

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 15, 2015

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2014-0501-RUL

Subject: Commission Approval for Adopted Rulemaking
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
VOC RACT Rules for the DFW 2008 Eight-Hour Ozone Nonattainment
Area
Rule Project No. 2013-048-115-AI

Background and reason(s) for the rulemaking:

On May 21, 2012, the United States Environmental Protection Agency (EPA) established initial air quality designations for the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS). Effective July 20, 2012, the Dallas–Fort Worth (DFW) 2008 eight-hour ozone nonattainment area, consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, was classified as a moderate nonattainment area with a December 31, 2018 attainment deadline (77 FR 30088, May 21, 2012). As a result of the D.C. Circuit Court's ruling on December 23, 2014, the attainment date for the DFW moderate nonattainment area has been changed from December 31, 2018 to July 20, 2018. In addition, because the attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, the attainment year for the DFW moderate nonattainment area has changed from 2018 to 2017. However, this change in attainment dates does not impact the compliance date of January 2017 for the VOC RACT rulemaking.

Nonattainment areas classified as moderate and above are required to meet the mandates of the Federal Clean Air Act (FCAA) under §172(c)(1) and §182(b)(2). FCAA, §172(c)(1) requires that the state implementation plan (SIP) incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. FCAA, §182(b)(2) requires the state to submit a SIP revision that implements RACT for all emission sources addressed in a control techniques guidelines (CTG) and all non-CTG major sources of volatile organic compounds (VOC).

The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). The FCAA requires the state to implement RACT, while EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. EPA guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or

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demonstrate that additional control for the CTG emission source category is not technologically or economically feasible in the area.

The adopted rulemaking revises Chapter 115 to implement RACT for all CTG emission source categories and all non-CTG major sources of VOC in the DFW area as required by FCAA, §172(c)(1) and §182(b)(2). If adopted, these rules will be submitted to the EPA as a SIP revision. The state previously adopted Chapter 115 RACT rules for sources in most of the DFW area as part of the SIP for the 1997 eight-hour ozone standard. However, Wise County was classified as attainment under the 1997 eight-hour ozone standard so the Chapter 115 RACT rules do not currently apply in Wise County.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking will revise divisions in Chapter 115, Subchapters B, C, D, E, and F to implement RACT as required by the FCAA for the emission source categories that have been identified as potentially being affected in the DFW area. Compliance is required for these sources by January 1, 2017, the compliance date prescribed in the EPA's implementation rule (80 FR 12264). The revisions are primarily adopted to expand the applicability of each rule and to extend the same RACT requirements currently applicable in the nine-county 1997 DFW eight-hour ozone nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) to Wise County. Sources in Wise County that meet applicability criteria and do not qualify for exemption from the rules will be required to comply with emission limits and control requirements; implement work practice standards or operating requirements; and institute associated monitoring, recordkeeping, and reporting requirements.

Although Subchapter A, §115.10, *Definitions* is not being revised to implement RACT, it is necessary to make revisions to reflect the change in attainment status of Wise County. Adopted changes exclude Wise County from the definition of covered attainment counties and include it in the definition of the *Dallas-Fort Worth area*. The revisions adopted for the DFW area definition explicitly list the counties that are covered under the applicability of each rule in Chapter 115. Adopted changes to §115.10 also amend the definition of *El Paso area* and *Internal floating roof*.

Changes identified during a previous rulemaking regarding the VOC storage tank rules in Subchapter B, Division 1 (Rule Project No. 2010-025-115-EN) are being adopted in the DFW area. Specifically, adopted requirements will add control, inspection, and recordkeeping requirements for storage tank openings, including thief hatches and pressure relief valves; revoke exemptions for pre-1982 floating roof storage tanks; and alter the applicability of control requirements for storage tanks at pipeline breakout stations.

B.) Scope required by federal regulations or state statutes:

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The adopted rulemaking implements RACT for sources of VOC emissions addressed in a CTG document and non-CTG major sources, as mandated by FCAA requirements.

