TEXAS REGISTER

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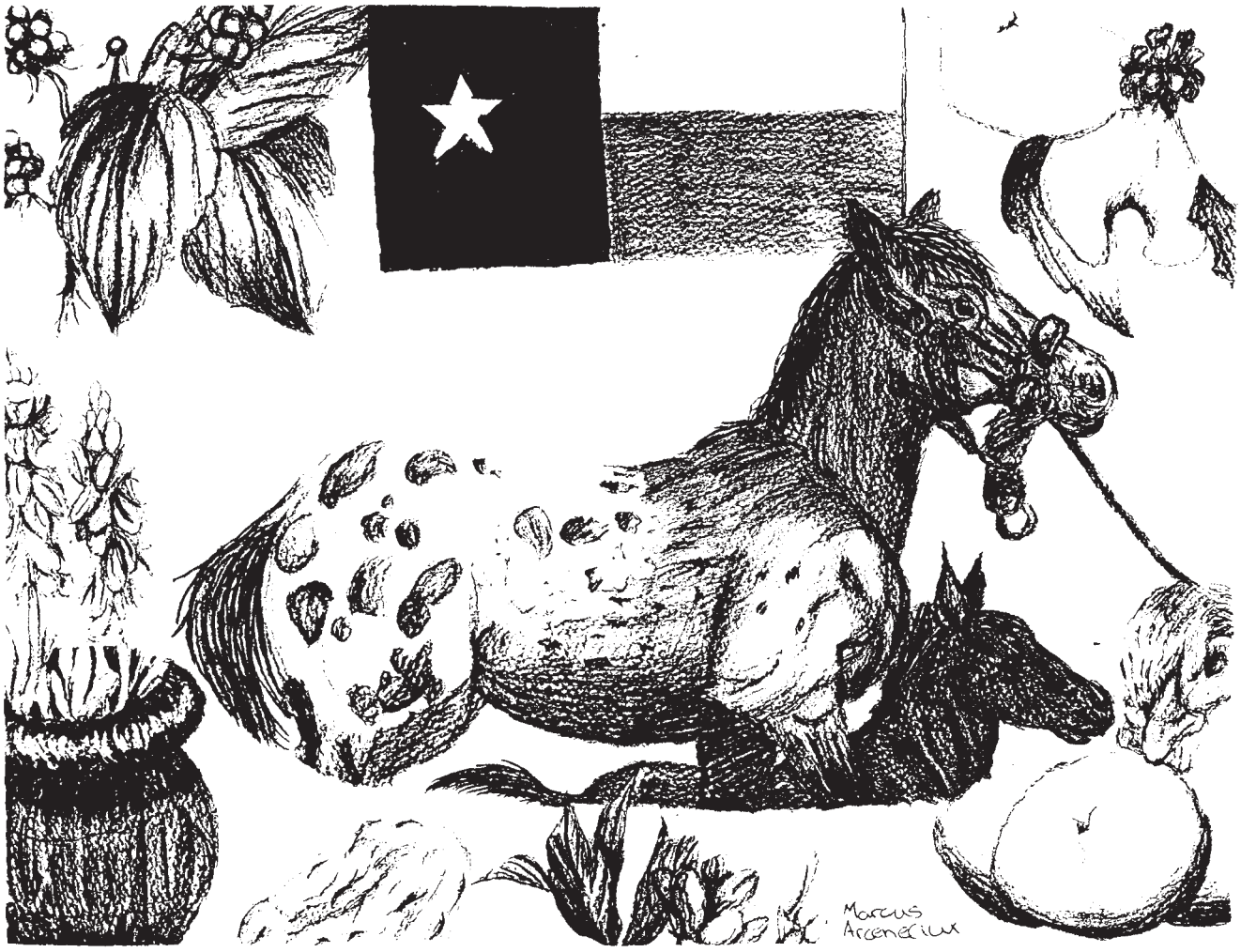

This month's front cover artwork:

Artist: *Marcus Arceneaux*

7th Grade

Johnston Middle School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

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OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code. Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the ***Texas Register***. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion # JC-0070. (RQ-923). Mr. Frank DiTucci, Executive Officer, Texas Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001, Re: Whether a polygraph examiner who in the course of an examination learns that a child has been abused or neglected must report that information to the appropriate authorities, and related questions.

Summary. Section 261.101 of the Family Code prevails over a conflicting statute, such as section 19A of the Polygraph Examiners Act, article 4413(29cc) of the Revised Civil Statutes, unless the legislature has explicitly indicated to the contrary. Because the legislature has not expressly excepted the information a polygraph examiner acquires during the course of a polygraph examination from the scope of section 261.101 of the Family Code, a polygraph examiner must report information indicating that a child has been or may have been abused or neglected in accordance with section 261.103 of the Family Code. The examinee's local community supervision and corrections officer or parole officer is not an "agency designated by the court to be responsible for the protection of children" for purposes of section 261.103 of the Family Code, unless a court has specifically ordered otherwise. A court probably would find that a polygraph examinee is not entitled to counsel during the course of a polygraph examination under section 261.101 of the Family Code and, consequently, that conducting the examination without counsel does not violate the examinee's due-process right. The attorney-client privilege applies to the testimony of a polygraph examiner hired by an attorney in certain circumstances. An examinee may have a right to claim the privilege against self-incrimination during the course of a polygraph examination. If the state wishes to compel an examinee who has legitimately invoked the privilege to respond to the question, the state must determine whether to provide immunity for the confession.

Opinion #JC-0071. (RQ-1155). The Honorable Donna J. Gordon, Houston County Attorney, 100 North 6th Street, Suite 105, Crockett, Texas 75835, Re: Whether a county may pay the autopsy expenses performed as part of an inquest into a death that occurs in a neighboring county.

Summary. A county may not contract under the Interlocal Cooperation Act, Tex. Gov't Code Ann. ch. 791 (Vernon 1994 & Supp. 1999), to charge for autopsies performed under chapter 49 of the Code of Criminal Procedure on residents of neighboring counties who die in the former county's hospital. Nor may a county contract to conduct or pay for autopsies ordered under chapter 49 of the Code of Criminal Procedure for its own residents who die in a neighboring county hospital.

Opinion #JC-0072. (RQ-1170). The Honorable Elliott Naishtat Chair, Committee on Human Services, Texas House of Representatives, P.O. Box 2910, Austin, Texas, 78768-2910, Re: Whether the Texas Board of Human Services may adopt a rule that authorizes a personal-care facility to provide "occasional nursing services" to its residents.

