

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539. Sections 115.149 and 115.239 are adopted *with changes* to the proposed text as published in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5558). Sections 115.10, 115.119, 115.129, 115.139, 115.219, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539 are adopted *without changes* to the proposed text and will not be republished.

These amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq.* require EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas-Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate for the one-hour ozone NAAQS in accordance with the 1990 FCAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas-Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the

EPA reclassified the Dallas-Fort Worth area from "moderate" to "serious," resulting in a requirement to submit an additional SIP revision demonstrating attainment by the new deadline of November 15, 1999.

The Dallas-Fort Worth area also failed to reach attainment by the November 15, 1999, deadline. In the attainment demonstration SIP revision adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the Dallas-Fort Worth area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was later overturned by three federal courts, including the Court of Appeals for the 5th Circuit, which ruled in *Sierra Club et. al v. EPA*, 314 F. 3d 735 (2002), that EPA did not have authority to extend an area's attainment date based on transport. Although the Dallas-Fort Worth area was not the specific subject of any of these suits, the Dallas-Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approvable by EPA.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS) (62 FR 38856). The eight-hour ozone NAAQS was challenged by numerous litigants and ultimately upheld by the United States Supreme Court in February 2001. On April 30, 2004, EPA promulgated the first phase of the implementation rules for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas-Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson,

Kaufman, Parker, and Rockwall) were added to the Dallas-Fort Worth eight-hour ozone nonattainment area (DFW area). Effective June 15, 2004, the DFW area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) that are nonattainment for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I Implementation Rule provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation (June 15, 2005); 2) submit an eight-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation, which is June 15, 2005, that provides for a 5% increment of progress (IOP) emission reduction from the area's 2002 emissions baseline that is in addition to federal and state measures already approved by EPA, and to achieve these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three required successful photochemical grid modeling performance. Based on poor model performance, the commission, in consultation with EPA, determined that option two was the most expeditious approach to achieve the emission reductions ultimately needed to meet the June 15, 2005, transportation conformity deadline and attain the eight-hour ozone NAAQS by June 15, 2010. Therefore, the commission adopted a 5% IOP Plan in April 2005 and submitted it to EPA.

On November 29, 2005, EPA subsequently finalized its Phase II Implementation Rule for the eight-hour ozone NAAQS (Phase II Implementation Rule) (70 FR 71612). The Phase II Implementation Rule provides guidance and requirements for the remaining elements of the program to implement the eight-hour ozone NAAQS.

FCCA, §182(b)(2)(C), requires that reasonably available control technology (RACT) be implemented in nonattainment areas designated as moderate and above for the ozone NAAQS. The purpose of this rulemaking is to implement RACT controls for VOC emission sources in the five newly designated nonattainment counties. RACT for NO_x emission sources will be addressed, if necessary, in other rulemaking actions.

The adopted rulemaking subjects owners or operators of certain VOC-emitting facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW nonattainment area are subject. The definition of “Dallas/Fort Worth area” in §115.10 has been amended to include the five additional counties. The definition of “Covered attainment counties” was also amended to remove these five counties. Compliance dates have been added to specify when the owners or operators of newly affected facilities must achieve compliance with the requirements. The EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701) requires the implementation of RACT as expeditiously as practicable, but no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard. Since the five additional counties were designated on June 15, 2004, the required compliance date for RACT is March 1, 2009.

Rules in Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes, were made applicable to the additional counties as part of the 5% IOP SIP adopted on April 27, 2005, and are not part of this adopted rulemaking. Rules in Subchapter B, Division 5, Municipal Solid Waste Landfills, are not part of this rulemaking because

information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Rules in Subchapter C, Division 4, Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, are not part of this adopted rulemaking because of the decreased cost-effectiveness of these controls with the increased market penetration of motor vehicles equipped with on-board refueling vapor recovery. The Stage II rules continue to apply to the four-county one-hour ozone nonattainment area.

SECTION BY SECTION DISCUSSION

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with Texas Register requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, November 2004.

