

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**AGENDA ITEM REQUEST**  
for Adoption of Rules Review & Readoption of Chapter 115

**AGENDA REQUESTED:** September 6, 2023

**DATE OF REQUEST:** August 18, 2023

**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2022-1729-MIS.** Consideration for the adoption of the rules review and readoption of 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The Notice of Intention to Review was published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857). (Jamie Zech, Amanda Kraynok and John Minter) (Non-Rule Project No. 2023-045-115-AI)

Richard C. Chism

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**Director**

Donna F. Huff

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**Division Deputy Director**

Gwen Ricco

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**Agenda Coordinator**

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** August 18, 2023

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Interim Executive Director

**From:** Richard C. Chism, Director *RCC*  
Office of Air

**Docket No.:** 2022-1729-MIS

**Subject:** Commission Approval for Adoption of Rules Review and Readoption of Rules  
Chapter 115, Control of Air Pollution from Volatile Organic Compounds  
Rules Review of 30 TAC Chapter 115  
Non-Rule Project No. 2023-045-115-AI

### **What the adopted action would do:**

This action will approve the rules review of 30 Texas Administrative Code (TAC) Chapter 115 and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality, after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

### **Applicable law:**

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039, which require state agencies to review and consider for re Adoption of their rules every four years.

### **Reason rules are needed:**

Executive director's staff conducted a review of the rules in 30 TAC Chapter 115 and determined that the reasons for adopting these rules continue to exist. The rules for control of volatile organic compounds (VOC) emissions in Chapter 115 were specifically developed to meet the federal Clean Air Act (FCAA) requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone set by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to their state implementation plans (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. VOC are precursor pollutants in the formation of ozone, and the rules in Chapter 115 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

### **Rules found to be obsolete:**

- The Stage II vapor recovery rules in Subchapter C, Division 4 are no longer required. A 2013 rulemaking to address the maintenance until decommissioning and removal of Stage II vapor recovery equipment was approved by the EPA, effective April 16, 2013

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(79 FR 14611; March 17, 2014). As part of its approval action, the EPA approved related revisions to the Stage II SIP narrative that pertained to the maintenance and removal of Stage II vapor recovery equipment and demonstrated that the absence of Stage II equipment in the affected areas in Texas would not interfere with attainment of the NAAQS, reasonable further progress or any other requirement of the FCAA. The Stage II decommissioning deadline was August 31, 2018. Now that the decommissioning deadline has passed, the division is no longer necessary and could be removed from the TAC and SIP.

- It is no longer necessary to include provisions in §§115.129(g), 115.139(e), 115.219(g), 115.229(f), 115.239(e), 115.359(e), 115.419(f), 115.429(f), 115.449(i), 115.459(d), 115.469(d), 115.479(d), and 115.519(e) that would remove Wise County from applicability to the associated rules upon notice in the *Texas Register* that the Wise County nonattainment designation under the 2008 eight-hour ozone NAAQS is no longer legally effective. The litigation concerning Wise County's attainment status is complete, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. Wise County is also designated nonattainment for the 2015 eight-hour ozone NAAQS. Removal of these provisions would allow for greater clarity concerning the nonattainment status of Wise County.
- The reference in §115.425(a)(2)(D) to performance test procedures in 40 Code of Federal Regulations (CFR) §60.044 is incorrect and should be amended to 40 CFR §60.444.

**Public comment:**

A public hearing was not offered for this review. The comment period for the rules review closed on May 8, 2023. Comments were received from the EPA suggesting that the TCEQ evaluate the flare monitoring requirements in Chapter 115 as well as in TCEQ flare guidance in light of currently available scientific information. The EPA also suggested that the TCEQ consider whether the definition for highly reactive volatile organic compounds (HRVOC) should be amended and should apply consistently across the eight counties in the Houston-Galveston-Brazoria (HGB) ozone nonattainment area. The EPA commented that the HGB ozone nonattainment area was reclassified to severe for the 2008 ozone NAAQS and that enhancing rules in Chapter 115 may help improve air quality in the area. Finally, the EPA recommended that the TCEQ take environmental justice concerns and related evaluation tools into account when undertaking rulemaking actions. The EPA's comments were outside the scope of this quadrennial rule review.

**Affected agency program(s):**

The program areas responsible for implementing these rules are the Air Quality Division, the Air Permits Division, and the Office of Compliance and Enforcement.

**Agency contacts:**

Jamie Zech, Project Manager, Air Quality Division, (512) 239-3935  
Amanda Kraynok, Staff Attorney, Environmental Law Division, (512) 239-0633  
John Minter, Staff Attorney, Environmental Law Division, (512) 239-0663  
Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

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**Attachments:**

*Texas Register* publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 115 continue to exist.

Comments regarding suggested changes to the rules in Chapter 115 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 115. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-045-115-AI. Comments must be received by May 8, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301223

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 29, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the com-

mission will assess whether the reasons for initially adopting the rules in Chapter 117 continue to exist.