Summary. To the extent the Texas Board of Human Services has adopted a rule (40 Tex. Admin. Code 92.2(b)(2) (1998)) that authorizes a personal-care facility to furnish nursing services beyond assisting with personal needs or maintenance, administering medications, or generally supervising residents' physical and mental well-being, the rule is ultra vires.

Opinion #JC-0073. (RQ 1171). The Honorable Rob Hofmann, Mason County Attorney, County Courthouse, P.O. Box 157, Mason, Texas 76856, Re: Whether a commissioners court may accept a donation conditioned upon spending the money to improve a particular county road.

Summary. A commissioners court has authority under section 252.214 of the Transportation Code to accept a donation for improving a specific county road subject to reasonable conditions. It is a matter for the exercise of good faith discretion by the commissioners

court, subject to judicial review for abuse of discretion, to determine whether the condition attached to a particular donation is reasonable.

Opinion #JC-0074. (RQ-0011). The Honorable Irma Rangel, Chair, Committee on Higher Education, Texas House of Representatives, P.O. Box 2910 Austin, Texas 78768-2910, The Honorable Delma Rios, Kleberg County Attorney, P.O. Box 1411, Kingsville, Texas 78364, Re: Whether a public school employee may simultaneously serve as a county commissioner and draw a salary therefor.

Summary. A public school teacher or administrator may simultaneously hold the office of county commissioner without renouncing the salary attached to the latter position. Attorney General Opinion H-6 (1973) is overruled.

Opinion #JC-0075. (RQ 0027). The Honorable B. J. Shepherd, District Attorney, 220th Judicial District, P.O. Box 368, Meridian, Texas 76665, Re: Permissible methods of disposing of property forfeited to the state under chapter 59 of the Code of Criminal Procedure.

Summary. Given that the District Attorney for the 220th Judicial District has executed a local agreement with the Bosque County Sheriff and the Department of Public Safety, article 59.06(a) of the Code of Criminal Procedure does not require the sale of the property forfeited pursuant to chapter 59 of that code to be conducted by sheriff's auction.

TRD-9904080
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 7, 1999

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EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

34 TAC §3.365

The Comptroller of Public Accounts adopts on an emergency basis a new §3.365, concerning Sales of Clothing and Footwear During a Three-day Period in August. Senate Bill 441 as passed during the Regular Session of the 76th Legislature provides for a three-day sales-tax holiday on sales of certain articles of clothing and footwear. This new section sets out guidelines for administering the three-day sales-tax holiday.

The Comptroller of Public Accounts will propose the new §3.365 after the August, 1999 three-day sales-tax holiday in order to make any appropriate adjustments to the guidelines set out in the emergency section as a result of questions arising during the first holiday.

The new section is adopted on an emergency basis under Senate Bill 441, §20(b), which authorizes the Comptroller of Public Accounts to adopt an emergency rule for the implementation of this provision.

§3.365. Sales of Clothing and Footwear During a Three-day Period in August. (Tax Code, §151.326 and §151.3111).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Clothing or footwear–An article of wearing apparel designed to be worn on or about the human body. For the purposes of this section, the term does not include accessories, including jewelry, handbags, purses, briefcases, luggage, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an article of clothing or footwear if:

(A) the sales price of the article is less than $100; and

(B) the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Sunday. For example, in 1999, this period begins at 12:01 a.m. on Friday, August 6, and ends at 12 midnight on Sunday, August 8.

(2) The exemption applies to each article of clothing or footwear selling for less than $100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for $80 each, both items qualify for the exemption, even though the customer's total purchase price ($160) exceeds $99.99.

(3) The exemption does not apply to the first $99.99 of an article of clothing or footwear selling for more than $99.99. For example, if a customer purchases a pair of pants costing $110, sales tax is due on the entire $110.

(c) Taxable sales. This exemption does not apply to:

(1) any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption;

(2) accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) the rental of clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, uniforms, diapers, and bowling shoes;

(4) taxable services performed on the clothing or footwear, such as repair, remodeling, or maintenance services and cleaning or laundry services. For example, sales tax is due on alterations to clothing, even though the alterations may be sold, invoiced and paid for at the same time as the clothing being altered. If a customer purchases a pair of pants for $90 and pays $15 to have the pants cuffed, the $90 charge for the pants is exempt, but tax is due on the $15 alterations charge; and

(5) purchases of items used to make or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, and zippers.

(d) Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for $150, the pair cannot be split in order to sell each shoe for $75 to qualify for the exemption. If a suit is normally priced at $225 on a single price tag, the suit cannot be split into separate articles so that

any of the components may be sold for less than $100 in order to qualify for the exemption. However, components that are normally priced as separate articles may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than $100.

(e) Sales of sets containing both exempt and taxable items.

(1) When exempt clothing or footwear is sold together with taxable merchandise as a set or single unit, the full price is subject to sales tax unless the price of the exempt clothing or footwear is separately stated. For example, if a boxed gift set consisting of a French-cuff dress shirt, cufflinks, and a tie tack is sold for a single price of $95, the full price of the boxed gift set is taxable because the cufflinks and tie tack are taxable and the sales price of the shirt is not separately stated.

(2) When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than $100 during the exemption period. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price the retailer paid for the item.

(f) Discounts and coupons.

(1) A retailer may offer discounts to reduce the sales price of an item. If the discount reduces the sales price of an item to $99.99 or less, the item may qualify for the exemption. For example, a customer buys a $150 dress and a $100 blouse from a retailer offering a 10% discount. After applying the 10% discount, the final sales price of the dress is $135, and the blouse is $90. The dress is taxable (it is over $99.99), and the blouse is exempt (it is less than $99.99).

(2) When coupons are accepted by retailers as a part of the selling price of any taxable item, the value of the coupon is excludable from the tax as a cash discount, regardless of whether the retailer is reimbursed for the amount represented by the coupon. Therefore, a coupon can be used to reduce the sales price of an item to $99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at $110 with a coupon worth $20 off, the final sales price of the shoes is $90, and the shoes qualify for the exemption.

(g) Buy one, get one free or for a reduced price. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

(1) A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at $120; the second pair of pants is free. Tax is due on $120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for $60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50% off, selling each pair of $120 pants for $60, each pair of pants qualifies for the exemption. Note: When a retailer gives an item away free of charge, the retailer owes sales or use tax on the purchase price the retailer paid for the item.