Subchapter A, Definitions

The adopted amendment to §115.10 revises the definitions of “Covered attainment counties” and “Dallas/Fort Worth area” by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the “Covered attainment counties” definition to the “Dallas/Fort Worth area” definition. The current definitions include these counties as part of the “Dallas/Fort Worth area” definition only for the purposes of Subchapter C, Division 2, and Subchapter E, Division 2. The adopted amendment includes the five counties as part of the “Dallas/Fort Worth area” definition for all sections of Chapter 115, except Subchapter B, Division 5. Information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Any new landfills would be subject to federal control

requirements. For these reasons, no emission reductions would be expected from extension of the landfill control requirements to the five counties. Therefore, applying the requirements to the five counties is not required for RACT.

Subchapter B, General Volatile Organic Compound Sources

Division 1, Storage of Volatile Organic Compounds

The adopted amendment to §115.119, Counties and Compliance Schedules, deletes language in subsections (a) and (b) that is no longer needed due to the passing of the specified compliance dates.

Subsection (a) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held shall continue to comply with the division as required by §115.930. Subsection (b) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Vent Gas Control

The adopted amendment to §115.129, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these

five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Water Separation

The adopted amendment to §115.139, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Industrial Wastewater

The adopted amendment to §115.149, Counties and Compliance Schedules, deletes language in subsections (a) - (g) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) has been changed to specify that the owner or operator of each affected source category within a plant 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 the division as required by §115.930. In response to a comment, the order of the counties has been changed in the adopted rule so that they are in proper alphabetical order. Subsection (b) has been changed to specify that the owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as

practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The adopted amendment to §115.219, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each VOC transfer operation in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline terminals and gasoline bulk plants in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline terminals and gasoline bulk plants shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements.

Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels

The adopted amendment to §115.239, Counties and Compliance Schedules, adds subsection (c) to specify that the owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009.

This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline tank-truck tanks in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline tank-truck tanks shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements. The adopted rule corrects a capitalization error in §115.269(c) of the proposal.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

The adopted amendment to §115.319, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

The adopted amendment to §115.359, Counties and Compliance Schedules, deletes language in paragraphs (2) and (3) that is no longer needed due to the passing of the specified compliance dates. The

remaining existing language and the language in paragraph (1) have been designated as subsection (a).

Subsection (b) has been added to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter E, Solvent-Using Processes

Division 1, Degreasing Processes

The adopted amendment to §115.419, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Flexographic and Rotogravure Printing

The adopted amendment to §115.439, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT

requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Offset Lithographic Printing

The adopted amendment to §115.449, Counties and Compliance Schedules, adds subsection (f) to specify that the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter F, Miscellaneous Industrial Sources

Division 1, Cutback Asphalt

The adopted amendment to §115.519, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Pharmaceutical Manufacturing Facilities

The adopted amendment to §115.539, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected pharmaceutical manufacturing facility in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "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 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 adopted rulemaking is intended to protect the environment and to reduce risks to human health from environmental exposure. However, as discussed in the fiscal note, the commission finds the adopted rulemaking will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area. Therefore, the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if the adopted rulemaking is determined to meet the definition of a major environmental rule, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The rulemaking is adopted to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Specifically, the adopted rulemaking subjects owners or operators of certain VOC-emitting facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW eight-hour ozone nonattainment area are subject.

The adopted rulemaking is intended to protect the environment and to reduce risks to human health and safety from environmental exposure by reducing VOC emissions from sources subject to control requirements in Chapter 115, Subchapter B, Divisions 1 - 4; Subchapter C, Divisions 1 and 3; Subchapter D, Divisions 1 and 3; Subchapter E, Divisions 1, 3, and 4; and Subchapter F, Divisions 1 and 2.

The adopted rulemaking implements requirements of the FCAA. Under 42 USC, §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs shall 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, otherwise known as the FCAA). The provisions of the FCAA recognize 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 the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and shall develop programs to assure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS within the state.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis 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 the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted 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 rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states shall develop programs for each area contributing to nonattainment to help ensure those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted 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 regulatory impact analysis 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 the intent of SB 633 was only to require the full regulatory impact analysis 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 adopted 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 has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the adopted rulemaking is to protect the environment and to reduce risks to human health by adoption of rules to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. The adopted rulemaking does not exceed a standard set by federal

law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in Texas Health and Safety Code, §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because, even if the adopted rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period that ended August 14, 2006. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose;

and that does not impose a greater burden than is necessary to achieve the health and safety purpose.

Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). As addressed elsewhere in this preamble, 42 USC, §7410 specifically requires states to adopt and implement SIPs that provide for implementation, maintenance, and enforcement of the NAAQS within the state. This adopted rulemaking is a required component of the Texas SIP. The action will specifically advance the health and safety purpose by reducing VOC emissions in the DFW area. The rulemaking specifically targets sources with VOC emissions. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action 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 Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, 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 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(l)). No new sources of air contaminants will be authorized and the adopted amendments will maintain at least the same level of or

increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of Chapter 115 are applicable requirements of 30 TAC Chapter 122. Owners or operators of sites that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their Federal Operating Permits as appropriate in order to include the requirements of this adopted rulemaking.

PUBLIC COMMENT

Public hearings were held on the proposed rules in Waxahachie, Texas, on August 8, 2006. One individual presented testimony, as discussed in the RESPONSE TO COMMENTS section. The public comment period closed at 5:00 p.m. on August 14, 2006. The commission received written comments from EPA Region 6 and from one individual. EPA generally supported the proposed rulemaking but had suggestions for changes or clarifications as discussed in the RESPONSE TO COMMENTS section. One individual urged more stringent controls on VOC emissions from cement kilns. Another individual urged the commission to delay permitting coal-fired power plants upwind from DFW.

RESPONSE TO COMMENTS

EPA expressed support of the commission's efforts to expand controls for additional VOC emissions within the DFW area.

The commission appreciates the support.

EPA commented that the proposed rulemaking partially fulfills RACT requirements for the State of Texas, and that a future proposed rulemaking will provide additional RACT requirements as defined by EPA's November 29, 2005, regulations.

The purpose of the rulemaking is to satisfy RACT requirements for VOC emission sources in the five new counties. Rules specifically implementing RACT requirements for NO_x emission sources in the five new counties are not expected to be needed, because controls that will be required to support the attainment demonstration are expected to be at least as stringent as, and possibly more stringent, than controls needed to satisfy RACT. The upcoming attainment demonstration SIP will also have a more complete discussion of VOC and NO_x RACT for the four core counties in the DFW area. The NO_x rules and the attainment demonstration SIP are expected to be proposed in December and adopted by June 15, 2007.

EPA requested that the commission confirm that the proposal accounts for all major VOC sources of affected sectors within the five new counties.

All major VOC sources within the five new counties in sectors covered by control techniques guidelines documents will be subjected to RACT requirements by these rule changes or by rule

changes that were adopted with the 5% IOP Plan in April 2005. The attainment demonstration SIP that will be submitted to EPA by June 15, 2007, will include additional documentation that all major sources of VOC in the five counties are complying with appropriate RACT requirements.

EPA requested that the commission confirm that the required degree of VOC control for major sources of each affected sector within the five new counties still represents RACT, or make sure this documentation can be confirmed in a future proposal.

The degree of VOC control required for major sources in the five new counties will be the same as that required for sources in the four counties that made up the one-hour ozone nonattainment area. Documentation that this level of control still represents RACT will be provided with the attainment demonstration SIP that will be submitted to EPA by June 15, 2007. The commission received only one comment questioning whether a more stringent level of control was appropriate. That comment related specifically to the use of thermal oxidizers for control of VOC emissions at cement kilns. As discussed elsewhere in this preamble in response to that comment, the commission maintains that the use of thermal oxidizers at cement kilns does not represent RACT.

EPA suggested that the commission consider a compliance date earlier than March 1, 2009. Since facilities in Collin, Dallas, Denton, and Tarrant Counties have already implemented the requirements, EPA expressed the opinion that facilities in the new counties may be able to implement the requirements more quickly, perhaps by the beginning of the ozone season in 2008.

The commission does not agree that an earlier compliance date is reasonable or possible. Requiring compliance by the beginning of the ozone season in 2008 would give regulated entities only 15 months after the rules become effective to obtain the necessary control equipment and make changes to operating or business practices to comply with the new rules. The fact that sources in the surrounding counties already employ the required measures does not mean that newly affected sources can comply more quickly. The preamble to the adopted Phase II Implementation Rule notes that “EPA encourages States to adopt rules expeditiously . . . so that sources have more than sufficient time to install the controls” (70 FR 71658). The preamble also cites the 1990 Clean Air Act Amendments, which specify a 30-month period for installation of RACT controls. The commission does not believe that shortening the proposed time period to achieve compliance by one year is reasonable.

