

The Texas Commission on Environmental Quality (commission) proposes an amendment to §115.247.

The proposed amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

For facilities used exclusively for the initial fueling and re-fueling of vehicles equipped with onboard refueling vapor recovery (ORVR) equipment, Stage II is an unnecessary expense because refueling emissions are captured via vehicle ORVR instead of the Stage II dispenser. The EPA estimates it costs about \$40,000 to install a vacuum-assist system and \$4,100 per year to maintain it. ORVR systems capture vapors otherwise vented to the atmosphere. ORVR systems are passive systems that force gasoline vapors displaced from a vehicle's fuel tank during refueling to be directed to a carbon-canister holding system and ultimately to the engine where they are consumed. EPA phased in ORVR systems for automobiles starting with model year 1998. All automobiles manufactured after 2000 must be equipped with ORVR. Phase-in of ORVR for light-duty trucks began in model year 2001, and by model year 2003, all new light-duty trucks were required to have ORVR systems.

SECTION DISCUSSION

The proposed amendment to §115.247, Exemptions, would add paragraph (3) for individual dispensers used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment.

ANTI-BACKSLIDING DEMONSTRATION

The Stage II program was initiated as a volatile organic compound (VOC) control strategy for certain ozone nonattainment areas. Stage II vapor recovery equipment must be certified by EPA to achieve 95% control efficiency for VOC emissions. Furthermore, EPA states in their Stage II Vapor Recovery Systems-Options Paper dated February 7, 2006, that ORVR controls achieve 95% control efficiency. Therefore, exempting facilities that refuel only ORVR-equipped vehicles from the Stage II program will not result in increased VOC emissions.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule would provide an exemption from Stage II vapor recovery requirements for facilities used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment. The amendment is needed because Stage II controls are an unnecessary expense for facilities used exclusively for the fueling of vehicles equipped with ORVR equipment. Refueling emissions are captured via vehicle ORVR instead of the facility's dispenser. The proposed amendment is expected to have no effect on the amount of emissions released into the atmosphere at any facility affected by the proposed amendment. Further, it is estimated that the proposed rule will only affect one facility, a General Motors manufacturing plant in Arlington. The agency inspects automobile manufacturing plants for compliance with agency rules once every three years at a maximum and every five years at a

minimum. Any cost savings for the agency due to any reduced inspection time is not considered significant. Due to the release of a December 12, 2006, EPA guidance memo to Regional Air Directors, *Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated*, the TCEQ is requesting comments on whether to change the proposed rule language to include an exemption from Stage II requirements for any facility where more than 95% of the motor vehicle fleet being fueled onsite is equipped with ORVR. We are also requesting comments on whether to include an exemption from Stage II requirements for E85 dispensing pumps.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be more efficient control of vehicle refueling emissions with continued protection of public health and the environment.

Some minor fiscal implications are anticipated for the General Motors manufacturing plant due to the implementation of the proposed rule. There may be other facilities affected by the proposed rule, such as large car rental businesses, but at this time agency staff are unable to identify other businesses or individuals that could be affected by the implementation of the proposed rule.

It is estimated that GM could save approximately \$45,000 each year if they are exempt from having to use the current Stage II vapor recovery equipment which is no longer needed. The estimated cost savings include maintenance, parts, service, and energy costs. It is anticipated that if there are any

other facilities affected by the proposed rule, similar cost savings would be realized.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. No small or micro-businesses are expected to be affected by the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. A "major environmental rule" is a rule which is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this proposed rulemaking action is to provide an exemption from Stage II vapor recovery requirements for facilities used exclusively for the initial fueling and/or re-fueling of vehicles equipped with ORVR equipment because use of both provides no net environmental benefit. The commission invites public comment on the draft regulatory

impact analysis determination. Also, the amendment is proposed to continue to meet the requirements of 42 United States Code, §7511a(b)(3) and Texas Health and Safety Code (THSC), §382.019 and §382.208, but in a less financially burdensome manner on owners and operators of gasoline dispensing facilities.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to the proposed amendment because this action discontinues Stage II vapor recovery requirements for specific regulated activities. Promulgation and enforcement of the proposed amendment would be neither a statutory or constitutional taking of private real property. Specifically, the proposed amendment does not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the proposed regulations.

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 CMP. 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 that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and the adopted revisions will maintain the same 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 §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CPM goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 115 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits; therefore, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permits to include the revised Chapter 115 requirements for each emission unit at their sites affected by the revisions to Chapter 115.

ANNOUNCEMENT OF HEARINGS

Public hearings will be held in Austin on February 27, 2007, at 2:00 p.m. at the Texas Commission on

Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210, and in Arlington on February 28, 2007, at 2:00 p.m. at the City of Arlington Council Chambers located at 101 West Abrams Street. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2006-049-115-EN. The comment period closes March 15, 2007. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Koy Howard, Air Quality Planning, at (512) 239-2306.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

**DIVISION 4: CONTROL OF VEHICLE REFUELING EMISSIONS (STAGE II) AT MOTOR
VEHICLE FUEL DISPENSING FACILITIES**

§115.247

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §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 TWC; and under THSC, §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 proposed under THSC, §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 control of the state's air; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements THSC, §§382.002, 382.011, 382.012, and 382.208.

§115.247. Exemptions.

The following are exempt from the requirements of this division (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities):

- (1) gasoline dispensing equipment used exclusively for the fueling of aircraft, watercraft, or implements of agriculture; [and]

- (2) any motor vehicle fuel dispensing facility for which construction began prior to November 15, 1992, and which has a monthly throughput of less than 10,000 gallons of gasoline. For the purposes of this paragraph, the monthly throughput shall be based on the maximum monthly gasoline throughput for any calendar month after January 1, 1991. To maintain a facility's exempt status under this paragraph, the owner or operator must submit the facility's monthly gasoline throughput on an annual basis no later than January 31 of each year to the executive director or designated representative; and[.]

- (3) any motor vehicle fuel dispensing facility used exclusively for the fueling and/or refueling of vehicles equipped with onboard refueling vapory recovery equipment.