(2) A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for $100; the second pair is sold for $50 (half price). Tax is due on the $100 shoes, but not on the $50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for $75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25% off, thereby selling each pair of $100 shoes for $75, each pair of shoes qualifies for the exemption.

(h) Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for $110 and receives a $12 rebate from the manufacturer. The retailer must collect tax on the $110 sales price of the sweater.

(i) Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, if final payment on a layaway order is made by, and the merchandise is given to, the customer during the exemption period, that sale of eligible clothing may qualify for the exemption.

(j) Rain checks. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

(k) Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period, and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period, and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

(3) If a customer purchases an item of eligible clothing or footwear before the exemption period, and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period.

(4) Examples:

(A) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the $35 price of the shirt.

(B) A customer purchases a $35 shirt during the exemption period. After the exemption period, the customer exchanges the shirt for a $35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the $35 price of the jacket.

(C) During the exemption period, a customer purchases a $90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $90 dress for a $150 dress. Tax is due on the $150 dress. The $90 credit from the returned item cannot be used to reduce the sales price of the $150 item to $60 for exemption purposes.

(D) During the exemption period, a customer purchases a $60 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the $60 dress for a $95 dress. Tax is not due on the $95 dress because it was also purchased during the exemption period and otherwise meets the qualifications for the exemption.

(l) Returned merchandise. For a thirty-day period after the temporary exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice showing tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific item. This thirty-day period is set solely for the purpose of designating a time period during which the customer must provide documentation showing that sales tax was paid on returned merchandise. The thirty-day period is not intended to change a retailer's policy concerning the time period during which the retailer will accept returns.

(m) Mail, telephone, e-mail, and Internet orders and custom orders. Under the Texas sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Therefore, an item of eligible clothing or footwear may qualify for this exemption if:

(1) the item is both delivered to and paid for by the customer during the exemption period; or

(2) the item is ordered and paid for by the customer and the order is accepted by the retailer during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is accepted by the retailer when it has taken an action to fill the order for immediate shipment. Actions to fill an order include placing an "in date" stamp on a mail order or assigning an "order number" to a telephone order. An order is for immediate shipment when delayed shipment is not requested by the customer. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the company.

(n) Shipping and handling charges.

(1) Shipping and handling charges are included as part of the sales price of the clothing or footwear, whether or not separately stated. Except as provided in paragraph (2) of this subsection, if multiple items are shipped on a single invoice, the shipping and handling charge must be proportionately allocated to each item ordered, and separately identified on the invoice, to determine if any items qualify for the exemption. The following examples illustrate the way these charges should be handled:

(A) A customer orders a jacket for $95. The shipping charge to deliver the jacket to the customer is $5.00. The sales price of the jacket is $100. Tax is due on the full sales price.

(B) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $15. The $15 shipping charge must be proportionately and separately allocated between the items: $285/$380=75%; therefore, 75% of the $15 shipping charge, or $11.25, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $15 shipping charge, or $3.75, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $3.75, totaling $98.75; therefore, the shirt qualifies for the exemption.

(C) A customer orders a suit for $285 and a shirt for $95. The charge to deliver the items is $20. The $20 shipping charge must be proportionately and separately allocated between the items: $285/$380=75%; therefore, 75% of the $20 shipping charge, or $15, must be allocated to the suit, and separately identified on the invoice as such. The remaining 25% of the $20 shipping charge, or $5.00, must be allocated to the shirt, and separately identified on the invoice as such. The sales price of the shirt is $95 plus $5.00, totaling $100; because the sales price of the shirt exceeds $99.99, the purchase of the shirt is taxable.

(2) If the shipping and handling charge is a flat rate per package and the amount charged is the same regardless of how many items are included in the package, for purposes of this exemption the total charge may be attributed to one of the items in the package rather than proportionately and separately allocated between the items. For example, a customer orders five shirts, four priced at $98 and one at $85, and the retailer charges $10 for shipping and handling the order. The retailer would have charged the same amount for shipping and handling whether the customer ordered one shirt or five shirts. The retailer may chose to attribute the $10 shipping and handling charge to the shirt sold for $85 rather than allocate the charge proportionately and separately between the shirts. If the charge is attributed to the $85 shirt, the sales price of that shirt is $95, and all of the shirts will qualify for the exemption.

(o) Documenting exempt sales. The retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period. However, the retailer's records should clearly identify the type of item sold, the date the item was sold, and the sales price of the item.

(p) Reporting exempt sales. No special reporting procedures are necessary to report exempt sales made during the exemption period. Sales should be reported as currently required by law.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904020
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Effective date: July 5, 1999
Expiration date: November 2, 1999
For further information, please call: (512) 463-4062

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PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 55. Child Support Enforcement

The Office of the Attorney General, Child Support Division, proposes the repeal of §§55.111– 55.114, 55.116–55.118 and simultaneously proposes new §§55.111, 55.112, 55.116–55.118 concerning child support. The proposed repeals are necessary due to the federal requirement to use one mandated form. The new sections will replace the current forms.

Section 55.111, Notice of Application For Judicial Writ of Withholding replaces Notice of Delinquency.

The Notice of Application for Judicial Writ of Withholding may be used in IV-D or non-IV-D cases, if there is a delinquency equal to one month's support or income withholding was not previously ordered.

Section 55.112, Motion to Stay, replaces Motion to Stay Issuance and Delivery of Writ of Income Withholding.

The Motion to Stay is filed by the child support obligor, and prohibits the clerk of the court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.

Section 55.113,Writ of Income Withholding (to Employer) and To Request Issuance of Writ of Income Withholding forms are deleted.

The functions of these forms have been included in §55.118, Order/Notice to Withhold Income for Child Support.

Section 55.114, Revised Writ of Withholding and the Request for Issuance of Revised Writ of Income Withholding forms are deleted.

The functions of these forms have been included in §55.116, Order/Notice to Withhold Income for Child Support (Administrative Writ of Withholding) and §55.118, Order/Notice to Withhold Income for Child Support.

Section 55.116, Notice of Administrative Writ of Withholding and the Order/Notice to Withhold Income for Child Support replaces Motion and Affidavit to Withdraw Writ of Income Withholding.

These forms are used by the Title IV-D agency for administrative withholding.

Section 55.117, Request for Issuance of Order replaces Notice to Terminate Writ of Income Withholding and Request for Issuance of Notice to Terminate Writ of Income Withholding.