EPA commented that “Hardin” should follow “Galveston” in §115.149 for alphabetic order.

The commission agrees and has made the suggested change.

An individual commented that TXI's Kiln Number 5 has set a new standard for VOC controls at cement plants by installing and operating a thermal oxidizer that has reduced VOC emissions significantly at Kiln Number 5. The commenter further stated that the public and DFW expect TCEQ to apply this new standard to all the other cement kilns in Midlothian as well.

The commission does not agree that the use of thermal oxidizers should be required at other cement kilns. The thermal oxidizer at TXI is believed to be one of only two installed on cement kilns in the

country. Neither was installed for the purpose of lowering ozone concentrations in a nonattainment area. The thermal oxidizer requires the use of supplemental natural gas fuel in order to reduce VOC emissions from the kiln exhaust. With the increasing costs of natural gas in addition to other operational costs and the capital cost of installing an oxidizer, the use of this technology is not economically reasonable. Furthermore, VOC emissions from the cement kilns represent less than 10% of the total VOC emissions in the DFW nine-county nonattainment area that come from point sources and less than 1% of total VOC emissions. Current modeling indicates that reductions in VOC emissions are less effective in reducing ambient ozone levels than reductions in NO_x emissions.

An individual urged the commission to delay permitting coal-fired power plants upwind from DFW until more studies showing the full, total impact of all the proposed plants can be completed. The commenter also suggested alternatives to new coal-fired power plants.

The commission appreciates the commenter's interest in air quality. The comment does not relate to the proposed VOC RACT update rulemaking, and no changes to the rule have been made in response to it. The commission encourages public input on the proposed power plants and, as part of the permitting process, has conducted a series of public meetings to inform the public of the permit applications and to seek public input on them.

SUBCHAPTER A: DEFINITIONS

§115.10

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.10. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following terms, when used in this chapter (relating to Control of Air Pollution from Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) **Background**--The ambient concentration of volatile organic compounds in the air, determined at least one meter upwind of the component to be monitored. Test Method 21 (40 Code of Federal Regulations Part 60, Appendix A) shall be used to determine the background.

(2) **Beaumont/Port Arthur area**--Hardin, Jefferson, and Orange Counties.

(3) **Capture efficiency**--The amount of volatile organic compounds (VOC) collected by a capture system that is expressed as a percentage derived from the weight per unit time of VOCs entering

a capture system and delivered to a control device divided by the weight per unit time of total VOCs generated by a source of VOCs.

(4) **Carbon adsorption system**--A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) **Closed-vent system**--A system that:

(A) is not open to the atmosphere;

(B) is composed of piping, ductwork, connections, and, if necessary, flow-inducing devices; and

(C) transports gas or vapor from a piece or pieces of equipment directly to a control device.

(6) **Component**--A piece of equipment, including, but not limited to, pumps, valves, compressors, connectors, and pressure relief valves, which has the potential to leak volatile organic compounds.

(7) **Connector**--A flanged, screwed, or other joined fitting used to connect two pipe lines or a pipe line and a piece of equipment. The term connector does not include joined fittings welded

completely around the circumference of the interface. A union connecting two pipes is considered to be one connector.

(8) **Continuous monitoring**--Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(9) **Covered attainment counties**--Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Karnes, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Polk, Rains, Red River, Refugio, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(10) **Dallas/Fort Worth area**--For purposes of Subchapter B of this chapter, General Volatile Organic Compound Sources, Division 5, Municipal Solid Waste Landfills, Collin, Dallas, Denton, and Tarrant Counties. For all other divisions, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(11) **El Paso area**--El Paso County.

(12) **Emergency flare**--A flare that only receives emissions during an upset event.

(13) **External floating roof**--A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. For the purposes of this chapter, an external floating roof storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(14) **Fugitive emission**--Any volatile organic compound entering the atmosphere that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(15) **Gasoline bulk plant**--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(16) **Gasoline terminal**--A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(17) **Heavy liquid**--Volatile organic compounds that have a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius).

(18) **Highly-reactive volatile organic compound**--As follows.

(A) In Harris County, one or more of the following volatile organic compounds (VOCs): 1,3-butadiene; all isomers of butene (e.g., isobutene (2-methylpropene or isobutylene), alpha-butylene (ethylethylene), and beta-butylene (dimethylethylene, including both cis- and trans-isomers)); ethylene; and propylene.

(B) In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, one or more of the following VOCs: ethylene and propylene.

(19) **Houston/Galveston or Houston/Galveston/Brazoria area**--Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(20) **Incinerator**--For the purposes of this chapter, an enclosed control device that combusts or oxidizes volatile organic compound gases or vapors.

(21) **Internal floating cover**--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. For the purposes of this chapter, an external floating roof

storage tank that is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(22) **Leak-free marine vessel**--A marine vessel with cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers, and gauging covers) that were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures must meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves must be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(23) **Light liquid**--Volatile organic compounds that have a true vapor pressure greater than 0.044 pounds per square inch absolute (0.3 kiloPascal) at 68 degrees Fahrenheit (20 degrees Celsius), and are a liquid at operating conditions.

(24) **Liquefied petroleum gas**--Any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(25) **Low-density polyethylene**--A thermoplastic polymer or copolymer comprised of at least 50% ethylene by weight and having a density of 0.940 grams per cubic centimeter or less.

(26) **Marine loading facility**--The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(27) **Marine loading operation**--The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(28) **Marine terminal**--Any marine facility or structure constructed to transfer oil, gasoline, or other volatile organic liquid bulk cargo to or from a marine vessel. A marine terminal may include one or more marine loading facilities.

(29) **Metal-to-metal seal**--A connection formed by a swage ring that exerts an elastic, radial preload on narrow sealing lands, plastically deforming the pipe being connected, and maintaining sealing pressure indefinitely.

(30) **Natural gas/gasoline processing**--A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

(31) **Petroleum refinery**--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(32) **Polymer or resin manufacturing process**--A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(33) **Pressure relief valve**--A safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A pressure relief valve is automatically actuated by the static pressure upstream of the valve, but does not include:

(A) a rupture disk; or

(B) a conservation vent or other device on an atmospheric storage tank that is actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge.

(34) **Printing line**--An operation consisting of a series of one or more printing processes and including associated drying areas.

(35) **Process drain**--Any opening (including a covered or controlled opening) that is installed or used to receive or convey wastewater into the wastewater system.

(36) **Process unit**--The smallest set of process equipment that can operate independently and includes all operations necessary to achieve its process objective.

(37) **Rupture disk**--A diaphragm held between flanges for the purpose of isolating a volatile organic compound from the atmosphere or from a downstream pressure relief valve.

(38) **Shutdown or turnaround**--For the purposes of this chapter, a work practice or operational procedure that stops production from a process unit or part of a unit during which time it is technically feasible to clear process material from a process unit or part of a unit consistent with safety constraints, and repairs can be accomplished.

(A) The term shutdown or turnaround does not include a work practice that would stop production from a process unit or part of a unit:

(i) for less than 24 hours; or

(ii) for a shorter period of time than would be required to clear the process unit or part of the unit and start up the unit.

(B) Operation of a process unit or part of a unit in recycle mode (i.e., process material is circulated, but production does not occur) is not considered shutdown.

(39) **Startup**--For the purposes of this chapter, the setting into operation of a piece of equipment or process unit for the purpose of production or waste management.

(40) **Strippable volatile organic compound (VOC)**--Any VOC in cooling tower heat exchange system water that is emitted to the atmosphere when the water passes through the cooling tower.

(41) **Synthetic organic chemical manufacturing process**--A process that produces, as intermediates or final products, one or more of the chemicals listed in 40 Code of Federal Regulations §60.489 (October 17, 2000).

(42) **Tank-truck tank**--Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(43) **Transport vessel**--Any land-based mode of transportation (truck or rail) equipped with a storage tank having a capacity greater than 1,000 gallons that is used to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(44) **True partial pressure**--The absolute aggregate partial pressure of all volatile organic compounds in a gas stream.

(45) **Vapor balance system**--A system that provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(46) **Vapor control system or vapor recovery system**--Any control system that utilizes vapor collection equipment to route volatile organic compounds (VOC) to a control device that reduces VOC emissions.

(47) **Vapor-tight**--Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in this chapter.

(48) **Waxy, high pour point crude oil**--A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1: STORAGE OF VOLATILE ORGANIC COMPOUNDS

§115.119

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.119. Counties and Compliance Schedules.

(a) The owner or operator of each stationary tank, reservoir, or other container in which any volatile organic compound (VOC) is placed, stored, or held in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Hardin, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Storage of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 2: VENT GAS CONTROL

§115.129

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.129. Counties and Compliance Schedules.

(a) The owner or operator of each vent gas stream in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Vent Gas Control) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each bakery in Collin, Dallas, Denton, and Tarrant Counties subject to §115.122(a)(3)(C) of this title (relating to Control Requirements) shall comply with §§115.121(a)(3), 115.122(a)(3)(C), and 115.126(6) of this title (relating to Emission Specifications; Control Requirements; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in Federal Clean Air Act (FCAA), §172(c)(9).

(c) The owner or operator of each bakery in El Paso County subject to §115.122(a)(3)(D) of this title shall comply with §§115.121(a)(3), 115.122(a)(3)(D), and 115.126(6) of this title as soon as

practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in FCAA, §172(c)(9).

(d) The owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 3: WATER SEPARATION

§115.139

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.139. Counties and Compliance Schedules.

(a) The owner or operator of each volatile organic compound (VOC) water separator in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Water Separation) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 4: INDUSTRIAL WASTEWATER

§115.149

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.149. Counties and Compliance Schedules.

(a) The owner or operator of each affected source category within a plant 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 Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 1: LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

§115.219

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.219. Counties and Compliance Schedules.

(a) The owner or operator of each volatile organic compound (VOC) transfer operation in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Loading and Unloading of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline bulk plant 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 gasoline terminal in the covered attainment counties, as defined in §115.10 of this title, shall continue to comply with this division as required by §115.930 of this title.

(d) The owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as

soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline terminal, gasoline bulk plant, and VOC transfer operation in these counties shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) until the facility achieves compliance with the newly applicable requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

**DIVISION 3: CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM
TRANSPORT VESSELS**

§115.239

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.239. Counties and Compliance Schedules.

(a) The owner or operator of each tank-truck tank 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 Control of Volatile Organic Compound Leaks from Transport Vessels) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline tank-truck tank 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 tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline tank-truck tank in these counties shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test Methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.

**SUBCHAPTER D: PETROLEUM REFINING, NATURAL GAS PROCESSING,
AND PETROCHEMICAL PROCESSES**

**DIVISION 1: PROCESS UNIT TURNAROUND AND VACUUM-PRODUCING SYSTEMS IN
PETROLEUM REFINERIES**

§115.319

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.319. 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 this division (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

**SUBCHAPTER D: PETROLEUM REFINING, NATURAL GAS PROCESSING, AND
PETROCHEMICAL PROCESSES**

**DIVISION 3: FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL
GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE
NONATTAINMENT AREAS**

§115.359

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or

regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.359. Counties and Compliance Schedules.

(a) The owner or operator of each affected source in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 1: DEGREASING PROCESSES

§115.419

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§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.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with the applicable sections of this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 3: FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

§115.439

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.439. 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 Flexographic and Rotogravure Printing) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 4: OFFSET LITHOGRAPHIC PRINTING

§115.449

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.449. Counties and Compliance Schedules.

(a) In El Paso County, all offset lithographic printing presses must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title (relating to Control Requirements; Alternate Control Requirements; Approved Test Methods; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than November 15, 1996.

(b) In Collin, Dallas, Denton, and Tarrant Counties, all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of volatile organic compound (VOC) equal to or greater than 50 tons per calendar year, must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than December 31, 2000.

(c) In Collin, Dallas, Denton, and Tarrant Counties, all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC less than 50 tons per calendar year, must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the attainment deadline or failure to demonstrate

reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act (FCAA), §172(c)(9).

(d) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 25 tons per calendar year, must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than December 31, 2002.

(e) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC less than 25 tons per calendar year, must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the FCAA, §172(c)(9).

(f) In Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, the owner or operator of all offset lithographic printing presses on a property that when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year, shall comply with §§115.442, 115.443, 115.445, and 115.446 of this title as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER F: MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1: CUTBACK ASPHALT

§115.519

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§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 as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with applicable sections of this division as soon as practicable, but no later than March 1, 2009.

SUBCHAPTER F: MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 2: PHARMACEUTICAL MANUFACTURING FACILITIES

§115.539

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; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.539. 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 this division (relating to Pharmaceutical Manufacturing Facilities) as required by §115.930 of this title (relating to Compliance Dates).

(b) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.