

The commission adopts the repeal of §§113.31-113.37, 113.41-113.48, 113.51-113.54, and 113.61-113.68, concerning Lead from Stationary Sources and a revision to the State Implementation Plan (SIP) concerning these repeals. The commission also adopts a change to the title of Subchapter B from “Lead from Stationary Sources” to “National Emission Standards for Hazardous Air Pollutants (FCAA §112, 40 CFR 61);” a new division concerning Radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPs); and a new §113.55, concerning Radon Emissions from Phosphogypsum Stacks (40 CFR 61, Subpart R). All sections are adopted without changes to the proposed text as published in the August 14, 1998 issue of the *Texas Register* (23 TexReg 8360).

EXPLANATION OF ADOPTED RULES

This rulemaking is part of the regulatory reform effort. Regulatory reform projects identify rules and regulations that need clarification for the benefit of the public and the regulated community; are outdated; impose regulatory requirements in excess of their contribution to the commission’s mission; or are duplicative, unnecessary, or inconsistent. This action is also a request for delegation of authority to implement one of the Title 40, Code of Federal Regulations, Part 61 (40 CFR 61) NESHAPs.

The lead rules for El Paso County were adopted on February 17, 1984 to control emissions from a primary lead smelter operated by ASARCO, Inc., and for Dallas County on May 18, 1984 to control lead from two secondary lead smelters (battery recycling facilities), all of which caused these counties to exceed the National Ambient Air Quality Standard for lead. Subsequently, the lead processes in all

three facilities were shut down and the equipment dismantled. A remaining lead emitting point source (a copper process) in the El Paso facility is under very rigid permit control (New Source Review (NSR) Permit Number 20345) for lead emissions. Fugitive lead emissions from the ASARCO plant are effectively controlled by existing particulate rules in Chapter 111 (concerning Control of Air Pollution from Visible Emissions and Particulate Matter) which apply throughout the City of El Paso. The fugitive lead emissions from outdoor storage piles are controlled by NSR Permit Number 4151, as well as controls found in 30 TAC §111.143, concerning Materials Handling. The fugitive lead emissions from the grounds and roads of the plant are controlled by NSR Permit Number 20345 as well as controls found in 30 TAC §111.147(a)(1), concerning Roads, Streets, and Alleys. One of the sites in Dallas (known as the Dixie Metals Company or the Exide Corporation) has been remediated under the federal Superfund program, and the other site in Dallas (Murph Metals, Incorporated, a subsidiary of RSR Corporation) is proposed for a state and federally supported remediation. There are no other operational lead smelters located, or anticipated to be located, within El Paso or Dallas County; therefore, the rules are being repealed under the commission's regulatory reform initiative.

Repeal of the existing Subchapter B, concerning Lead from Stationary Sources, is adopted concurrently with a new Subchapter B, concerning National Emission Standards for Hazardous Air Pollutants (FCAA §112, 40 CFR 61). The new Subchapter B will complement the existing Subchapter C, concerning National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63), which are requirements of the 1990 Federal Clean Air Act Amendments. Unlike other Part 61 NESHAPs, Texas was not automatically delegated authority to implement any

Radionuclide NESHAPs. Part 61, Subpart R, Radon Emissions from Phosphogypsum Stacks, is actually one of seven standards that apply to various types of federal or industrial facilities which have potential emissions of radioactive substances (radionuclides). Section 113.55 is added in response to a request from the United States Environmental Protection Agency (EPA) that Texas take delegation of 40 CFR, Part 61, Subpart R. Title 40 CFR Part 61, Subpart R, requires existing facilities to notify the commission in advance of any Radon test so it may be observed. The test requires a statistical sampling approach which is unique from other requirements associated with air regulations. Ninety days after the test, affected facilities must provide a report to the commission. Annual reports must be submitted to both the EPA and the appropriate commission regional office.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that 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. It does not meet the definition of a major environmental rule because outdated rules are being removed and because a new NESHAP requirement will not adversely affect the economy in a material way. The identified facilities affected by the NESHAP, already established by federal law, are currently meeting the federal standard being enforced by EPA. This rulemaking action will not, therefore, change the current level of protection of the environment.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this adoption under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal lead rules because there is no longer a need due to the shut down and dismantling of facilities formerly subject to the rules. The adoption by reference of 40 CFR 61, Subpart R will give Texas the authority to enforce the federal standard. Promulgation and enforcement of this rulemaking will not affect private real property because the rules being repealed applied to decommissioned facilities, and the rule being adopted already exists at the federal level and is currently enforced by EPA.