This form is used to request issuance of the Order/Notice to Withhold Income for Child Support.

Section 55.118, Order/Notice to Withhold Income for Child Support replaces Employer's Order To Withhold Earnings for Child Support, Request for Issuance of Order, Writ of Income Withholding (to Employer), and To Request Issuance of Writ of Income Withholding.

This document is federally mandated for use in IV-D and non IV-D cases and may be used as a judicial withholding document, an original withholding document, amended withholding document, or to terminate withholding.

Howard G. Baldwin, Deputy Attorney General for Child Support, has determined that for the first five years these sections as proposed are in effect, there will be no fiscal implications for state or local government as a result of any replacement in these sections.

Mr. Baldwin has also determined that each year of the first five years the sections are in effect, the public benefit anticipated as a result of replacing or deleting these forms is more standardized and efficient income withholding. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Comments may be submitted to Kathy Shafer, Child Support Division, General Counsel Section, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, mail code 039, Austin, Texas, 78722-2017.

Subchapter D. Forms for Child Support Enforcement

1 TAC §§55.111–55.114, 55.116–55.118

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Family Code, Chapter 158, pursuant to the September 1, 1997, statutory changes.

The Texas Family Code is affected by 42 USC 652(a)(11), and 42 USC 654(9)(E).

§55.111. Form for Notice of Delinquency.

§55.112. Form for Motion to Stay Issuance and Delivery of Writ of Income Withholding.

§55.113. Forms for Writ of Income Withholding (to Employer) and To Request Issuance of Writ of Income Withholding.

§55.114. Forms for Revised Writ of Income Withholding and for Request for Issuance of Revised Writ of Income Withholding.

§55.116. Form for Motion and Affidavit To Withdraw Writ of Income Withholding.

§55.117. Forms for Notice To Terminate Writ of Income Withholding and for Request for Issuance of Notice To Terminate Writ of Income Withholding.

§55.118. Forms for Employer's Order To Withhold Earnings for Child Support and for Request for Issuance of Order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 2, 1999.

TRD-9903950
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 463–2110

♦ ♦ ♦

1 TAC §§55.111, 55.112, 55.116, 55.117, 55.118

The new sections are proposed under the Texas Family Code, Chapter 158, pursuant to the September 1, 1999, statutory changes.

The Texas Family Code is affected by 42 USC 652(a)(11), and 42 USC 654(9)(E).

§55.111. Notice of Application For Judicial Writ of Withholding.

The following form is to be used in IV-D or non-IV-D cases, if there is a delinquency equal to one month's support or income withholding was not previously ordered.
Figure: 1 TAC §55.111

§55.112. Motion To Stay.

This form is filed by the child support obligor, and prohibits the clerk of the court from delivering the judicial writ of withholding to any employer of the obligor before a hearing is held.
Figure: 1 TAC §55.112

§55.116. Notice of Administrative Writ of Withholding and the Order/Notice to Withhold Income for Child Support.

(a) This form is sent to the obligor by the Title IV-D agency, informing the obligor that withholding has commenced and providing procedures for contesting the withholding.
Figure: 1 TAC §55.116(a)

(b) This form is issued by the Title IV-D agency to initiate withholding for the enforcement of an existing order.
Figure: 1 TAC §55.116(b)

§55.117. Request for Issuance of Order.
This form is used to request issuance of the Order/Notice to Withhold Income for Child Support.
Figure: 1 TAC §55.117

§55.118. Order/Notice to Withholding Income for Child Support.
This form is federally mandated for use in IV-D and non IV-D cases and may be used as a judicial withholding document, an original withholding document, amended withholding document, or to terminate withholding.
Figure: 1 TAC §55.118

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 2, 1999.

TRD-9903949
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 463–2110

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Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

Subchapter C. Purchasing Procedures

1 TAC §71.61

The Office of the Secretary of State proposes new §71.61, concerning procedures for Vendor Protests. The new rule establishes protest procedures consistent with those of the General Services Commission.

Mary Jon Urban, Purchasing Manager, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Urban also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated will be to clarify the procedures for formal protest by a vendor and dispute resolution. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mary Jon Urban, Office of the Secretary of State, Purchasing, P.O. Box 12887, Austin, Texas 78711 or by e-mail to mjurban@sos.state.tx.us.

The new rule is proposed under the authority of Texas Government Code, Chapter 2155, §2155.132.

Government Code, Chapter 2155, §2155.132 affects this proposal.

§71.61. Protests/Dispute Resolution.

(a) Any actual or prospective bidder, offeror, or contractor alleging to have been aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Deputy Assistant Secretary for Administrative Services (the Deputy). Such protests must be in writing and received in the Deputy's office within 10 working days after the protesting party knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the agency and other interested parties. For the purposes of this section, "interested parties" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, the Secretary of State's office shall not proceed further with the solicitation or with the award of the contract unless the Deputy makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

(c) A formal protest must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed to identifiable interested parties.

(d) The Deputy shall have the authority, prior to appeal to the Secretary of State, to settle and resolve the dispute concerning the solicitation or award of a contract. The Deputy may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Deputy will issue a written determination on the protest.

(1) If the Deputy determines that no violation of rules or statutes has occurred, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Deputy determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he shall so inform the protesting party, and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Deputy determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include nullifying the contract.

(f) The Deputy's determination on a protest may be appealed by an interested party to the Secretary of State. An appeal of the Deputy's determination must be in writing and must be received in the Secretary of State's office no later than 10 working days after the date of the Deputy's determination. The appeal shall be limited to review of the Deputy's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g) The general counsel shall review the protest, Deputy's determination, and the appeal and prepare a written opinion with recommendation to the Secretary of State. Copies of the general counsel's recommendation shall be mailed to the appealing party, and other interested parties.

(h) When a protest has been appealed to the Secretary of State under subsection (f) of this section a decision issued in writing by the Secretary of State shall be the final administrative action of the agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 2, 1999.

TRD-9903951
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 463–5561

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Chapter 102. Health Spas

Subchapter D. Security

1 TAC §102.45

The Office of the Secretary of State proposes an amendment to §102.45, concerning the filing of a certificate of deposit as security under the Health Spa Act. Many banks no longer issue original certificates of deposit. Rather, a book entry is made to reflect such deposits. This amendment is proposed in order to conform §102.45 to current industry practice.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed amendments are in effect there will be no fiscal implications for state or local government or small business as a result of enforcing the amendment.

