

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 15, 2016

Thru: Richard A. Hyde, P.E., Executive Director

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

From: David Brymer, Division Director
Air Quality Division

Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 115, Control of Air Pollution from Volatile Organic Compounds

Suggested short title: VOC RACT Rules for the 2008 (HGB) Eight-Hour Ozone Nonattainment Area

Introduction and reason(s) for the rulemaking:

The Federal Clean Air Act (FCAA) requires states to submit plans to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for nonattainment areas within the state. The Houston-Galveston-Brazoria area, consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, is classified as marginal nonattainment for the 2008 eight-hour ozone NAAQS of 75 parts per billion (ppb) with a July 20, 2015 attainment deadline.

The HGB area did not attain the 2008 eight-hour ozone standard in 2014 but qualified for a one-year attainment date extension in accordance with FCAA, §181(a)(5). The United States Environmental Protection Agency (EPA) published final approval of the one-year extension on May 4, 2016, which extended the HGB area's attainment deadline to July 20, 2016 with a 2015 attainment year (80 FR 51992). However, based on preliminary 2015 monitoring data the HGB area is not attaining the 2008 ozone NAAQS and is not eligible for a second one-year extension. The EPA has informed TCEQ that it plans on reclassifying the HGB area to moderate nonattainment by operation of law after it finds that the area has failed to attain the standard in 2015 as outlined in FCAA, §181(b)(2). EPA concurrence of the TCEQ's 2015 annual data certification for the HGB area is anticipated to be final in July 2016. Because concurrence of the 2015 monitoring data must be completed before the EPA can take action, it is anticipated that final reclassification of the HGB area to moderate nonattainment of the 2008 eight-hour ozone NAAQS will not occur until December 2016.

Nonattainment areas classified as moderate and above are required to meet the mandates of FCAA, §172(c)(1) and §182(b)(2) and (f). According to the EPA's *Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements; Final Rule* (2008 ozone standard SIP requirements rule) published in the *Federal Register* on March 6, 2015 (80 FR 12264), a state with an area classified as moderate nonattainment or higher must submit a state implementation plan (SIP) revision to fulfill the reasonably available control technology (RACT) requirements for all control techniques guidelines (CTG) emission source categories and all non-CTG major sources.

As indicated in the 2008 ozone standard SIP requirements rule, the attainment deadline for a moderate classification is July 20, 2018 with an attainment year of 2017.

Therefore, the compliance deadline to implement RACT for any sources affected by this rulemaking would need to be no later than July 20, 2018.

Scope of the proposed rule:

A. Scope required by federal regulations or state statutes:

The proposed rule would revise Chapter 115, Subchapter B, Division 1, to implement RACT requirements for volatile organic compounds (VOC) storage vessels in the HGB area. These proposed requirements would establish more stringent requirements consistent with the level of RACT established for this emission source category in the 2008 Dallas-Fort Worth (DFW) nonattainment area.

The control, inspection, and recordkeeping requirements adopted for major source storage vessels in the DFW area and recommended for implementation in the HGB area are:

- Increasing the control efficiency for all control devices from 90% to 95%.
- Implementing inspection requirements after tank opening/loading and quarterly seal integrity inspections for condensate and crude oil storage tanks.
- Maintaining records of the new inspection requirements.

The 95% control efficiency adopted for storage vessels in the DFW area was approved by the EPA as RACT in 2014. The control, inspection, and recordkeeping requirements for openings, and the 95% control efficiency, are also consistent with the New Source Performance Standards (NSPS) for new condensate and crude oil tanks.

The proposed rulemaking would include revisions of the following Chapter 115 rules:

- Subchapter B: General Volatile Organic Compound Sources
 - Division 1: Storage of Volatile Organic Compounds

B. Additional staff recommendations:

The rulemaking would include other non-substantive revisions to the open sections of Chapter 115 to remove obsolete language, use consistent terminology, and update the rule language to conform to current *Texas Register* and TCEQ style and formatting requirements.

Potential controversial concerns and legislative interest:

In order to ensure that there will be enough time to finish the rulemaking, the planning to meet the RACT obligations for the anticipated reclassification of the 2008 HGB area from marginal to moderate must begin prior to the EPA's anticipated finalized classification. Owners and operators in the HGB area who would be required to achieve the 95% control efficiency on VOC storage tanks and comply with the new inspection requirements for crude oil and condensate fixed roof tanks may object to the rule

changes. Industry may object to the short time frame to implement controls. However, any source meeting the existing 90% control requirements is highly likely to already be meeting the proposed 95% requirement as well. If the reclassification of the HGB area to moderate nonattainment is not initiated or finalized by the EPA by the scheduled adoption date of this rulemaking, the rule proposal will be withdrawn.

The proposed 95% control efficiency would apply to all major source storage vessels in the HGB 2008 eight-hour ozone nonattainment area. Because the HGB area is currently classified as severe nonattainment for the 1997 eight-hour ozone NAAQS, the major source threshold is 25 tons per year (tpy) of VOC. If the EPA approves the redesignation substitute request submitted in August of 2015, the major source threshold for the 2008 eight-hour ozone HGB nonattainment area would be 100 tpy of VOC emissions, commensurate with a moderate nonattainment area classification.

Potential alternatives:

FCAA, §172(c)(1) and §182(b)(2) requires the state to submit a SIP revision implementing RACT for all CTG emission source categories and all non-CTG major sources in the HGB area. Failure to submit a SIP revision could result in sanctions or promulgation of a Federal Implementation Plan. One alternative would be to submit a certification that existing provisions fulfill RACT requirements for storage vessels in the HGB area. However, this would necessitate a demonstration showing that the existing RACT requirements for storage vessels in the DFW area are not RACT for the same types of storage vessels in the HGB area, which may be difficult to support.

Effect on the:

- A) **Regulated community:** The regulated community would be obligated to comply with the new requirements and may incur costs associated with those requirements.
- B) **Public:** The general public in the HGB area may benefit from improved air quality.
- C) **Agency programs:** The rulemaking may increase the workload for the Office of Compliance and Enforcement staff when inspecting affected facilities to verify compliance with any new or revised requirements.

Proposed schedule and constraints:

Anticipated Proposal Date: December 7, 2016

Anticipated Public Comment Period: December 23, 2016 through January 23, 2017

Anticipated Adoption Date: May 2017

Planned stakeholder involvement:

If a proposed rulemaking is approved by the commission for public comment and public hearing, then a formal public comment period would be opened and a public hearing would be held.

Statutory authority:

The rule changes would be proposed 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 Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission. The rule changes would also be proposed 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; 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; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §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; and 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 proposed under FCAA, 42 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 EPA published the final rule establishing the 2008 eight-hour NAAQS for ozone in the *Federal Register* on March 27, 2008 (73 FR 16436).

Direction and Guidance:

Rule or Non-Rule Project number: 2016-039-115-AI

Electronic cc: Stephanie Bergeron Perdue
Lori Wilson
Barbara Robinson
Emily Lindley
Brian Christian
Mark Harmon
Patricia Durón
Steve Hagle, P.E.
David Brymer
Graham Bates
Jayme Sadlier