

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §118.1, concerning Generalized Air Pollution Episodes; §118.2, concerning Provisions Governing Generalized Episode Control; §118.3, concerning Localized Air Pollution Episodes; §118.4, concerning Hearings; §118.5, concerning Emission Reduction Plan; and §118.6, concerning Texas Air Pollution Episode Contingency Plan and Emergency Management Center. These amendments are proposed as a revision to the Texas State Implementation Plan (SIP).

The commission proposes to update statutory citations in §§118.1, 118.3, and 118.4, and to update references to the commission in §§118.2, 118.4, 118.5, and 118.6. Also, the commission proposes various wording changes in all six sections to improve readability.

The commission is proposing to conduct a review of the rules in Chapter 118 as required by Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The proposed notice of review can be found in the Review of Agency Rules section in this issue of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

Chapter 118 is in the SIP at Title 40 Code of Federal Regulations (CFR) §52.2270(c)(71). The chapter enables the commission to satisfy the requirements of the Federal Clean Air Act (FCAA), §110(a)(2)(G), concerning Implementation Plans, and §303, concerning Emergency Powers, and implements 40 CFR 51, Subpart H, concerning Prevention of Air Pollution Episodes. Also, the chapter

supports the requirements of the Texas Clean Air Act (TCAA), §382.026, concerning Orders Issued Under Emergencies.

Chapter 118 specifies conditions and establishes actions to be taken by the commission and man-made emissions sources in preparation for, or in response to, an air pollution episode. An episode is the existence of a widespread condition of air pollution that creates an emergency requiring immediate action to protect human health or safety. The condition would cover a geographical area, would involve a combination of stagnating weather conditions and specified ambient levels of certain pollutants, and would remain for at least 12 hours. Under such conditions, the commission, with the governor's concurrence, could request or order any contributing source immediately to reduce or discontinue the emission of air contaminants.

Sections 118.1 and 118.2 reflect the provisions of the TCAA, §382.026(a), and contain episode criteria recommended in 40 CFR 51, Appendix L, concerning Example Regulations for Prevention of Air Pollution Emergency Episodes. Sections 118.2 and 118.3 satisfy the FCAA, §110(a)(2)(G), by providing authority comparable to that given the United States Environmental Protection Agency (EPA) administrator in the FCAA, §303, to stop the emission of air pollutants causing or contributing to an episode. Also, §118.3 reflects the provisions of the TCAA, §382.026(b), relating to localized episodes. Section 118.4 satisfies requirements of the TCAA, §382.026(c) and (d), relating to notice of a hearing to be held before the commission. Section 118.5 follows the EPA recommendations for emission reduction standby plans to be prepared, approved, and maintained on-site by sources which are likely to contribute to an episode. Section 118.6 reflects a requirement of the FCAA, §110(a)(2)(G), for the SIP

to provide a contingency plan to implement the state's authority specified in the FCAA, §303. Also, §118.6 satisfies the requirement for a state plan under 40 CFR 51, Subpart H. Additionally, §118.6 requires the executive director to establish and staff an emergency management center (EMC) for episode control activities. The FCAA, the TCAA, and 40 CFR 51, Subpart H, do not require the state to establish an EMC and 40 CFR 51, Appendix L, lacks any recommendation for one.

Mechanisms for implementing Chapter 118 are in the Texas Air Pollution Episode Contingency Plan, Section VIII of the SIP, which was first adopted in 1972 and revised in 1987. The plan is required under the FCAA and 40 CFR 51, and contains procedures for monitoring air contaminant levels and taking abatement actions to reduce those levels that could endanger public health and welfare. The plan, which includes most of EPA's recommendations in 40 CFR 51, Appendix L, specifies episode characteristics, concepts of operations, episode actions, and abatement options for stationary and mobile sources.

Sections 118.1, 118.3, and 118.4 contain old citations of the TCAA, §3.14 or §3.14(a). The proposed revisions to the three sections include replacement of "§3.14" or "§3.14(a)" with "§382.026" to reflect current codification of the same statutory content under §382.026.

Sections 118.2, 118.4, 118.5, and 118.6 contain references to the former Texas Air Control Board (TACB). The proposed revisions to these four sections include replacement of the old references with "commission" to indicate that the commission is responsible for administering and enforcing the rules. Also, "commission" is added to appropriate sentences in §§118.1 - 118.4 to reflect wording of the

TCAA, §382.026. As the “commission” is used as the initiating agent for episode response actions, §118.2(c) is no longer necessary and is removed.