Mr. Joyner also has determined that for each year of the first five years that the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the establishment of a procedure for furnishing the required security deposit, and the elimination of a burden on the public to acquire a document that is customarily unavailable.

There is no anticipated additional economic cost to individuals who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The amendment is proposed under the Texas Government Code, Section 2001.004 (1) and the Health Spa Act, Texas Civil Statutes, Article 5221l, Section 26 which provide the Secretary of State with the authority to prescribe and adopt rules.

The amendment affects the Texas Civil Statutes, Article 5221l, Section 10(a) & (d).

§102.45. Procedure for Filing Certificates of Deposit as Security under the Health Spa Act, §10.

(a) (No change.)

(b) A copy of the document, issued by the financial institution, that evidences the existence of the certificate of deposit [~~The original certificate of deposit~~] must be filed along with an executed assignment form. The assignment form can be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887, (512) 463-6906 [~~5559~~]. It is also available on the Internet at http://www.sos.state.tx.us/function/statforms/spa.html.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 31, 1999.

TRD-9903926
Jeffrey H. Eubank
Assistant Secretary of State
Office of the Secretary of State
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 475–0775

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TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 1. Consumer Credit Commissioner

Subchapter A. Regulated Loan License

Division 1. General Provisions

7 TAC §§1.4, 1.7, 1.8, 1.10, 1.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of §§1.4, 1.7, 1.8, 1.10, and 1.11. The repeals are necessary because the sections that are proposed for repeal relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature (1997). These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature (1997). Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old chapters 3 through 5. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeals as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeals as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. These is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeals may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeals are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals; Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K.

§1.4. Conditional Granting of Credit.

§1.7. Solicitation of Borrowers.

§1.8. Duplication of Loans.

§1.10. Inducements Prohibited.

§1.11. Loan Size, Duration, and Schedule of Installments: Limitations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 30, 1999.

TRD-9903914
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Division 9. Collection Practices

7 TAC §§1.151, 1.152, 1.154–1.156

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of §§1.151, 1.152, and 1.154-1.156. The repeals are necessary because the sections that are proposed for repeal relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature (1997). These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature (1997). Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old chapters 3 through 5. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeals as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeals as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. These is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeals may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeals are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals; Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K.

§1.151. Collection Practices.

§1.152. Collection Contacts.

§1.154. Simulated Legal Process or Documents Prohibited.

§1.155. Impersonation and Fictitious Names Prohibited.

§1.156. Complaint Proceedings Before Commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 30, 1999.

TRD-9903915

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: August 15, 1999

For further information, please call: (512) 936–7640

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Division 10. Advertising

7 TAC §§1.171, 1.173–1.179

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of §§1.171 and 1.173–1.179. The repeals are necessary because the sections that are proposed for repeal relate to prohibitions on authorized lenders under authority of Chapter 3, Texas Civil Statutes, Article 5069.301 *et seq.*, which was repealed by the 75th Legislature(1997). These rules have also been reviewed as part of a rule review required under House Bill 1, Article IX, Section 167, 75th Legislature (1997). Moreover, they are being replaced by a new set of rules for Chapter 3A, a new chapter of the Texas Credit Title which encompasses old chapters 3 through 5. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeals as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeals as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. These is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeals may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeals are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeal will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals; Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter K.

§1.171. Place of Loan.

§1.173. Full Disclosure Requirements Other Than Open End or Revolving Loan Plans.

§1.174. Full Disclosure Requirements Open End and Revolving Loan Plans.

§1.175. Misleading Advertising.

§1.176. Credit Cards Letters of Credit.

§1.177. Advertisements in Form of Negotiable Instruments.

§1.178. Multiple Page Assignments.

§1.179. Use of State Agency Name.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 30, 1999.

TRD-9903916

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: August 15, 1999

For further information, please call: (512) 936–7640

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Subchapter K. Prohibitions on Authorized Lenders

7 TAC §§1.851–1.863

The Finance Commission of Texas (the commission) proposes the adoption of new §§1.851–1.863, concerning prohibitions on authorized lenders as provided in Subchapter K, Chapter 3A, Article 5069.

Simultaneously, the Finance Commission is repealing various rules and adopting these rules in their place. These rules being repealed were reviewed and those being proposed to be adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist.

Secton 1.851 addresses the prohibitions on obligating a consumer on more than one loan contract with the purpose or effect of obtaining a higher interest charge than the statute would

allow on a single loan for the same aggregate amount as prescribed by Article 5069-3A.851. The rule serves to clarify and identify situations that result in a violation. The rule also provides that refunds may be required to correct violations. The rule is necessary to effectuate the intent of the statute and to prescribe procedures for handling violations of the statute.

Section 1.852 limits the distribution of listings of borrowers for the purpose of soliciting the same borrowers to obtain another loan. This rule serves to limit potential debt overburdening of borrowers in the small loan classification where the highest rates are charged. This is a readoption of an existing rule, however, the restrictions have been limited to borrowers with Subchapter F loans, where before the restriction on list distribution applied to all borrowers with a regulated loan.

Section 1.853 further clarifies the prohibition for licensees on misleading advertising found in §341.403 of the Finance Code. The rule defines phrases and practices that will be considered misleading. This section will benefit the consumer public by eliminating or reducing confusing and potentially misleading advertising.

Section 1.854 prohibits the use of preapproved offers of credit unless the offer is unconditional. This is a new provision and will serve to reduce confusion of consumers who receive offers of credit that purport to be "approved," but upon further review, in fact, have conditional features. The rule further provides that offers of credit may not be conditioned upon the purchase of goods and services unless that practice has been specifically authorized in statute. This rule is further designed to protect consumers from usury violations.

Section 1.855 restricts licensees from using mailing pieces that resemble negotiable instruments. Advertising using facsimile negotiable instruments is confusing and misleading to consumers. This rule intends to protect consumers from misleading advertising.

Section 1.856 permits licensed lenders to publicly display their status as licensed and examined lenders.

Section 1.857 and Section 1.858 prescribe the disclosure requirements for advertising closed-end and open-end transactions. The rules also provide that a lender who complies with the Federal Truth-In-Lending Act is deemed to comply with the section. The rules are intended to provide consumers with accurate, comparable information for shopping for credit products.

Section 1.859 requires a licensee to consider the borrower's financial ability to repay a loan when structuring the terms of a loan. This rule is designed to prohibit a lender from overburdening a consumer's debt load beyond that consumer's capacity to repay. If a lender violates the section, the commissioner may require the lender to restructure the debt.