COASTAL MANAGEMENT PLAN

The commission has determined that the portion of this rulemaking concerning repeal of the lead rules is not subject to the Texas Coastal Management Plan (CMP) because these rules affect only sources outside of the Coastal Management Zone. The commission has determined that the portion of this rulemaking concerning 40 CFR 61, Subpart R NESHAP does relate 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 Resource Code, §§33.201 et. seq.), 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, commission 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 with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and

has determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This adoption does not change existing requirements because the same requirements are codified in 40 CFR 61, Subpart R. Therefore the adoption is consistent with 40 CFR. No persons commented on the consistency of the proposed rules with the CMP during the public comment period.

HEARING AND COMMENTERS

Public hearings on the proposal were held in Austin on September 8, 1998, and in El Paso on September 9, 1998. The comment period for the 40 CFR Subpart R NESHAP in §113.55 closed September 14, 1998. There were no comments received concerning the adoption of the new §113.55. In order to ensure compliance with public hearing requirements for SIP revisions, in accordance with 40 CFR 51, the commission scheduled another hearing in Austin, held on October 26, 1998, and extended the comment period for the lead rules and corresponding SIP revision until October 26, 1998. One commenter, Bracewell & Patterson, L.L.P., submitted written comments on behalf of ASARCO.

ANALYSIS OF TESTIMONY

General Comments

ASARCO supported the proposed repeal of the lead rules insofar as they applied to the El Paso area. ASARCO also requested that the commission amend the administrative provisions of the SIP which applied to the El Paso area.

Administrative SIP Revisions

ASARCO recommended that the commission submit a request to EPA for a conforming repeal of all the non-rule components of the Texas lead SIP, specifically 40 CFR §§52.2270(c)(41), (56), and (65). ASARCO also stated that to ensure consistency in the commission regulations, the commission should administratively void the dust control programs submitted under §113.33(a)(3)(A), any alternate schedules for equipment measurements approved under §113.35(7)(B), any designs for secondary hoods and control plans approved under §113.36(1) and (3), any alternate means of control approved under §113.51, and any control plans submitted under §113.62 and §113.63.

The commission agrees that many of the non-rule components of the Texas lead SIP need to be repealed; however, not all of the suggested repeals were proposed through this rulemaking project.

The SIP submissions cited in 40 CFR 52.2270(c)(41) covered a broad spectrum of lead issues; such as the designation of various counties throughout the state as attainment, nonattainment, or unclassified; and typical lead point sources which may cause the lead standard to be exceeded in areas of public exposure. It also identified, and addressed stationary sources of inorganic lead in El Paso, Collin, Denton, Dallas, and Harris Counties, as well as stationary and mobile sources of organic lead in major metropolitan areas of the state. The SIP also addresses the state's air quality surveillance network for lead. The SIP submission cited in 40 CFR 52.2270(c)(65) addresses the control strategy necessary for the El Paso area to achieve attainment. Because this

rulemaking only deals with the rescission of lead rules in 30 TAC Chapter 113 and not with nonattainment designation or the attainment demonstration, the commission cannot request EPA to repeal these sections at this time. The commission does plan to initiate a redesignation SIP revision to have both El Paso and Dallas declared attainment areas for the lead standard.