Proposed revisions to improve readability include making minor punctuation changes in §118.2(a). Grammatical changes improve readability, add clarity, and remove unnecessary wording in §§118.1, 118.2, 118.4, 118.5, and 118.6. In §118.6, references to an EMC are proposed for deletion because the agency does not maintain an EMC and has no federal or state requirement to do so.

These proposed revisions are non-substantive in nature. However, in the future, the commission anticipates substantive revisions to Chapter 118 and the contingency plan to reflect new pollution episode response procedures, changes in classifications of regions for episode plans, the redefinition of “major source” in the 1990 FCAA Amendments, and changes in ozone and particulate standards. Such revisions also will be contingent upon potential EPA guideline changes relative to 40 CFR 51, Subpart H, and upon pending litigation regarding the National Ambient Air Quality Standards.

#### FISCAL NOTE

Bob Orozco, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for the TNRCC or other units of state and local government as a result of administration or enforcement of the proposed amendments to Chapter 118, Control of Air Pollution Episodes. The proposed amendments are administrative in nature and are intended to correct or update references,

citations, clarify existing rules, and make the rules easier to read and understand. The proposed amendments do not add any requirements to currently existing rules.

Chapter 118 specifies actions to be taken by the commission and owners and operators of emission sources in preparation for, or in response to, an air pollution episode. A generalized air pollution episode is defined as a widespread condition of air pollution as specified in the TCAA that requires immediate action to protect human health or safety.

#### **PUBLIC BENEFIT**

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 118 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be enhanced clarity in general commission processes and enhanced understanding by making the rules easier to read and understand, and consistent with federal requirements. These benefits are anticipated to assist the public and the regulated community in their understanding of and compliance with the regulations.

There are no economic costs anticipated to any person required to comply with the proposed amendments to Chapter 118 because the proposed amendments do not impose any new regulatory requirements beyond those which currently exist.

#### SMALL BUSINESS AND MICRO-BUSINESS ANALYSES

No adverse economic effects are anticipated to any small businesses or micro-businesses as a result of implementing the proposed amendments because the proposed amendments do not impose any requirement beyond those which current exist. The proposed amendments remain consistent with federal requirements and make current requirements easier to read and understand.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 that statute. “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 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 proposed amendments to Chapter 118 are not anticipated to 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 because the proposed amendments are administrative in nature and are intended to correct or update references, citations, clarify existing rules, and make the rules easier to read and understand. The proposed amendments do not add any additional regulatory requirements not already required by state or federal law. In addition, the proposed amendments do not meet the applicability requirements of a “major environmental rule.” The proposed amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a

delegation agreement. In addition, the proposed amendments are consistent with federal law regarding the control of air pollution episodes.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this proposal under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to update references and citations and to improve readability. These changes are editorial in nature and will not affect private real property because they do not change existing requirements.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking concerning Chapter 118 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.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. 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 proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action is consistent with the applicable CMP goals and policies, specifically §501.12(1), which is to protect, restore, and enhance the diversity, quality, functions, and values of coastal natural resource areas and §501.14(q), regarding compliance with 40 CFR, Protection of Environment. The rules are consistent with 40 CFR 51, Subpart H, concerning Prevention of Air Pollution Episodes. The

proposed rule changes do not modify any requirements of 40 CFR 51, Subpart H. Thus, the proposal complies with regulations in 40 CFR, Part 51, and is, therefore, consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### PUBLIC HEARING

A public hearing on the proposal will be held in Austin on November 10, 1999 at 10:00 a.m. in Room 5108 of Building F, Texas Natural Resource Conservation Commission Complex, located at 12100 Park 35 Circle. 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 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 answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log No. 99026-118-AI. Comments must be received by 5:00 p.m.,

November 15, 1999. For further information, please contact Barry Irwin, Office of Environmental Policy, Analysis, and Assessment at (512) 239-1461.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

The proposed amendments do not implement any new state or federal requirements.

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

**CHAPTER 118**  
**CONTROL OF AIR POLLUTION EPISODES**

**§118.1. Generalized Air Pollution Episodes.**

(a) A generalized air pollution episode is a widespread [generalized] condition of air pollution as specified in the Texas Clean Air Act (TCAA), §382.026 [§3.14(a)], that requires immediate action to protect human health or safety. An episode may be declared for one or more air contaminants and will apply to any geographical area affected by the generalized condition of air pollution.

(b) (No change.)