C.) Additional staff recommendations that are not required by federal rule or state statute:

In addition to implementing RACT requirements for the DFW area, the adopted rulemaking includes potentially substantive technical corrections that extend to the Houston-Galveston-Brazoria nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) and in some instances extend to other areas that are currently in attainment with the ozone NAAQS (e.g., the Beaumont-Port Arthur and El Paso areas; in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties; and in other counties defined as covered attainment counties, §115.10). Adopted technical corrections are intended to add compliance flexibility, streamline and consolidate requirements, remove obsolete language and requirements that have been superseded by more stringent rules, and clarify the rules for consistency with the agency's intent and CTG recommendations. Non-substantive revisions are also being adopted as part of this rulemaking to remove obsolete language, establish consistent terminology, and update the rule language to current *Texas Register* and Texas Commission on Environmental Quality (TCEQ) style and format requirements. The technical corrections and non-substantive revisions are only adopted for the rules that are simultaneously being revised to implement RACT.

The TCEQ and other concerned parties are currently challenging whether the EPA's inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area was lawful. These challenges are currently pending in the United States Court of Appeals for the District of Columbia Circuit. If the inclusion of Wise County in the DFW 2008 eight-hour ozone nonattainment area is overturned, the TCEQ will take action to revise this rulemaking appropriately. Changes are adopted to the compliance schedule section in each division being revised as part of this rulemaking to appropriately address this issue if it occurs.

Subchapter B, Division 1, Storage of Volatile Organic Compounds

Changes include correcting exemptions to reflect the threshold triggering applicability of this rule. Adopted requirements also add control, inspection, and recordkeeping requirements for storage tank openings, including thief hatches and pressure relief valves; revoke exemptions for pre-1982 floating roof storage tanks; and alter the applicability of control requirements for storage tanks at pipeline breakout stations. In developing these rule requirements, staff reviewed the recent rule changes in Colorado and the EPA's new source performance standard for condensate storage tanks.

Subchapter B, Division 2, Vent Gas Controls

Adopted revisions incorporate past TCEQ formal interpretations to clarify the applicability and exemptions consistent with prior agency formal rule interpretations regarding glycol dehydrator reboilers, vents from a compressor rod packing housing, and exemption

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criteria for multiple vent streams prior to a single control device. Similar to other divisions, the rulemaking requires the flare flame to be lit to clarify that the intent is for both the flare flame and the pilot to be lit at all times when VOC vapors are routed to the flare. The adopted rule also includes testing updates and provides an alternative to continuous VOC monitoring in carbon adsorption systems or carbon adsorber monitoring.

Subchapter C, Division 1, Loading and Unloading of Volatile Organic Compounds

The adopted revisions add a newly EPA-approved test method for determining the vapor pressure of crude oil to the list of approved test methods. In addition, the adopted rulemaking specifies that true vapor pressure must be corrected to storage temperature using the measured actual storage temperature or the maximum local monthly average ambient temperature as reported by the National Weather Service.

Subchapter E, Division 1, Degreasing Processes

Adopted changes add a new applicability and definitions section to the division to improve the readability of the rule and to direct users to the rules containing the relevant degreasing processes definitions. The adopted revisions clarify that this rule impacts VOC-containing degreasing materials and provides the option to rely on and maintain manufacturer's data or standard reference text as an alternative to testing for determining the vapor pressure of cold solvent cleaning. Recordkeeping requirements are also adopted to demonstrate compliance with applicable exemption criteria.

Subchapter E, Division 2, Surface Coating Processes

The adopted revisions add a new subsection to establish the applicability for each of the surface coating processes regulated in the division. Adopted revisions also consolidate and restructure rule requirements as a result of the adopted applicability subsection, as well as to improve the readability and usability of these rules throughout the division.

Subchapter E, Division 5, Control Requirements for Surface Coating Processes

Corrections adopted for this division clarify the applicability for the miscellaneous metal and plastic parts category. Amendments are adopted to add an exemption for ultraviolet curable coating because negligible amounts of VOC are emitted from these processes. Adopted revisions clarify the intent of the coating application system transfer efficiency control requirement.