Comments regarding suggested changes to the rules in Chapter 117 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 117. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-041-117-AI. Comments must be received by May 8, 2023. For further information, please contact Jamie Zech, Air Quality Division, at (512) 239-3935.

TRD-202301219

Guy Henry

Acting Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 29, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 318, Marine Seawater Desalination Discharges.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 318 continue to exist.

Comments regarding suggested changes to the rules in Chapter 318 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

#### Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 318. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist. The rules for control of volatile organic compounds (VOC) emissions in Chapter 115 were specifically developed to meet the federal Clean Air Act (FCAA) requirements for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone set by the United States Environmental Protection Agency (EPA).

States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established those standards. Under 42 United States Code, §7410 and related provisions, states must submit revisions to their state implementation plans (SIP) for EPA approval that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. VOC are precursor pollutants in the formation of ozone, and the rules in Chapter 115 form a significant component of the Texas SIP to attain and maintain the NAAQS for ozone.

The review resulted in a determination that the following rules are obsolete: Stage II vapor recovery requirements; provisions allowing for Wise County to be exempt from rules pending litigation that is now complete; and an incorrect reference to federal test procedures.

The Stage II vapor recovery rules in Subchapter C, Division 4 are no longer required. A 2013 rulemaking to address the maintenance until decommissioning and removal of Stage II vapor recovery equipment was approved effective April 16, 2013 (79 FR 14611; March 17, 2014). As part of its approval action, the EPA approved related revisions to the Stage II SIP narrative that pertained to the maintenance and removal of Stage II vapor recovery equipment and demonstrated that the absence of Stage II equipment in the affected areas in Texas would not interfere with attainment of the NAAQS, reasonable further progress or any other requirement of the FCAA. The Stage II decommissioning deadline was August 31, 2018. Now that the decommissioning deadline has passed, the division is no longer necessary and could be removed from the TAC and SIP.

It is no longer necessary to include provisions in §§115.129(g), 115.139(e), 115.219(g), 115.229(f), 115.239(e), 115.359(e), 115.419(f), 115.429(f), 115.449(i), 115.459(d), 115.469(d), 115.479(d), and 115.519(e) that would remove Wise County from applicability to the associated rules upon notice in the Texas Register that the Wise County nonattainment designation under the 2008 eight-hour ozone NAAQS is no longer legally effective. The litigation concerning Wise County's attainment status is

complete, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. Wise County is also designated nonattainment for the 2015 eight-hour ozone NAAQS. Removal of these provisions would allow for greater clarity concerning the nonattainment status of Wise County.

The reference in §115.425(a)(2)(D) to performance test procedures in 40 Code of Federal Regulations (FR) §60.044 is incorrect and should be amended to 40 CFR §60.444.

#### Public Comment

The public comment period closed on May 8, 2023. Comments were received from the EPA on this review.

The EPA commented that the TCEQ's accepted flare destruction removal efficiency (DRE) assumptions for highly reactive volatile organic compounds (HRVOC), which are based on compliance with 40 Code of Federal Regulations (CFR) §60.18, are outdated and unobtainable on a continuous basis. The EPA recommended that the HRVOC rules in Chapter 115, Subchapter H that rely upon or cite 40 CFR §60.18 for compliance with monitoring requirements be evaluated and revised to ensure that appropriate DREs are applied. The EPA added that the TCEQ should consider whether the initial factual, legal, and policy reasons for adopting each rule in these subchapters continue to exist and to take into consideration current industry and scientific knowledge and the current attainment status of the Houston-Galveston-Brazoria (HGB) area.



The EPA extended its concerns and recommendations regarding the TCEQ's assumed HRVOC DRE to TCEQ flare guidance, including the TCEQ 2022 Emissions Inventory Guidelines, RG-360/22. If the TCEQ continues to apply its current assumed rates, the EPA commented that the TCEQ should provide rigorous technical justification for continued acceptance of the efficiencies.

The EPA also suggested that the TCEQ evaluate the definition for HRVOC in §115.10 to consider whether it should be revised and updated to apply consistently across the eight counties that comprise the HGB ozone nonattainment area. The EPA further recommended that the TCEQ consider enhancing the rules in Chapter 115 due to a severe classification for the HGB 2008 ozone NAAQS nonattainment area. The EPA commented that strengthening compliance requirements may help improve air quality in the nonattainment area. Finally, the EPA suggested that the TCEQ use EJScreen and related evaluation tools to take environmental justice concerns into account when undertaking rulemaking actions.

**This quadrennial rule review of Chapter 115 is specifically required to assess whether the initial reasons for adopting the rules in Chapter 115 continue to exist. The EPA's comments, including that the TCEQ consider current industry and scientific knowledge and the current attainment status of the HGB area, are outside the scope of this rule review action. These comments may be considered in a future rulemaking.**

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 115 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

# Texas Commission on Environmental Quality



## ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1729-MIS  
Non-Rule Project No. 2023-045-115-AI

On September 6, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 115, Control of Air Pollution from Volatile Organic Compounds (30 TAC Chapter 115), in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1857).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 115 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed