

The commission proposes amendments to §101.1, concerning Definitions, and §101.11, concerning Exemptions from Rules and Regulations and new §101.6, concerning Upset Reporting and Recordkeeping Requirements, and §101.7, concerning Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements. In concurrent rulemaking, the commission is proposing the repeal of §101.6, concerning Notification Requirement for Major Upset, and §101.7, concerning Notification Requirements for Maintenance, and revisions to the State Implementation Plan (SIP) regarding these proposals.

EXPLANATION OF PROPOSED RULES. The proposal is intended to clarify when and how unauthorized air emissions during upsets, maintenance, start-ups, and shutdowns must be recorded and reported, considering reporting requirements found in other state and federal regulations, enhancement of compliance, and utilization of agency resources. Specifically, the revisions are intended to use the same reporting tools as the commission's spill prevention and control rules found in 30 TAC Chapter 327 which coordinate the reporting requirements found in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code Annotated (USCA), §§9601-9675) and the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 USCA, §§11001-11050), and the related regulations implementing these Acts. The reporting requirements under CERCLA, EPCRA, and the spill rules are based on reportable quantities (RQs). CERCLA, EPCRA, and the spill rules all require the reporting of any release which equals or exceeds an RQ. The proposed rule would facilitate consistent reporting for state and federal programs.

The proposed revisions incorporate the concept of using RQs as the mechanism that defines what should be reported immediately. The proposed definition of RQ also establishes quantities for several air contaminants significant to Texas industries, and defines a default RQ of 100 pounds for air contaminants not listed in the federal rules or this definition, which is similar to the CERCLA default RQ of 100 pounds for unlisted hazardous substances. The concept of opacity is included in the definition of RQ, and opacity reporting and recordkeeping are adjusted due to the difficulty in estimating the emission quantity. The RQs are not intended to represent a judgment as to the specific degree of hazard associated with certain releases, but rather function as a mechanism by which the regulated community will know when to notify the commission of an unauthorized emission. The recordkeeping requirements replace the need for reporting of all events, allowing the agency to focus on the more significant events in the short term while enhancing the information more appropriately handled in the long term.

In addition to comments on the specific language and impacts of the proposed rules, the commission solicits suggestions on alternative language or approaches on how unauthorized air emissions during upsets, maintenance, start-ups, and shutdowns should be recorded, reported, limited, or exempted. The commission specifically wants comments on how to eliminate any duplicate or unnecessary reporting or information. The commission also specifically would like comments on how continuous emission monitors (CEMs) provide the same or similar information and how the requirements of the proposed rules should be modified or made inapplicable to avoid unnecessary duplication.

If adopted, these revisions will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the SIP. The commission also solicits comments on delaying the effect of these rules until EPA approval.

The proposed amendments to §101.1 would delete the definition of “major upset” and add definitions for “non-reportable upset,” “reportable quantity,” “reportable upset,” “upset,” and “unauthorized emission.” The definition of unauthorized emissions specifically includes compounds and elements the agency does not want to consider in records and reports. The definitions would establish the distinction between reportable and non-reportable upsets through the use of numerical values for reportable quantities. The air contaminants listed within the reportable quantity definition are not listed in CERCLA and EPCRA, but are air contaminants significant to Texas industries. Additional compounds may be added through rulemaking. The agency considered use of additional generic categories such as particulate matter, volatile organic compounds, alkanes, and alkenes. These categories were not proposed to ensure the agency would receive appropriate information on the chemical characteristics of the release. Particulate matter, volatile organic compounds, and alkene groups can include significantly hazardous constituents listed in CERCLA, EPCRA, and agency permits. Alkanes were not added as a group because the most common gaseous alkanes are individually listed at the maximum RQ that the commission considered appropriate.

The proposed new §101.6 would establish the reporting and recordkeeping requirements for upsets, including establishment of a time frame for making certain decisions related to reporting and recordkeeping. Any requirement for additional information would be at the discretion of the executive

director. The owners or operators will continue to be required to provide timely notification of reportable upsets, but the language “as soon as practicable” is intended to provide the flexibility to make a cursory determination of whether the upset has or will exceed a reportable quantity, and allow sufficient time to gather enough information to make a reasonably informative report. Where obvious health and human safety impacts are occurring or have occurred, more immediate reporting is expected. The outside limit for reporting is 24 hours from discovery of the upset. The concept of a compound descriptive air contaminant is introduced to clarify that compound specific information is not required when it cannot be determined, but to ensure that the owner or operator provides as much insight as possible regarding the nature of the material released. The proposal also clarifies that an estimate of the quantity is acceptable, rather than an exact quantity. For upsets involving opacity exceedences only, the owner/operator would not have to estimate the excess weight of air contaminants. The location, magnitude, and the chemical characteristics of the release are the important factors that will aid the agency in its short term response. The amendments require that a record of any upset be created within two weeks of the occurrence and that the record be retained for two years.

An unauthorized air release of regular unleaded gasoline provides a good example of the commission’s expectations of the new reporting requirements. Obviously, it would be impractical to provide an exact speciation of all the compounds in a gasoline release, and the major constituents of gasoline, branched-chain paraffins, cycloparaffins, and aromatics are well known. Regular unleaded gasoline is relatively descriptive as compared to a description like volatile organic compounds. If the release is from evaporation of a spill from an overfilled gasoline tank, or is a mist coming off the top of a distillation column, the compound description should include that type of information. The reportable quantity for

regular unleaded gasoline would normally be the 100 pound default RQ. Knowledge of the basic makeup of the gasoline at the facility should be used to ensure that the known CERCLA and EPCRA constituents of the gasoline are not controlling the reportable quantity or forcing the owner/operator to use the RQ of the most hazardous constituent as the mixture default RQ. For example, benzene is a known hazardous constituent of gasoline and has a listed RQ of ten pounds. Owners or operators who know the benzene in their gasoline is never greater than about 5.0% by weight (or five pounds benzene per 100 pounds gasoline) would know the benzene RQ is not the controlling RQ. This same analysis is generally true of the other CERCLA and EPCRA constituents of gasoline. Additives with an RQ of one pound would have to be greater than 1.0% by weight to be the controlling RQ in a gasoline, or any mixture. It would be important for an owner or operator to be aware of and report unusually high concentrations of hazardous additives, such as lead compounds, which would effect the toxic nature of the mixture.

The proposed new §101.7 establishes the reporting, recordkeeping, and operational requirements for maintenance, start-ups, and shutdowns. The new section utilizes the concept of reportable quantities for the purpose of limiting the number of required reports. The section retains the specific authority of the executive director to establish the amount, time, and duration of emissions allowed during the maintenance, start-up, or shutdown, which is currently codified in §101.11(b). The executive director also retains the specific authority to require a detailed plan on how these emissions can be limited. The proposed new section would require that maintenance, start-up, and shutdown events which were not expected to equal or exceed an RQ but which resulted in reportable emissions, be considered upsets.

As such, they would be subject to the requirements for upset reporting and recordkeeping, and the additional standard of “unavoidability” to be eligible for an upset exemption under §101.11.

The language prohibiting the creation of nuisances during upsets, maintenance, start-ups, and shutdowns in existing sections §101.6 and §101.7 would not be carried into the proposed new sections. This prohibition is retained in §101.11(f).

The proposed amendments to §101.11 establish conditions for an exemption of unauthorized emissions from limits in permits, rules, and orders of the commission during upsets, maintenance, start-ups, and shutdowns. The amendments to §101.11 would eliminate the requirement for the executive director to take definitive action to exempt unauthorized emissions during upsets. This action cannot be practically provided in all cases. Eliminating the requirement will provide the regulated community with more certainty of the availability of exemptions. The amendments would retain separate exemptions for upsets and for maintenance, start-up, and shutdown.

The proposed exemption for upsets would establish the requirement that the owner or operator must comply with §101.6 for an upset to be exempt. This retains the concept in the current rule that upsets must be correctly reported, which provides an appropriate incentive for the regulated community to communicate reportable upsets to the agency. The proposal retains the commission’s practice that requires upsets to be reasonably unavoidable in order to be exempt. In general, the agency considers such factors as the use of good engineering practice, the presence of negligence, or the repetition of similar upsets in evaluating the unavoidability of an upset. The amendments modify language in the

current rule that has been interpreted to require a shutdown even in circumstances where a shutdown would result in higher emissions than continuing to operate in an upset condition. The proposal retains the requirement that an owner or operator must take appropriate corrective action, which could include shutdown. Specifically, the commission intends that appropriate action should include minimization of emissions in concert with correction of the upset.

The proposed exemption for maintenance, start-up, and shutdown would establish the requirement that the owner or operator must comply with §101.7 to receive the exemption for unauthorized emissions during those activities. This retains the concept in the current rule that maintenance, start-ups, and shutdowns must be correctly reported, which provides an appropriate incentive for the regulated community to communicate these activities to the agency. The amended exemption would further establish the requirement for emissions to be minimized to the extent practicable. The executive director's specific authority to establish the amount, time, and duration of emissions allowed would be moved to §101.7. It is not common practice for the executive director to set limits where maintenance, start-up, and shutdown are expected to cause unauthorized emissions, so the exemption criteria of minimizing emissions to the extent practicable is important in ensuring that the owner or operator takes reasonable precautions in their internal plans for these activities.

FISCAL NOTE. Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the sections as proposed are in effect, there will be no fiscal implications for state or local government as a result of enforcement and administration of the sections.

PUBLIC BENEFIT. Mr. Minick has also determined that for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of the sections will be the ability of the commission to concentrate short term resources on the larger releases of air pollutants and more effectively evaluate unauthorized releases in the long term. There are no additional regulatory burdens on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for the sections under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these sections is to clarify when and how unauthorized emissions must be reported and recorded and when those unauthorized emissions can be exempt from limits established in permits, rules, and orders of the commission. Promulgation and enforcement of the sections will not affect private real property.

PUBLIC HEARING. A public hearing on the proposal will be held March 6, 1997, at 2:00 p.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons regarding this proposal and request for alternatives. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments regarding this proposal and request for alternatives may be mailed to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96154-101-AI. Comments must be received by 5:00 p.m., March 13, 1997. For further information, please contact Jeff Greif, Office of Compliance and Enforcement, (512) 239-1534, or Beecher Cameron, Office of Policy and Regulatory Development, (512) 239-1495.

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments and new sections implement Health and Safety Code, §382.017.

GENERAL RULES

§§101.1, 101.6, 101.7, and 101.11

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission [Texas Natural Resource Conservation Commission (Commission)], the terms used by the commission [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 TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[**Major upset** - An unscheduled occurrence or excursion of a process or operation that results in an emission of air contaminants that contravenes the TCAA and is beyond immediate control, or a release that is initiated to protect life in the immediate or adjacent areas.]

Non-reportable upset - Any upset that is not a reportable upset as defined in this section.

Reportable quantity (RQ) - Is as follows:

(A) for substances, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR), §302, Table 302.4,

the column “final RQ”;

(II) listed in 40 CFR, §355, Appendix A, the column “Reportable

Quantity”; or

(III) listed as follows:

(-a-) butane - 5,000 pounds;

(-b-) butenes (except 1,3-butadiene) - 5,000 pounds;

(-c-) ethylene - 5,000 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) isobutylene - 5,000 pounds;

(-f-) pentane - 5,000 pounds;

(-g-) propane - 5,000 pounds;

(-h-) propylene - 5,000 pounds; or

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures:

(i) where the relative amount of constituents is known, any amount of a constituent which equals or exceeds the amount specified in subparagraph (A) of this definition;

(ii) where the relative amount of constituents is not known, an amount of mixture which equals or exceeds the amount of any single constituent specified in subparagraph (A) of this definition;

(C) for opacity, an opacity which is 15% above the applicable limit, averaged over a six-minute period.

Reportable upset - Any upset which, in any 24-hour period, results in an unauthorized emission of air contaminants equal to or in excess of the reportable quantity as defined in this section.

Upset - An unscheduled occurrence or excursion of a process or operation that results in an unauthorized emission of air contaminants.

Unauthorized emission - An emission of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen which exceeds any limit in a permit, rule or order of the commission.

§101.6. Upset Reporting and Recordkeeping Requirements.

(a) The following requirements for reportable upsets shall apply.

(1) As soon as practicable, but not later than 24 hours after the discovery of an upset, the owner or operator shall:

(A) determine if the upset is a reportable upset; and

(B) notify the commission's regional office for the region in which the facility is located and all appropriate local air pollution control agencies if the upset is reportable.

(2) The notification for reportable upsets shall identify:

(A) the processes and equipment involved;

(B) the date and time of the upset;

(C) the duration or expected duration of the upset;

(D) the compound descriptive type of air contaminant(s) released or expected to be released during the upset; and

(E) the estimated quantities of the air contaminant(s) released or expected to be released during the upset, except in the case of upsets determined on opacity only, where the volumetric flow rate and opacity shall be estimated.

(3) The owner or operator of a facility must report additional or more detailed information on the upset when requested by the executive director.

(b) The owner or operator of a facility shall create records of reportable and non-reportable upsets as soon as practicable but no later than two weeks after an upset. The records shall be maintained on site for a minimum of two years and be made readily available upon request to commission staff or personnel of any local air pollution program having jurisdiction. If a site is not normally staffed, then records of upsets may be maintained at the staffed location within Texas that is responsible for day-to-day operations of the site. Such records shall identify:

(1) the cause of the upset;

(2) the processes and equipment involved;

(3) the date and time of the upset;

(4) the duration of the upset;

(5) the compound descriptive type of the air contaminant(s) released during the upset;

(6) the estimated quantities of the air contaminant(s) released during the upset, except in the case of upsets determined on opacity only, where the volumetric flow rate and opacity shall be estimated; and

(7) the corrective actions taken to eliminate the upset and/or minimize the emissions.

(c) The owner or operator of any facility subject to the provisions of this section shall perform, upon request by the executive director, a technical evaluation of the upset event. The evaluation shall include at least an analysis of the probable causes of the upset and any necessary actions to prevent or minimize recurrence. The evaluation shall be submitted in writing to the executive director within 60 days from the date of request. The 60-day period may be extended by the executive director.

§101.7. Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

(a) All pollution emission capture equipment and abatement equipment shall be maintained in good working order and operated properly during normal facility operations. Emission capture and abatement equipment shall be considered in good working order and operated properly when operated in a manner such that the facility is capable of operating within limitations established by permit, rule, or order of the commission.

(b) The owner or operator shall notify the commission's regional office for the region in which the facility is located and all appropriate local air pollution control agencies at least ten days prior to any maintenance, start-up, or shutdown which is expected to cause an unauthorized emission which equals or exceeds the reportable quantity in any 24-hour period. If notice cannot be given ten days prior to any start-up, shutdown, or maintenance which is expected to cause an unauthorized emission that will equal or exceed a reportable quantity in any 24-hour period, notification shall be given as soon as practicable prior to the maintenance, start-up, or shutdown. Any maintenance, start-up, or shutdown which results in an unexpected unauthorized emission that equals or exceeds the reportable quantity shall be considered a reportable upset and subject to §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements). The notification shall include:

- (1) the expected date and time of the maintenance, start-up, or shutdown;

(2) the processes and equipment involved;

(3) the expected duration of the maintenance, start-up, or shutdown;

(4) the compound descriptive type of the air contaminant(s) expected to be released during the maintenance, start-up, or shutdown; and

(5) the estimated quantities of the air contaminant(s) expected to be released during the maintenance, start-up, or shutdown, except in the case of unauthorized emissions based on opacity only, where the volumetric flow rate and opacity shall be estimated.

(c) The owner or operator of a facility shall create records of all maintenance, start-ups, and shutdowns with unauthorized emissions as soon as practicable but no later than two weeks after the maintenance, start-up, or shutdown. The records shall be maintained on-site for a minimum of two years and be made readily available upon request to commission staff or personnel of any local air pollution program having jurisdiction. If a site is not normally staffed, then records of upsets may be maintained at the staffed location within Texas that is responsible for day to day operations of the site. Such records shall identify:

(1) the type of activity and the reason for the maintenance, start-up, or shutdown;

(2) the processes and equipment involved;

(3) the date and time of the maintenance, start-up, or shutdown;

(4) the duration of the maintenance, start-up, or shutdown;

(5) the compound descriptive type of the air contaminant(s) released during the maintenance, start-up, or shutdown;

(6) the estimated quantities of the air contaminant(s) released during the maintenance, start-up, or shutdown, except in the case of unauthorized emissions based on opacity only, where the volumetric flow rate and opacity shall be estimated; and

(7) the actions taken to minimize the emissions from the maintenance, start-up, or shutdown.

(d) The executive director may specify the amount, time, and duration of emissions that will be allowed during the maintenance, start-up, or shutdown. The owner or operator of any source subject to the provisions of this section shall submit a technical plan for any start-up, shutdown, or maintenance when requested by the executive director. The plan shall contain a detailed explanation of the means by which emissions will be minimized during the maintenance, start-up, or shutdown. For those emissions which must be released into the atmosphere, the plan shall include the reasons such emissions cannot be reduced further.

§101.11. Exemptions from Rules and Regulations.

(a) Upset emissions are exempt from compliance with emissions limits established in permits, rules, and orders of the commission if:

(1) the owner or operator properly complies with the requirements of §101.6 of this title (relating to Upset Reporting and Recordkeeping Requirements);

(2) the upset was not reasonably avoidable; and

(3) appropriate corrective actions were taken as soon as practicable after initiation of the upset.

[(a) Emissions occurring during major upsets may not be required to meet the allowable emission levels set by the rules and regulations upon proper notification as set forth in §101.6 of this title (relating to Notification Requirements for Major Upset), if a determination is made by the executive director after consultation with appropriate local agencies and with appropriate officials of the subject source that the upset conditions were unavoidable and that a shutdown or other corrective actions were taken as soon as practicable.]

(b) Emissions from any maintenance, start-up, or shutdown are exempt from compliance with emission limits established in permits, rules, and orders of the commission if the owner or operator

complies with the requirements of §101.7 of this title (relating to Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements), and the emissions are minimized to the extent practicable.

[(b) Emissions occurring during start-up or shutdown of processes or during periods of maintenance may not be required to meet the allowable emission levels set by the rules and regulations if so determined by the executive director upon proper notification as set forth in §101.7 of this title (relating to Notification Requirements for Maintenance). The executive director may specify the amount, time, and duration of emissions that will be allowed during start-up and shutdown and during periods of maintenance].

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 8, 1997.

The commission proposes the repeal of §101.6, concerning Notification Requirement for Major Upset, and §101.7, concerning Notification Requirements for Maintenance.

EXPLANATION OF PROPOSED REPEALS. The purpose of the repeals is to allow the adoption of new §101.6, concerning Upset Reporting and Recordkeeping Requirements, and §101.7, concerning Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements in concurrent rulemaking.

FISCAL NOTE. Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local government as a result of enforcement and administration of the repeals.

PUBLIC BENEFIT. Mr. Minick has also determined that for the first five years the repeals as proposed are in effect, the public benefit anticipated as a result of the repeals will be the ability of the commission to concentrate attention on the larger releases of air pollutants. There are no anticipated effects on small businesses. There is no anticipated economic cost for persons who are required to comply with the repeals as proposal.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for this proposal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the repeals is to clarify when and how unauthorized emissions must

be reported and to achieve consistency with other state and federal law. Promulgation and enforcement of the repeals will not affect private real property.

PUBLIC HEARING. A public hearing on the proposal will be held March 6, 1997, at 2:00 p.m. in Room 2210 of TNRCC Building F, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96154-101-AI. Comments must be received by 5:00 p.m., March 13, 1997. For further information, please contact Jeff Greif, Engineering Services Section, (512) 239-1534, or Beecher Cameron, Office of Policy and Regulatory Development, (512) 239-1495.

STATUTORY AUTHORITY. The repeals are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeals implement Health and Safety Code, §382.017.

GENERAL RULES

§101.6 and §101.7

§101.6. Notification Requirements for Major Upsets.

§101.7. Notification Requirements for Maintenance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 8, 1997.