A new exemption is also being adopted to clarify the applicability of adhesives used in miscellaneous metal parts and products coating processes. Since the Subchapter E, Division 7 rules also apply to adhesives, this adopted revision makes clear which division a source is expected to comply with.

Subchapter E, Division 6, Industrial Cleaning Solvents

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Adopted amendments define *solvent* and make changes to *solvent cleaning operations* to clarify the materials intended to be regulated in the division. An exemption regarding aerosols is updated to reflect the intended meaning.

Subchapter E, Division 7, Miscellaneous Industrial Adhesives

Adopted changes clarify the applicability of this division by more thoroughly explaining the adhesives that are exempt from complying with the VOC limits in this division and are required to instead comply with the requirements in Subchapter E, Division 5. The adopted change makes clear with which division a source is expected to comply.

Statutory authority:

The new, amended, and repealed sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new, amended, and repealed sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new, amended, and repealed sections are also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions. The new, amended, and repealed sections are also adopted under FCAA, 42 United States Code (USC), §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

The new, amended, and repealed sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and FCAA, 42 USC, §§7401 *et seq.*

Effect on the:

A.) Regulated community: The rulemaking may require affected sources to install control equipment or use reformulated products to meet the emission specifications; implement work practices; or comply with monitoring, testing, and recordkeeping

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requirements. The RACT rules addressing emissions from CTG emission source categories will likely affect many small businesses.

The cost to regulated entities depends on whether an owner or operator is affected by the new rule requirements and which compliance option the affected owner or operator chooses. However, staff does not anticipate any significant fiscal impacts as a result of the adopted VOC rules, and for certain rule categories, the adopted requirements are anticipated to incur cost savings.

B.) Public: The public may benefit from improved air quality.

C.) Agency programs: The adopted changes are not expected to significantly increase the workload or the number of facilities requiring inspection by the Office of Compliance and Enforcement. Depending on the number of small businesses affected in Wise County, the Environmental Assistance Division may experience a minor increase in workload.

Stakeholder meetings:

An Ozone Planning Public Information Meeting was held at the North Central Texas Council of Governments in Arlington, Texas on September 5, 2013.

Public comment:

A public hearing in Arlington was held on January 15, 2015 at 6:30 pm at the City of Arlington Council Chamber and another public hearing was held in Austin on January 22, 2015 at 10:00 am at the TCEQ. The hearing in Austin was not officially opened because no party indicated a desire to provide oral comment. The commission received comments regarding the Chapter 115 VOC RACT rulemaking from two individuals, the EPA, the Texas Pipeline Association (TPA), and the Lone Star Sierra Club. Significant public comments are summarized as follows.

- One individual and the Lone Star Sierra Club suggested additional controls to reduce emissions from storage tanks and pneumatic devices. *No changes are made in response to this comment. This rulemaking ensures RACT is in place for storage tanks. Pneumatics are not addressed in this RACT rulemaking because no controls were included at proposal so affected parties would not be afforded the opportunity to provide public comment and because there is no CTG document that establishes presumptive RACT for this emission source category.*
- One individual suggested requiring electrification of natural gas-fired compressors as a reasonably available control measure. *No changes are made in response to this comment. This is not a strategy evaluated for VOC RACT.*

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- The EPA commented that the proposed format of the DFW definition and the corresponding use of the term in certain compliance schedules create confusion. The EPA suggested defining the DFW area by the four-county DFW area, the nine-county DFW area, and the ten-county DFW area to indicate which counties are intended to be covered in each instance. *In response to this comment, in certain compliance schedules, the 'Dallas-Fort Worth area' is replaced with the list of county names intended to be covered.*
- The EPA commented that it cannot approve the proposed compliance schedule stating that upon publishing notice in the *Texas Register* that Wise County is no longer nonattainment for the 2008 ozone standard, the rule applicability for sources in Wise County remains as it was prior to this rulemaking. The EPA indicated it cannot approve this provision because it does not contain "a replicable procedure" and to accomplish changing the applicability for sources in Wise County, the state would need to undergo rulemaking and submit a subsequent SIP revision. *In response to this comment, the commission is replacing the proposed language "Wise County is no longer designated nonattainment for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard" with "the Wise County nonattainment designation for the 2008 Eight-Hour Ozone National Ambient Air Quality Standard is no longer legally effective."*
- The TPA commented that the proposed 500 parts per million by volume (ppmv) leak definition for valves at natural gas processing plants in Wise County is not RACT because it is not economically feasible and suggested regulatory alternatives. The TPA estimated that one affected natural gas processing plant in Wise County is expected to incur a total compliance cost of \$3.45 million and that the commission's fiscal analysis is too low. *The commission disagrees with the TPA that the natural gas processing plant rules in Chapter 115, Subchapter D, Division 3 are not economically feasible. The fiscal analysis is based on EPA Natural Gas Star documents and articles published in Oil and Gas Journal. The commenter did not provide data demonstrating that unique technological and economic circumstances exist for the natural gas processing plants in Wise County that warrant a leak definition different than the current 500 ppmv RACT-level leak definition to which natural gas processing plants in the other nonattainment counties and areas are subject. No changes are made in response to this comment.*
- The TPA commented that it supports the proposed language in §115.112(e)(7)(D), which states that if a repair requires a shutdown that creates more emissions than the repair would eliminate, then the repair could be delayed until the next shutdown. The TPA suggested including this same repair schedule language into §115.114(a)(5)(B) since the preamble discussion for that subparagraph indicates delay of repair is allowed as in §115.112(e)(7)(D). *The rule has been revised to allow delay of repair in §115.114(a)(5)(B) as is allowed under §115.112(e)(7)(D). This was the intent at proposal and was included in the proposal preamble discussion.*
- The TPA commented the commission should make clear that maintenance, shutdown, and startup (MSS) emissions are not included in the calculation to determine whether a particular vent gas stream qualifies for exemption by emitting less than or equal to 100

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pounds of VOC in a continuous 24-hour period. *No changes are made in response to this comment. Addressing MSS emissions is beyond the scope of this rulemaking.*

Significant changes from proposal:

- In response to comments received, the "Dallas-Fort Worth area" is replaced with the list of county names intended to be covered in certain compliance schedules. In some instances, the Houston-Galveston-Brazoria (HGB) area is referenced and to clearly identify the counties affected as with the DFW area, revisions are made to certain compliance schedules to list the county names instead of the HGB areas.
- In response to comments received, the compliance schedules eliminating compliance obligations for sources in Wise County in the event Wise County is no longer defined as part of the DFW nonattainment area under the 2008 eight-hour ozone NAAQS as a result of the Court's decision, are amended to add some language indicating the commission will publish notice in the *Texas Register* that sources in Wise County do not have to comply with the RACT rules once the nonattainment designation "is no longer legally effective." In addition, to accommodate the transition of Wise County from a DFW area county to a covered attainment county, the commission makes revisions to the definition of "Covered attainment counties", "Dallas-Fort Worth area," and to a compliance schedule in §115.229(e).
- In response to comments received, the commission revises §115.114(a)(5)(B) to add language allowing delay of repair under certain circumstances. The language added to this subparagraph is identical to the delay of repair language being that was proposed and is being adopted in §115.112(e)(7)(D).

Potential controversial concerns and legislative interest:

None

Does this rulemaking affect any current policies or require development of new policies?

No

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

FCAA, §172(c)(1) and §182(b)(2) requires the state to submit a SIP revision implementing RACT for all CTG emission sources categories and all non-CTG major sources of VOC in the DFW area. Failure to submit a SIP revision could result in sanctions or promulgation of a federal implementation plan. One alternative would be to address RACT for the DFW area only and not make technical corrections that impact other areas of the state.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** December 26, 2014

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Anticipated *Texas Register* adoption publication date: June 19, 2015

Anticipated effective date: June 25, 2015

Six-month *Texas Register* filing deadline: June 26, 2015

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Attachments

None

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