Sections 1.860–1.863 address collection practices of licensed lenders. These rules detail procedures for collecting debts, including who may be contacted regarding a debt and when a lender may communicate with a borrower. The rules are intended to prevent abusive and harassing collecting practices and to assure lawful remedies are used to collect debts.

The Subchapter K rules are also necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these rules prescribe procedures that are well established and have been and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification to lenders of the maximum allowable charges provided under the law and guidelines for compliance, thereby assisting lenders and borrowers in constructing transactions that comply with the law. It is anticipated that there will be no adverse economic effect on small businesses.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Article 5069-3A, Subchapter K is affected by these proposed new sections.

§1.851. Duplication of Loans.

(a) A licensee may have more than one loan contract under Chapter 3A with the same borrower at the same time; however, in such an event the total interest charges assessed on the several cash advances shall not exceed the total interest charges that could be legally imposed on one cash advance of an amount equal to the total of the several separate cash advances. The commissioner may require refunds of interest charges in excess of that which could be legally charged under the chapter. The commissioner shall prescribe the method of determining any excess charges.

(b) Married applicants, who under the authority of Regulation B 12 C.F.R §202.11(c), voluntarily apply for and maintain separate accounts, and who have the ability to repay the obligation, will not violate the prohibition on duplicate loans.

(c) No loan may be made by a licensee in one office to any borrower or to the spouse of the borrower when the borrower or spouse has a loan in another office operated by the same entity, affiliate, parent, subsidiary, or an entity under the same ownership, management, or control whether partial or complete when the total interest charges of the separate loans exceed the total interest charges that could be legally imposed on one cash advance. If loans are granted that violate this section, the rates shall be adjusted to rates applicable to a single loan of equivalent amounts.

§1.852. Solicitation of Borrowers.

(a) No licensee, its agents, or employees, shall take, acquire, or compile a listing of borrowers with an outstanding Subchapter F loan of another nonaffiliated licensee for the purpose of soliciting the same borrowers or their spouses to acquire loans.

(b) An individual may not solicit in any manner the borrowers of a licensee with which the individual was associated through employment or ownership within 90 days upon acceptance of employment or association with another lender licensed by the Office of Consumer Credit Commissioner.

(c) A lender is not prohibited from the placement of advertisements in newspapers, magazines, through radio and television, or

other similar media wherein the advertisement is directed toward the general public.

§1.853. Misleading Advertising.

(a) No licensee shall advertise that loans will be made at any other place other than that named in its license except for Subchapter G loans, which may be closed at a title company or an attorney's office. Every advertisement shall state or clearly indicate the identity of the licensee, and in such a manner as to prevent confusion with the name of any other unrelated licensee.

(b) No licensee shall use blind loan advertisements which give only telephone numbers or addresses.

(c) In determining whether any particular advertising matter violates §341.403 of the Finance Code, the general arrangement of copy and statements or representations made shall be considered to determine if the inference or impression may reasonably be drawn that the statements or representations are inaccurate, deceptive, or misleading.

(d) It shall be considered misleading:

(1) to use phrases such as "lowest costs," "lowest rates," "quickest service," "easy payments," "repayment in easy installments;"

(2) to advertise "new reduced rates" or "a new type of service" or any similar comparative expression unless the statement is in fact accurate with respect to the business of the licensee advertised and unless the advertisement clearly indicates that the new plan refers specifically to a change in the particular licensee's plan of operation, and which change must be of more than minor importance with respect to the business of the licensee. Any such advertisement shall not be used for a period longer than 60 days after the plan has been put into effect;

(3) to make any statement or representation with reference to the ease of procuring a loan, the speed with which it may be effected, the freedom from credit inquiries addressed to particular sources of information, or to any other implied differentiation in policy or loan service, unless the licensee shall comply with the representation made;

(4) to advertise offers to borrowers on loans in general or on particular classes or types of loans during a certain limited time, unless in general practice, the licensee actually makes a reasonable number of the loans within the limited time and upon the basis of the offer; or

(5) for any licensee other than a lawfully chartered banking institution to use the work "bank," or any derivative, in any advertisement wherein its use might mislead the public to believe that the licensee is an authorized banking institution or is conducting a banking business.

§1.854. Conditional Offers of Credit.

(a) No licensee shall solicit business by means of a "pre-approved," "approved," or any similar expression unless the statement or offer is unconditional. The term "unconditional" means not limited in any way.

(b) No licensee shall require the purchase of any goods, services, or intangibles from any person or firm as a condition to the granting or extending of credit, except as specifically authorized by the Texas Credit Title. This prohibition is not applicable to insurance premium financing or similar transactions wherein the loan is made solely for the purpose of financing the purchase. This section shall not be construed so as to prohibit the conduct of another business by a licensee as is authorized by Article 3A.910 of the Texas Credit Title.

§1.855. Advertisements in Form of Negotiable Instruments.

No licensee shall advertise, display, or distribute mailing pieces which have a similarity or resemblance to a blank counter check, postal or express money order, U.S. currency, cash, exchange certificate, or any negotiable instrument whatsoever, or any federal, state, or local government warrant. No licensee shall use an envelope which in any way indicates or implies that it is from federal, state, or local government.

§1.856. Use of State Agency Name.

It shall be permissible for a licensee of the Office of Consumer Credit Commissioner to publicly display or advertise the following statement: "This office is licensed and examined by the Office of Consumer Credit Commissioner of the State of Texas."

§1.857. Full Disclosure Requirements–Other than Open End or Revolving Loan Plans.

(a) If rates or charges are stated in advertising, they shall be expressed in terms of an "annual percentage rate" (simple annual interest rate). Any advertisement that states the amount of any installment payment, the dollar amount of any finance charge or the number of installments or the period of repayment shall also state:

(1) the amount of the loan expressed as "amount financed" (cash advance);

(2) the number, amount, and due dates or periods of payments scheduled to repay the indebtedness if the credit is extended;

(3) the rate of the finance charge; and

(4) the sum of the payments expressed as "total of payments" (amount of loan).

(b) The information required by this subsection shall be clearly shown in such a manner as not to be deceiving or misleading.

(c) If any licensee advertises that the first installment on a loan may be extended beyond one month from the loan date, the licensee must also clearly state whether a charge is to be made for the extension.

