

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** January 29, 2016

**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.:** Docket Number 2015-1455-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 101, General Air Quality Rules  
Emissions Inventory and General Definitions Update  
Rule Project No. 2015-040-101-AI

### **Background and reason(s) for the rulemaking:**

On February 6, 2015, the United States Environmental Protection Agency (EPA) finalized revisions (80 FR 8787) to the 40 Code of Federal Regulations (CFR) Part 51, Subpart A, Air Emissions Reporting Rule (AERR) that lowered the lead point source reporting threshold to sources that emit 0.5 tons per year (tpy) or more. The current Texas Commission on Environmental Quality (TCEQ) emissions inventory (EI) reporting rule, 30 Texas Administrative Code (TAC) §101.10 (and previous version of the AERR) language requires a source to submit an EI if it has 10 tpy or more of actual or 25 tpy or more of potential lead emissions. This proposed rule revision would lower the lead emissions delineation threshold for point source in §101.10 to align with reporting requirements in the AERR.

Currently, sources that are within 25 miles from the shoreline are required to submit an EI if the source meets one of the reporting thresholds in §101.10. The proposed rule revision would change the distance from the shoreline to 9.0 nautical miles for consistency with Texas' legal offshore jurisdiction.

Other proposed changes are to specifically list particulate matter that is 2.5 micrometers (PM<sub>2.5</sub>) or less as being required to be reported in the EI rather than relying on its inclusion as a National Ambient Air Quality Standard (NAAQS) pollutant and for consistency with the AERR, codify existing business processes for certification statements, and clarify the EI requirements.

Additionally, the EPA has made multiple recent revisions to the federal definition of volatile organic compounds (VOC) in 40 CFR, §51.100(s), to exclude certain organic compounds from regulation as a VOC. The TCEQ definition of VOC in 30 TAC §101.1 was last updated in 2010 and references the federal definition as amended on January 21, 2009; therefore, the TCEQ's definition is not consistent with the current EPA definition.

If adopted, the revised rules would be submitted to the EPA as revisions to the state implementation plan (SIP).

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**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

- a. The proposal would align §101.1 with the federal definition of VOC in 40 CFR §51.100(s) by excluding certain organic compounds from regulation as a VOC.
- b. The proposed rulemaking would lower the lead emissions reporting threshold in §101.10 from 10 tpy to 0.5 tpy for point sources to align with reporting requirements in the AERR.
- c. The proposal would specify the reporting requirement for PM<sub>2.5</sub> to be consistent with the AERR. Language in §101.10 already requires PM<sub>2.5</sub> to be reported because "any other pollutant subject to the NAAQS" is stated.
- d. For consistency with Texas' legal offshore jurisdiction, the proposed rule revision in §101.10 would require sources to submit an EI if the source meets one of the reporting thresholds in §101.10 if the source lies within 9.0 nautical miles of the shoreline rather than 25 miles.
- e. The proposal would require an affirmative signature that no emissions events were experienced at the site.

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

- a. Change the rule applicability threshold for lead emissions to 0.5 tpy by adding a new paragraph to §101.10(a). This proposed change would reflect current AERR requirements.
- b. Update the definition of VOC in §101.1 to be consistent with the current effective EPA definition of VOC in 40 CFR §51.100(s).

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

- a. Remove the word "forms" from §101.10(a). The TCEQ prefers that all emissions inventories be submitted electronically, and not on paper forms. Additionally, the term is redundant with the remaining language "other reported media" in the subsection.
- b. Applicability (§101.10(a)) includes sources that are within 25 miles from the shoreline. Up to 9.0 nautical miles (three leagues) is the legal offshore jurisdiction of Texas. Beyond 9.0 nautical miles offshore are federal waters.
- c. Add a clarification to the sentence in §101.10(a)(5) to more clearly exclude reporting of greenhouse gas emissions as an applicable pollutant for reporting an EI.
- d. Add a requirement to §101.10 that an affirmative statement is required by the reporting regulated entity per Texas Health and Safety Code (THSC), §382.0215(f) if no emissions events are experienced at a site. Currently, the published EI guidance document instructs the representative of a regulated entity to provide a signature on its submitted EI affirming this fact if the site experienced no emissions events.
- e. Clarify that emissions of PM<sub>2.5</sub> are to be reported in an EI in §101.10.