(c) A level 2 air pollution episode exists if the commission [executive director] determines that emergency reductions [reduction] of emissions must be initiated to prevent ambient [the presence in the atmosphere of any of the air contaminants in the] concentrations specified for Level 2 in Table 1.

[These levels could cause significant harm to human health.]

**§118.2. Provisions Governing Generalized Episode Control.**

(a) Whenever the commission [executive director] determines that a Level 1 air pollution episode exists, the commission [he] shall issue an order, with the concurrence of the governor, declaring a Level 1 air pollution episode. A Level 1 episode may be declared for one or more air

contaminants and may apply to any geographical area affected by the generalized condition of air pollution. Any person responsible for the operation of an emission source of a specified air contaminant in the designated area shall take the following actions:

(1) determine [Determine] the existing emission levels for all specified contaminants involved in the episode; [.]

(2) immediately [Immediately] implement all reasonably available methods to reduce the emission of the specified contaminant(s); [.] and,

(3) prepare [Prepare] to curtail operation of all affected emission sources in anticipation that a Level 2 episode will be declared.

(b) Whenever the commission [executive director] determines that [the level of air contaminants is such that the levels specified for] Level 2 concentrations [in Table 1] may be reached unless emergency curtailment of source emissions is initiated, the commission [executive director] shall issue an order, with the concurrence of the governor, declaring a Level 2 air pollution episode. A Level 2 episode may be declared for one or more air contaminants and may apply to any geographical area affected by the generalized condition of air pollution. If a Level 2 episode is declared, the commission [executive director] shall identify the primary sources of the specified contaminants and shall order those sources to curtail or cease operations [in order to reduce those emissions as may be necessary to

prevent the levels specified for Level 2 in Table 1 from occurring]. The notice and hearing requirements of §118.4 of this title (relating to Hearings) shall apply.

[ (c) The executive director shall notify all members of the board of the issuance of an order declaring either a Level 1 or Level 2 air pollution episode as soon as practicable.]

### **§118.3. Localized Air Pollution Episodes.**

Whenever the commission [executive director] determines that emissions from one or more air contaminant sources are causing localized imminent danger to human health or safety, but that there is not a generalized condition of air pollution of the type referred to in the Texas Clean Air Act, §382.026 [§3.14(a)], the commission [executive director] shall order the person or persons responsible for the emissions to reduce or discontinue the emissions immediately. In such event, the notice and hearing requirements of §118.4 of this title (relating to Hearings) shall apply.

### **§118.4. Hearings.**

Any emission reduction order issued [by the executive director] under the provisions of this chapter [§118.2(a) or (b) of this title (relating to Provisions Governing Generalized Episode Control), or §118.3 of this title (relating to Localized Air Pollution Episodes),] shall set a time and place for a hearing under [pursuant to] the TCAA, §382.026 [§3.14], to be held before the commission [board] as

soon as practicable after the order is issued. The commission [executive director] shall give such general notice of the hearing as in its [his] judgment is practicable under the circumstances.

**§118.5. Emission Reduction Plan.**

Any owner or operator of a major stationary source in El Paso, Galveston, Harris, Jefferson, and Orange Counties which emits 100 tons or more per year of any air contaminant specified in Table 1 of §118.1 of this title (relating to Generalized Air Pollution Episodes) or volatile organic compounds (VOC) shall prepare and maintain an emission reduction plan. A plan for any existing source shall be completed within six months after the effective date of this section. A plan for any new or modified source shall be completed within six months after the source begins operations. The emission reduction plan shall be made available to the commission [any representative of the Texas Air Control Board] or a local air pollution control agency upon request and shall contain at least the following:

(1) identification of all sources of air contaminants specified in Table 1 and sources of VOC to account for at least 95% of the total major stationary source emissions for each contaminant specified in Table 1 and VOC;

(2) the approximate amount of each air contaminant specified in Table 1 and amount of VOC from each facility;

(3) a description of the specified actions to be taken during a Level 1 episode and the amount of emissions reduction expected for VOC and for each air contaminant specified in Table 1 [and VOC];

(4)-(6) (No change.)

**§118.6. Texas Air Pollution Episode Contingency Plan [and Emergency Management Center].**

The commission [executive director] shall prepare [cause to be prepared] a contingency plan which will include detailed procedures for public notification of actual or impending air pollution episodes; actions required by the commission [Texas Air Control Board (TACB) personnel] and local air pollution control personnel; notification of public officials; and transmission of information to contiguous states as may be necessary. [Also, the executive director shall establish an emergency management center and shall designate TACB personnel to conduct corrective activities during impending or actual air pollution episodes.]