

The Texas Commission on Environmental Quality (commission) adopts an amendment to §115.769; Subchapter H, Highly-Reactive Volatile Organic Compounds; Division 2, Cooling Tower Heat Exchange Systems. Section 115.769 is adopted *without change* to the proposed text as published in the November 7, 2003 issue of the *Texas Register* (28 TexReg 9715) and will not be republished.

The amendment to §115.769 and corresponding revision to the state implementation plan (SIP) will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The commission adopts this amendment to Chapter 115 and the associated revision to the SIP in order to change the compliance date for cooling tower heat exchange systems in the eight-county Houston/Galveston (HGA) ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. This amendment would make the compliance date for cooling tower heat exchange systems in highly-reactive volatile organic compound (HRVOC) service the same as the compliance dates for HRVOC flares and HRVOC vent gas streams, but would not affect the compliance date for the site-wide cap in 30 TAC §115.761, Site-wide Cap. This change is necessary to provide sufficient time for owners and operators of cooling tower heat exchange systems to purchase and install the required monitoring equipment, and is consistent with commission objectives to achieve the intended volatile organic compound (VOC) emission reductions of the HGA ozone SIP.

The scope of the rulemaking is limited to the change to the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area. No additional changes are being adopted to the cooling tower rules or other HRVOC rules at this time.

SECTION DISCUSSION

The amendment to §115.769, Counties and Compliance Schedules, changes the compliance date for cooling tower heat exchange systems in the eight-county HGA ozone nonattainment area from no later than December 31, 2004 to no later than December 31, 2005. The amendment makes the compliance date for cooling tower heat exchange systems with HRVOC in the water the same as the compliance dates for HRVOC flares and HRVOC vent gas streams, but does not affect the compliance date for the site-wide cap in §115.761.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking action in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking action does not meet the definition of a “major environmental rule.” A “major environmental rule” is 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. This primary purpose of this amended rule is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water, and this amended rule does not implement additional regulations that are not already required by the commission and EPA. This rulemaking

action will not 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.

Therefore, this is not a major environmental rule.

In addition, a regulatory impact analysis is not required because this rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a “major environmental rule” as defined in Texas Government Code, §2001.0225. Section 2001.0225 applies only 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. This rule amendment does not exceed a standard set by federal law nor exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because this adopted rule amendment does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether this rule amendment is subject to Texas Government Code, Chapter 2007. The primary purpose of this rulemaking action is to extend the compliance date for cooling tower heat exchange systems with HRVOC contained in the water. Promulgation and enforcement of this rule amendment would be neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, this rule amendment does not affect a landowner's rights in private real property because this rule amendment does not burden (constitutionally), nor restrict or limit the owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of this rule amendment. Therefore, this rule amendment will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking action and found that this action is identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore, requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that this rulemaking 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. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations; therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT 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 permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by this revision to Chapter 115.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on December 2, 2003. No person presented oral comments at the hearing. The following persons submitted written comments: BP Products North America, Inc. (BP); EPA; Sierra Club, Houston Regional Group (Sierra); and Texas Chemical Council (TCC).

RESPONSE TO COMMENTS

BP and TCC supported the proposal. EPA and Sierra opposed the proposal.

BP and TCC stated that if a company chooses to submit an alternative cooling water monitoring plan, time will be needed for agency review and approval. BP and TCC also stated that after a plan is approved, approximately 12 to 18 months will be necessary to procure and install monitoring equipment. Finally, BP and TCC commented that more time is necessary because the previous Chapter 115 rulemaking was delayed.

The commission appreciates the support and acknowledges that there are many factors that may delay the installation of monitors in certain cases. Therefore, the commission maintains that extending the compliance date to December 31, 2005 will ensure that all accounts will have sufficient time to demonstrate compliance with the division.

EPA expressed a belief that the proposed rule change may not ensure that the monitoring requirements are being required as expeditiously as practicable. EPA suggested that the compliance date be six months earlier than proposed.

The commission is confident that, in most cases, monitors will be installed as soon as practicable per the requirements of §115.769. However, due to the current supply and demand for these specialized monitors, associated equipment, and construction required for installation and operation, the commission has concluded that a December 31, 2005 compliance date will better ensure overall compliance with this rule. Moreover, a compliance date that matches the compliance dates for flares and vent gas streams in HRVOC service is logical because it will provide the regulated community with consistent HRVOC compliance dates for which the

regulated community may better coordinate the installation of monitors to ensure complete and timely compliance. While requiring monitoring six months earlier as EPA suggests would provide the commission with additional data for modeling purposes, the data would not be available for assessment and analysis in time to impact the site-wide cap by the April 1, 2006 site-wide cap compliance date.

Sierra stated that it opposed the delay of implementation of the compliance date from December 31, 2004 to December 31, 2005. Sierra further commented on the health effects of ozone and stated that the SIP is nine years past the Federal Clean Air Act Amendment's 1994 deadline and seven years past the 1996 deadline, and that the commission is unreasonably putting the public at risk. Sierra also commented that it supported the existing cooling tower rules that require continuous VOC measurements, continuous flow measurements, the requirement to continuously operate each monitoring system at least 95% of the time when the cooling tower is operating, and the recordkeeping requirements in §115.767.

The commission has been working to adopt measures to meet the health-based ozone standards. Due to ongoing advances in the science of ozone formation, the commission has regularly modified the SIP over the past 13 years since the Federal Clean Air Act Amendments were signed into law in 1990. The 1990 amendments mandated that the HGA ozone attainment demonstration be submitted by 1996. However, this deadline was changed in 1995 when EPA issued guidance that allowed states to postpone completion of their attainment demonstrations until an assessment of the role of transported ozone and precursors was completed for the eastern half of the nation,

including the eastern portion of Texas. Texas participated in this study, which concluded that Texas does not significantly contribute to ozone exceedances in the northeastern United States. It is important to note that none of the changes to the submittal deadlines have resulted in changes to the attainment deadline in the Federal Clean Air Act, which requires HGA to attain the one-hour ozone standard by November 15, 2007.

The commission appreciates Sierra's comments supporting the existing cooling tower rules that require continuous VOC measurements, continuous flow measurements, the requirement to continuously operate each monitoring system at least 95% of the time when the cooling tower is operating, and the recordkeeping requirements in §115.767. The commission disagrees with Sierra's comments opposing the proposed compliance date of December 31, 2005. Due to the current supply and demand for the specialized monitors, associated equipment, and construction required for the installation and operation that will meet the requirements of this division, the commission has concluded that a December 31, 2005 compliance date will better ensure overall compliance with this rule. Moreover, a compliance date that matches the compliance dates for flares and vent gas streams in HRVOC service is logical because it will provide the regulated community with consistent HRVOC compliance dates for which the regulated community may better coordinate the installation of monitors to ensure complete and timely compliance. Finally, the date for complying with the site-wide cap, April 1, 2006, has not been changed.

SUBCHAPTER H: HIGHLY-REACTIVE VOLATILE ORGANIC COMPOUNDS

DIVISION 2: COOLING TOWER HEAT EXCHANGE SYSTEMS

§115.769

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which 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. The amendment is also adopted under 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; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and §382.016, concerning Monitoring Requirements – Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants.

§115.769. Counties and Compliance Schedules.

The owner or operator of each cooling tower heat exchange system in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall demonstrate compliance with this division (relating to Cooling Tower Heat Exchange Systems) as soon as practicable, but no later than December 31, 2005, with the exception of the site-wide cap in §115.761 of this title (relating to Site-wide Cap) for which the owner or operator shall demonstrate compliance as soon as practicable, but no later than April 1, 2006.