA nonattainment area, including Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

FISCAL NOTE AND COSTS TO STATE AND LOCAL GOVERNMENTS

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications which are not anticipated to be significant for units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rules would restrict the use of handheld and non-handheld spark-ignition lawn and garden equipment, rated at 25 hp or less, from use between the hours of 6:00 a.m. and noon, from April 1 through October 31. The restriction would apply to lawn and garden equipment in the eight-county HGA ozone nonattainment area. The proposed rules would become effective April 1, 2005. The proposed rules do not require additional control equipment or new emission control technologies to be applied to the affected lawn and garden equipment.

The commission is required to submit a new SIP revision by the end of 2000 which will bring the HGA into attainment by 2007. The rules proposed for HGA in this notice comprise one element of the ozone Attainment Demonstration SIP for HGA. The purpose of the proposed rules is for the HGA nonattainment area to demonstrate attainment with the ozone NAAQS. The plan sets forth a control

strategy that provides emission reductions necessary for attainment and maintenance of the national standards.

The commission estimates that units of state and local government within the HGA ozone nonattainment area may have to pay more to contract for landscape services if landscape businesses charge more for their services due to the proposed time restrictions. Although the extent of the fiscal implications are not known at this time, the commission anticipates that the potential increased costs to units of state and local government as a result of the proposed rules will not be significant.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be a potential reduction in the formation of ozone by delaying NO_x emissions from lawn and garden equipment until later in the day when optimum conditions for the formation of ozone no longer exist, potentially improved air quality, and contribution toward demonstration of attainment with the NAAQS for ozone.

The proposed rules would restrict the use of handheld and non-handheld spark-ignition lawn and garden equipment, rated at 25 hp or less, from use between the hours of 6:00 a.m. and noon, from April 1 through October 31. The restriction would apply to lawn and garden equipment in the HGA ozone nonattainment area. The proposed rules would become effective April 1, 2005. The proposed rules do

not require additional control equipment or new emission control technologies to be applied to the affected lawn and garden equipment.

Persons within the HGA ozone nonattainment area that utilize equipment affected by the proposed rules may experience adverse fiscal implications in an amount that cannot be determined at this time.

Because the proposed rules do not require additional control equipment or new technology, the commission does not anticipate significant economic impacts to commercial operators beyond the shift in work schedule and possible implications caused by potential work delays attributable to the proposed rules. Delaying use of lawn and garden equipment until after noon may require commercial operators to adjust their work schedules and could cause extensions of projects or the need to hire more employees and procure additional equipment to meet business requirements. Private operators that utilize commercial operators to perform lawn and garden related work may have to pay more for the services.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be fiscal implications, in an amount which cannot be determined, which may have an adverse fiscal impact on small or micro-businesses as a result of administration or enforcement of the proposed rules.

The proposed rules would restrict the use of handheld and non-handheld spark-ignition lawn and garden equipment, rated at 25 hp or less, from use between the hours of 6:00 a.m. and noon, from April 1 through October 31. The restriction would apply to lawn and garden equipment in the HGA ozone

nonattainment area. The proposed rules would become effective April 1, 2005. The proposed rules do not require additional control equipment or new emission control technologies to be applied to the affected lawn and garden equipment.

Small or micro-businesses within the HGA ozone nonattainment area that utilize equipment affected by the proposed rules may experience adverse fiscal implications in an amount that cannot be determined at this time. Because the proposed rules do not require additional control equipment or new technology, the commission does not anticipate significant economic impacts to affected individuals and businesses beyond the shift in work schedule and possible implications caused by potential work delays attributable to the proposed amendments. Delaying use of lawn and garden equipment until after noon may require affected small or micro-businesses to adjust their work schedules and could cause extensions of projects or the need to hire more employees and procure additional equipment to meet business requirements. Small or micro-businesses that utilize businesses to perform lawn and garden related work may have to pay more for the services.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed 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 proposed rules to Chapter 114 are intended to protect the environment or reduce risks to human health from environmental exposure to ozone and, although no estimates of cost are available at this time, the commission does not believe work delays could affect a sector of the economy in a material way. The proposed rules are intended to implement an operating-use restriction program requiring that certain lawn and garden equipment be restricted from use between the hours of 6:00 a.m. and noon, April 1 through October 31. This program is part of the strategy to reduce the formation of ozone by delaying NO_x emissions from lawn and garden equipment until later in the day when optimum conditions for the formation of ozone no longer exist. The program was developed for the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The commission does not believe that the businesses that provide lawn and garden services comprise a sector of the economy, nor does the commission believe that the rules will adversely affect in a material way, the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Provisions of 42 USC, §7410, require states to adopt a SIP which provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While §7410 does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control). It is true that 42 USC does require some specific measures for SIP purposes, like the

inspection and maintenance program, but those programs are the exception, not the rule, in the SIP structure of 42 USC. The provisions of 42 USC recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though 42 USC allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of §7410 and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill 633 (SB 633) during the 75th Legislative Session, 1999. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis (RIA) of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules

from the full analysis unless the rule was a major environmental rule that exceeds a federal law. As previously discussed, 42 USC does not require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to ensure that area will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules proposed for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law. The commission performed photochemical grid modeling which predicts that NO_x emission reductions, such as those required by these rules, will result in reductions in ozone formation in the HGA ozone nonattainment area. This rulemaking does not exceed an express requirement of state law. This rulemaking is intended to obtain NO_x emission reductions which will result in reductions in ozone formation in the HGA ozone nonattainment area and help bring HGA into compliance with the air quality standards established under federal law as NAAQS for ozone. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law (unless specifically required

by federal law), or exceed a requirement of a delegation agreement. The rulemaking was not developed solely under the general powers of the agency, but was specifically developed to meet the NAAQS established under federal law and authorized under Texas Clean Air Act (TCAA), §§382.011, 382.012, 382.017, 382.019, and 382.039.

The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking action is to establish a lawn and garden service equipment operating-use limitation to delay NO_x emissions that lead to high levels of ground-level ozone production. This proposed rulemaking will act as an air pollution control strategy to reduce NO_x emissions necessary for the eight counties included in the HGA ozone nonattainment area to be able to demonstrate attainment with the ozone NAAQS. The proposed affected area consists of the eight counties contained in the HGA CMSA. Promulgation and enforcement of the proposed rules will not burden private, real property as it only regulates handheld and non-handheld spark-ignition lawn and garden equipment rated at 25 hp or less. Although the proposed rules do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the proposed rules partially fulfill a federal mandate under 42 USC, §7410. Specifically, the emissions limitations and delays within this proposal were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of the NAAQS,

once the EPA has established them. Under 42 USC, §7410 and related provisions, states must submit, for EPA approval, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule proposal is to implement a lawn and garden service equipment operating-use limitation necessary for the HGA nonattainment area to meet the air quality standards established under federal law as NAAQS. Consequently, the exemption which also applies to these proposed rules is that of an action reasonably taken to fulfill an obligation mandated by federal law. For the reasons stated, these proposed rules will not constitute a takings under the Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the proposed rulemaking relates 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 CMP. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), 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 this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is 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 will be authorized and NO_x air emissions will be reduced as a result of these rules. The CMP policy

applicable to this rulemaking action is 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)). This rulemaking action complies 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), this rulemaking action is consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations:

September 18, 2000, 10:00 a.m., Lone Star Convention Center, 9055 Airport Road (FM 1484), Conroe; September 18, 2000, 7:00 p.m., Lake Jackson Civic Center, 333 Highway 332 East, Lake Jackson; September 19, 2000, 10:00 a.m. and 7:00 p.m., George Brown Convention Center, 1001 Avenida de Las Americas, Houston; September 20, 2000, 9:00 a.m., VFW Hall, 6202 George Bush Drive, Katy; September 20, 2000, 6:00 p.m., East Harris County Community Center, 7340 Spencer, Pasadena; September 21, 2000, 10:00 a.m., Southeast Texas Regional Airport Media Room, 6000 Airline Drive, Beaumont; September 21, 2000, 2:00 p.m., Amarillo City Commission Chambers, City Hall, 509 East 7th Avenue, Amarillo; September 21, 2000, 6:00 p.m., Charles T. Doyle Convention Center, 21st Street at Phoenix Lane, Texas City; September 22, 2000, 10:00 a.m., Dayton High School, 2nd Floor Lecture Room, 3200 North Cleveland Street, Dayton; September 22, 2000, 11:00

a.m., El Paso City Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso; September 22, 2000, 2:00 p.m., North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington; and September 25, 2000, 10:00 a.m., Texas Natural Resource Conservation Commission, 12100 North I-35, Building E, Room 201S, Austin. The hearings are structured for the receipt of oral or written comments by interested persons. Registration will begin one hour prior to each hearing. Individuals may present oral statements when called upon in order of registration. A four-minute time limit will be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal one hour before each hearing, and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Heather Evans, Office of Environmental Policy, Analysis, and Assessment, MC 206, P.O. Box 13087, Austin, Texas 78711-3087, faxed to (512) 239-4808, or emailed to siprules@tnrcc.state.tx.us. All comments should reference Rule Log Number 2000-011O-114-AI. Comments must be received by 5:00 p.m., September 25, 2000. For further information, please contact Roland Castaneda at (512) 239-0774, or Alan Henderson at (512) 239-1510.

STATUTORY AUTHORITY

The new sections are proposed under the Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under the Texas Health and Safety Code, TCAA, §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA. The new sections are also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and §382.039, which authorizes the commission to develop and implement programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed new sections implement TCAA, §382.002, relating to Policy and Purpose; §382.011, relating to General Powers and Duties; §382.012, relating to State Air Control Plan; §382.019, relating to Methods Used to Control and Reduce Emissions from Land Vehicles; and §382.039, relating to Attainment Program.

SUBCHAPTER I: NON-ROAD ENGINES

DIVISION 6: LAWN SERVICE EQUIPMENT OPERATING RESTRICTIONS

§114.452, §114.459

§114.452. Control Requirements.

No person shall start or operate any handheld or non-handheld, spark-ignition lawn and garden service equipment, of 25 horsepower and below, between the hours of 6:00 a.m. and noon, during the time period between April 1 through October 31, in the counties listed in §114.459 of this title (relating to Affected Counties and Compliance Dates).

§114.459. Affected Counties and Compliance Dates.

Effective April 1, 2005, persons in the following counties shall be in compliance with §114.452 of this title (relating to Control Requirements). These include Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties in the Houston/Galveston ozone nonattainment area.