(d) For purposes of this section, compliance by an authorized lender with the Federal Truth-In-Lending Act and regulations promulgated thereunder relating to closed-end transactions shall constitute compliance with the Texas Credit Title, Article 3A.855 and these administrative rules.

§1.858. Full Disclosure Requirements–Open End and Revolving Loan Plans.

(a) Any advertisement of an open-end or revolving loan plan which states any of the specific terms of that plan, shall also clearly and conspicuously set forth the following items:

(1) the time period, if any, within which any credit extended may be repaid without incurring a finance charge;

(2) the method of determining the balance upon which a finance charge will be imposed;

(3) the method of determining the amount of the finance charge;

(4) the method by which any charge for insurance, if any, is to be calculated;

(5) when periodic rates may be used to compute the finance charge the periodic rates expressed as annual percentage rates.

(b) For purposes of this section, compliance by an authorized lender with the Federal Truth-In-Lending Act and regulations promulgated thereunder relating to open-end credit transactions shall constitute compliance with the Texas Credit Title and these administrative rules.

§1.859. Loan Size, Duration, and Schedule of Installments: Limitation.

When making or negotiating a loan under Chapter 3A of the Texas Credit Title, licensees shall consider, in determining the size, duration, and schedule of installments of a loan, the financial ability of the borrower to repay the loan. The lender should evaluate whether the borrower should be reasonably able to repay the loan in cash in the time and means provided in the loan contract and repay all other known obligations concurrently. Upon finding by the commissioner that this section has not been complied with, the commissioner shall have the authority to require adjustments of the loan or loans on terms as the commissioner may require.

§1.860. Collection Practices.

(a) In attempting to collect money due on a loan or to take possession of any property securing a loan, a licensee or the licensee's agent shall not use any means other than appeals to reason or lawful remedies authorized under the laws of this state. The licensee is also bound by the remedies prescribed in any instrument securing the loan.

(b) A licensee or the licensee's agent shall not use any physical force or violence against any person or use any physical force or violence against any property.

§1.861. Collection Contacts.

(a) A licensee or the licensee's agent shall have the right to contact any person in order to secure information concerning a borrower unless any person other than the borrower, the borrower's spouse, a member of the borrower's household, a comaker, endorser, surety, or guarantor of the obligation, objects to any contact by a licensee or the licensee's agent. Upon receipt of the objection, the licensee or agent, shall cease and desist from any further contact with the person.

(b) A licensee or the licensee's agent shall not solicit the payment of all or any part of any debt subject to this title from any person other than the borrower, the borrower's spouse, a member of the borrower's household, a comaker, endorser, surety, or guarantor of the obligation.

(c) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate with a borrower in connection with the collection of a loan at any unusual time or place. In the absence of any knowledge to the contrary, a licensee can assume that the convenient time for communicating with a borrower is after 8:00 a.m. and before 9:00 p.m., local time at the borrower's location.

(d) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate with a borrower in connection with the collection of a loan at the borrower's place of employment if the licensee knows or has reason to believe that the borrower's employer prohibits the borrower from receiving the communication.

(e) Without the prior written consent of the borrower given directly to the licensee or the express permission of a court of competent jurisdiction, a licensee may not communicate any information pertaining to a debt or obligation unless the person receiving the information is the borrower, the borrower's attorney, a consumer reporting agency, another creditor, or the attorney of the creditor. Unless notified pursuant to subsection (a), this prohibition does not apply to a licensee seeking information about the location of the borrower.

§1.862. Simulated Legal Process or Documents Prohibited.

In attempting to collect money due on a loan or to take possession of any property securing a loan, a licensee or the licensee's agent shall not use any simulated legal process, simulated legal document, or legal form designed to suggest that legal proceedings have been commenced or completed when in fact they have not.

§1.863. Impersonation and Fictitious Names Prohibited.

In attempting to collect money due on a loan, to take possession of any property securing a loan, or to secure information concerning a loan, a licensee or the licensee's agent shall not impersonate or attempt to impersonate any law enforcement officer or other agent of federal, state, or local governments, nor shall a licensee or a licensee's agent use any fictitious name unless the name used is an established or recognized trade name of the licensee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 30, 1999.

TRD-9903917
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Part V. Office of Consumer Credit Commissioner

Chapter 85. Rules of Operation for Pawnshops

7 TAC §85.1, §85.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of Consumer Credit Commissioner (the agency) proposes the repeal of §85.1, defining terms, and §85.2, concerning licensing of pawnshops. The subjects of these sections will be addressed in new replacement sections that the agency is simultaneously proposing and publishing for comment. The process of the repeal and simultaneous adoption of replacement rules is part of the agency's rule review process. Adoption of the repeals is necessary as the sections that are proposed for repeal would conflict with the adoption of new rules. Furthermore, repeal of obsolete rules will reduce the volume of existing rules, providing additional space for replacement rules. This process of repeal and adoption benefits the public and the industry by making the rules more accessible and readable.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the proposed repeals will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the

repeals. There is no anticipated impact on local or state employment as a result of implementing the repeals.

Ms. Pettijohn also has determined that for each year of the first five-year period the proposed repeals will be in effect, the public benefit anticipated as a result of the repeal is the removal of obsolete rules which will provide space for replacement rules and the overall improvement in accessibility and clarity of the remaining rules. There will be no anticipated cost to persons who are required to comply with the repeals as proposed. There will be no adverse economic effect on small businesses as compared to the effect on large businesses.

Comments on the proposed repeals may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeals are proposed under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules relating to the administration and enforcement of the Texas Pawnshop Act.

The statutory provisions affected by the proposed amendment are Chapter 371 of the Finance Code, Chapter 371.

§85.1. Definitions.

§85.2. Pawnshop Licensing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904015
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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7 TAC §§85.21, 85.31, 85.41, 85.51, 85.61, 85.71, 85.81

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of Consumer Credit Commissioner (the agency) proposes the repeal of §§85.21 concerning business records, §85.31 relating to crime victim assistance, §85.41 regarding security of persons and pledged goods, §85.51 concerning lost or damaged pledged personal property, §85.61 relating to advertising, §85.71 regarding examinations and investigations, and §85.81 concerning miscellaneous operating provisions. The repeals are necessary for administrative purposes in clarifying the printed version of the Texas Administrative Code. The sections that are proposed for repeal were challenged in district court. Upon appeal, the appeals court ruled that a technical and procedural violation in the manner of adoption invalidated the rule adoption.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the proposed repeals will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the proposed repeal will be in effect, the public benefit anticipated as a result of the repeal is the removal of obsolete rules which will provide space for replacement rules and the overall improvement in accessibility and clarity of the remaining rules. There will be no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeal may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeal is proposed under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules relating to the administration and enforcement of the Texas Pawnshop Act.