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- f. Change the term "microns" to "micrometers" in §101.10 for consistency with the AERR.
- g. Change the term "tons" to "tpy" in proposed renumbered §101.10(a)(5) to more clearly indicate the period over which the emissions are calculated and to be consistent with the other paragraphs in §101.10(a).

**Statutory authority:**

Texas Water Code, §§5.102, 5.103, and 5.105, and THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.017, and 382.0215.

**Effect on the:**

**A.) Regulated community:**

Two sources report to the EI because they have lead emissions between 0.5 and ten tons that otherwise would not be required to submit an EI. These sources would continue to be required to report an annual EI if they emit 0.5 tpy or more of lead. Currently, the special inventory provision of §101.10(b)(3) is being used for the authority to collect the necessary lead data at the new AERR reporting levels. However, the special inventory provision requires the agency to annually identify and contact the sources for an inventory. The proposed revision would require applicable sources to self-identify and report a full and complete EI annually if it emits more than 0.5 tpy of lead.

No off-shore sources between 9.0 nautical miles and 25 miles from the Texas shoreline currently submit an EI to the TCEQ. Other inventory proposed changes codify existing practices already performed by regulated entities.

Updating the definition of VOC in §101.1 to be consistent with the EPA definition would provide clarity and consistency for owners and operators of sources subject to TCEQ rules regarding VOC control.

**B.) Public:**

While updating the definition of VOC would exclude certain compounds from regulation as a VOC for SIP purposes regarding the ozone NAAQSs, the EPA has excluded these compounds from the federal definition of VOC due to the compounds' negligible ozone formation potential. Therefore, public health and the environment will not be impacted by the definition update.

**C.) Agency programs:**

None.

**Stakeholder meetings:**

The commission has not held any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

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**Potential controversial concerns and legislative interest:**

No controversial concerns or legislative interests are identified. The proposed changes codify or clarify existing EI requirements, update the definition of VOC in §101.1 to be consistent with the current EPA definition of VOC in 40 CFR §51.100(s), and update the lead point source EI applicability threshold to be consistent with current EPA reporting requirements in 40 CFR Part 51, Subpart A, AERR.

**Will 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?**

The TCEQ could continue to use the special inventory provision in §101.10(b)(3) to require sources with 0.5 tons or more of lead to report their annual emissions. However, the special inventory provision places the burden on the TCEQ to identify the sources potentially subject to the lower lead reporting requirements of the AERR.

The TCEQ continues to require sites that are located between 9.0 and 25 miles of the shore to submit an inventory. Because at this time no sources in this range submit an EI, not changing the rule would have no impact unless offshore activity occurs in this range.

A complete EI submission requires sources to affirmatively sign the EI report indicating no emissions events were experienced at the site if none were reported in the site's EI. This practice would continue if the rule was not changed.

No change in reporting is anticipated if the rule was not changed to specifically list PM<sub>2.5</sub> because it is subject to a NAAQS and under §101.10(a)(2), as written, all pollutants subject to a NAAQS are to be reported. Specifically including it in the rule language adds clarity to the reporting requirement for the regulated community.

There are no practical alternatives to updating the definition of VOC in §101.1. The definition for VOC in 40 CFR §51.100 is the federal definition for the purposes of preparation, adoption, and submittal of the SIP revision. The TCEQ is required to update the definition in §101.1 to be consistent with the EPA's definition to have an approvable SIP.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** February 17, 2016

**Anticipated *Texas Register* publication date:** March 4, 2016

**Anticipated public hearing date (if any):** March 29, 2016

**Anticipated public comment period:** March 4, 2016 - April 4, 2016

**Anticipated adoption date:** July 6, 2016

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**Attachments:**

None.

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