

The commission adopts the repeal of §115.521, concerning Emission Specifications; §115.522, concerning Control Requirements; §115.523, concerning Alternate Control Requirements; §115.524, concerning Inspection Requirements; §115.525, concerning Testing Requirements; §115.526, concerning Recordkeeping Requirements; §115.527, concerning Exemptions; and §115.529, concerning Counties and Compliance Schedules. The repeals of §§115.521-115.527 and 115.529 are adopted without changes as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6837) and will not be republished.

EXPLANATION OF ADOPTED RULE REPEALS

The commission adopts these revisions to Chapter 115 and to the State Implementation Plan in order to repeal rules which are no longer necessary. Sections 115.521-115.527 and 115.529 are based upon a United States Environmental Protection Agency (EPA) Control Techniques Guideline (CTG) guidance document, "Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems," issued in December, 1978. The requirements of §§115.521-115.527 and 115.529 are being repealed subsequent to final action by the EPA to exclude perchloroethylene (perc) from the federal definition of "volatile organic compound" on February 7, 1996 (61 Federal Register (FR) 4588) due to perc's negligible photochemical reactivity. The EPA's action means that the perc dry cleaning CTG no longer has the regulatory status of a CTG for purposes of ozone control, and therefore states may repeal their CTG-based perc dry cleaning rules.

However, perc will continue to be regulated as a hazardous air pollutant under the Federal Clean Air Act, §112. Specifically, the EPA issued a National Emissions Standards for Hazardous Air Pollutants

(NESHAP) regulation limiting emissions from perc dry cleaners on September 22, 1993 (58 FR 49376), with a final compliance date of September 22, 1996. In the July 22, 1997, issue of the *Texas Register* (22 TexReg 6835), the commission proposed revisions to Chapter 113, concerning Control of Air Pollution from Toxic Materials, which incorporates this perc dry cleaning NESHAP by reference.

The perc dry cleaning NESHAP rules include an exemption from the add-on control requirements for existing dry-to-dry and transfer machines located at dry cleaners with total perc consumption of less than 140 or 200 gallons per year, respectively. (“Existing” means construction or reconstruction began before December 9, 1991. New machines installed on or after December 9, 1991 are considered “new” and must be equipped with at least a refrigerated condenser upon startup.) Consequently, repealing the Chapter 115 perc dry cleaning rules means that these smaller existing facilities in Dallas, Harris, and Tarrant Counties will no longer have to use add-on controls.

Because repealing the Chapter 115 perc dry cleaning rules would allow smaller dry cleaners in Dallas, Harris, and Tarrant Counties to increase their perc emissions, an analysis of the implications of this potential increase was conducted. The emissions from a small perc dry cleaners were modeled with screening modeling, which generally overestimates the concentrations. In order for the review to be conservative, the worst-case conditions were assumed (perc usage right at the 200 gallon/year exemption threshold; short distance to the property line; etc.). The results of the modeling were reviewed by the Toxicology and Risk Assessment Section and determined to be acceptable. In addition, any existing dry cleaners currently complying with the Chapter 115 perc dry cleaning rules are likely to

continue using their add-on controls due to the value of the recovered perc. Therefore, the Chapter 115 perc dry cleaning rules can simply be repealed, with the perc dry cleaning NESHAP superseding it.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal rules which are no longer necessary for control of ozone formation. Promulgation and enforcement of these rule repeals will not affect private real property which is the subject of the rule because the rule repeals do not impose new requirements, but repeal existing requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to

protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule repeals; however, minor increases in perc emissions may occur at smaller perc dry cleaners in Dallas, Harris, and Tarrant Counties. The commission has evaluated this potential increase and determined it to be insignificant. Therefore, in compliance with 31 TAC, §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

HEARING AND COMMENTERS

A public hearing on this proposal was held in Austin on August 14, 1997. The comment period closed August 21, 1997. No commenters submitted oral testimony. One commenter, Southwest Drycleaners Association (SDA), submitted written comments which supported the proposed revisions. No commenters opposed the proposed revisions.

SDA supported the proposed repeal of the Chapter 115 perc dry cleaning rules, since this would avoid unneeded duplication of the perc dry cleaning NESHAP.

The commission appreciates the support.

STATUTORY AUTHORITY

The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

SUBCHAPTER F : MISCELLANEOUS INDUSTRIAL SOURCES

PERCHLOROETHYLENE DRY CLEANING SYSTEMS (Repeal.)

§115.521. Emission Specifications. (Repeal.)

§115.522. Control Requirements. (Repeal.)

§115.523. Alternate Control Requirements. (Repeal.)

§115.524. Inspection Requirements. (Repeal.)

§115.525. Testing Requirements. (Repeal.)

§115.526. Recordkeeping Requirements. (Repeal.)

§115.527. Exemptions. (Repeal.)

§115.529. Counties and Compliance Schedules. (Repeal.)

This agency hereby certifies that the sections as repealed have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on October 15, 1997.