The SIP submission cited in 40 CFR 52.2270(c)(56) covers the initial control strategy for El Paso as defined in the lead rule sections of 30 TAC Chapter 113. EPA took no action on several of the sections and on the attainment date for El Paso. Because this rulemaking rescinds all the lead rule sections in 30 TAC Chapter 113 regarding El Paso, including those sections on which EPA took no action, the commission will request that the rules referenced in 40 CFR 52.2270(c)(56) be administratively deleted from the SIP. In addition, because the attainment date on which no action was taken was later resubmitted and approved in 40 CFR 52.2270(c)(65), the commission will also request that the reference to the attainment date be administratively deleted from 40 CFR 52.2270(c)(56).

STATUTORY AUTHORITY

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air, and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA, because the primary

purposes of this rulemaking are to repeal a subchapter which contains an air emission standard no longer applicable and to adopt by reference a federal standard.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

1. NONFERROUS SMELTERS IN EL PASO COUNTY

§§113.31 - 113.37

§113.31. Maintenance and Operation of Control Equipment.

§113.32. Areas Accessible to the General Public.

§113.33. Control of Fugitive Dust.

§113.34. Materials Handling and Transfer.

§113.35. Smelting of Lead.

§113.36. Smelting of Copper and Zinc.

§113.37. Lead Emissions Limits for Stacks.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

2. LEAD SMELTERS IN DALLAS COUNTY

§§113.41 - 113.48

STATUTORY AUTHORITY

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air, and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to adopt by reference a federal standard.

§113.41. Maintenance and Operation of Control Equipment.

§113.42. Storage of Lead-Containing Materials.

§113.43. Transport of Materials.

§113.44. Fugitive Emissions from Lead Processes.

§113.45. Battery or Lead Reclaiming Operations.

§113.46. Lead Emission Limits for Reverberatory Furnaces and Blast Furnaces.

§113.47. Control of Fugitive Dust.

§113.48. Additional Measures to Reduce Lead Emissions.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

3. ALTERNATE CONTROLS

§§113.51 - 113.54

STATUTORY AUTHORITY

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air, and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to adopt by reference a federal standard.

§113.51. Alternate Means of Control in El Paso County.

§113.52. Alternate Emission Reductions in El Paso County.

§113.53. Alternate Means of Control in Dallas County.

§113.54. Alternate Emission Reductions in Dallas County.

**SUBCHAPTER B : NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR
POLLUTANTS (FCAA §112, 40 CFR 61)**

1. RADIONUCLIDE NESHAPS

§113.55

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, 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 because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and adopt by reference a federal standard. The new section is also adopted under the TCAA, §382.011, which provides the commission with the authority to control the quality of the state's air which the new rule will accomplish by regulating emissions from phosphogypsum stacks. Under TCAA, §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air, the new rule is one of many national standards developed for the overall control of hazardous air pollutants in the United States. The new rule is also adopted under TCAA, §382.016, which authorizes the commission to require monitoring requirements and examination of records and therefore is consistent with the referenced requirements. The authority for delegation of 40 CFR Part 61 for both the implementation and enforcement of NESHAPs is contained in §112(l) of the 1990 Federal Clean Air Act Amendments and 40 CFR 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities.

§113.55. Radon Emissions from Phosphogypsum Stacks (40 CFR 61, Subpart R).

The National Emissions Standards for Radon Emissions from Phosphogypsum Stacks as specified in 40 CFR 61, Subpart R, as promulgated on June 3, 1992, are incorporated by reference.

SUBCHAPTER B : LEAD FROM STATIONARY SOURCES

4. COMPLIANCE AND CONTROL PLAN REQUIREMENTS

§§113.61 - 113.68

STATUTORY AUTHORITY

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA because the primary purposes of this rulemaking are to repeal a subchapter which contains an air emission standard applicable to nonexisting sources and to adopt by reference a federal standard.

§113.61. Compliance with Other Rules in El Paso County.

§113.62. Dates for Control Plan Submission and for Final Compliance in El Paso County.

§113.63. Control Plan Procedure in El Paso County.

§113.64. Reporting Procedure in El Paso County.

§113.65. Compliance with Other Rules in Dallas County.

§113.66. Dates for Control Plan Submission and for Final Compliance in Dallas County.

§113.67. Control Plan Procedure in Dallas County.

§113.68. Reporting Procedure in Dallas County.