The statutory provisions affected by the proposed amendment are Chapter 371 of the Texas Finance Code.

§85.21. Business Records.

§85.31. Crime Victim Assistance.

§85.41. Security of Persons and Pledged Goods.

§85.51. Pledged Personal Property Lost or Damaged–Liability of Pawnbroker.

§85.61. Advertising.

§85.71. Examinations and Investigations.

§85.81. Miscellaneous Operating Provisions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904014
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Subchapter A. General Provisions

§§85.101–85.104

The Office of Consumer Credit Commissioner (the commissioner) proposes the adoption of new §§85.101-85.104 concerning general provisions.

Simultaneously, the Office of Consumer Credit Commissioner is repealing various rules and adopting these rules in their place. The rules being repealed and those being proposed to be adopted here were reviewed and evaluated. An assessment was made that the reasons for (re)adopting the rule continues to exist. The process of repeal of certain rules and the adoption of these rules benefit the public and the industry by making the rules more accessible, readable, and providing clarity and guidance in certain administrative and enforcement procedures.

Section 85.101 delineates the purpose and scope of this chapter of rules. The purpose and scope more clearly define the applicability of the chapter. This rule is necessary to ensure consistent application of the administrative rules to all persons who are engaging in transactions that are tantamount to pawn transactions even if they are not labeled as such.

Section 85.102 defines various terms that are used within the rules and the Texas Pawnshop Act. Definition of the terms is necessary to advise persons trying to comply with the rules on the meaning and effect of certain terms. The definitions are also necessary to ensure consistent application of the licensing and enforcement rules. For example, the definition of "principal party" is important to determine which individuals affiliated with a new pawnshop are required to submit personal affidavits, fingerprint investigation forms, and other forms in the licensing of a pawnshop.

Section 85.103 addresses the applicability of the chapter. The rule is necessary to clarify that any person who may attempt to disguise a transaction that would otherwise fit the definition of a pawn transaction may not evade the application of the chapter by employing a device or subterfuge.

Section 85.104 prescribes the dates for renewal and expiration of pawnshop and pawnshop employee licenses. The rule is necessary to stagger the dates of renewal from other licenses that the agency issues, so as to more evenly distribute the workload throughout the year.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five- year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules. There is no anticipated impact on local or state employment as a result of implementing the proposed rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification and accessibility of definitions, requirements, and procedures under the Texas Pawnshop Act. There will be no anticipated cost to persons who are required to comply with the rules as proposed. It is anticipated that there will be no adverse economic effect on small business as compared to the effect on large businesses. The agency specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small business. If the rule is believed to have such an effect, then comments are invited on how the agency may legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted. Additionally, if the rule is believed to adversely impact small business, then comments are specifically requested on how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 sales.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act.

§85.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of the Texas Finance Code, Chapter 371, which may be cited as the Texas Pawnshop Act.

(b) Scope. This chapter applies to a person engaged in the business of:

(1) lending money on the security of pledged goods; or

(2) purchasing goods on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period.

§85.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Bank deposits - Cash on deposit in banks or in other federally insured depository institutions. The value of deposits shall be reduced by any taxes or penalties that would be due and payable if the funds were withdrawn on the date of valuation.

(2) Book value - The dollar amount assigned to assets using generally accepted accounting principles (GAAP). In evaluating merchandise inventory, the lower of the cost or the market value of the asset method is generally used when determining book value.

(3) Commissioner - The Commissioner of the Office of Consumer Credit Commissioner of the State of Texas as defined in Chapter 14 of the Texas Finance Code.

(4) Facility - The physical space used or proposed for the use of the operation of a pawnshop.

(5) Merchandise inventory - Tangible personal property held by a pawnbroker or applicant for immediate sale in the pawnshop or proposed pawnshop.

(6) Operator - A person or entity who manages the daily operations of a pawnshop. This term includes a party to a management agreement for oversight and supervision of the operations of the pawnshop on behalf of the owners of the pawnshop.

(7) Pawnbroker - A person who has an ownership interest in a pawnshop as shown in an application for a pawnshop license filed with the commissioner. When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.

(8) Pledged goods - Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(9) Principal party Each proprietor and adult individual with a substantial relationship to the proposed business of the applicant. An individual with a substantial relationship to the proposed business of the applicant shall include but is not limited to:

(A) a general partner;

(B) a voting member of a limited liability corporation;

(C) a corporate officer, including the Chief Executive Officer or President, the Chief Financial Officer or Treasurer, and an officer with substantial responsibility for operations or compliance with the Texas Pawnshop Act;

(D) a director of a corporation;

(E) a shareholder owning 5% or more of the outstanding voting stock;

(F) a trustee; and

(G) an operator.

§85.103. Attempted Evasion of Applicability of Chapter.

A person may not use any device, subterfuge, or pretense to evade the application of this chapter. A device, subterfuge, or pretense includes any transaction that in form may appear on its face to be something other than a pawn transaction, but in substance meets the definition of a pawn transaction as defined in the Texas Pawnshop Act, §371.003(8).

§85.104. Renewal Dates of Licenses.

A pawnshop license and a pawnshop employee license shall expire on June 30th of each year unless the annual fee for the following year has been paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904016
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Subchapter B. Pawnshops

7 TAC §§85.201–85.212

The Office of Consumer Credit Commissioner (the commissioner) proposes the adoption of new §§85.201-85.212 concerning the licensing of pawnshops.

Simultaneously, the Office of Consumer Credit Commissioner is repealing various rules and adopting these rules in their place. These rules being repealed were reviewed and those being proposed to be adopted here were evaluated and an assessment made that the reasons for (re)adopting the rule continues to exist. The process of repeal of certain rule and the adoption of these rules benefit the public and the industry by making the rules more accessible, readable, and providing clarity and guidance in certain administrative and enforcement procedures.

Section 85.201 clarifies the requirement that any person who desires to engage in the business of making pawn loans must obtain a license before being authorized to make pawn loans. Additionally, the section requires that an individual be appropriately authorized to make pawn loans before advertising the operation of a pawnshop. This is consistent with the requirement of Texas Finance Code, §341.404.

Section 85.202 prescribes the requirements for filing a new pawnshop application. The rule states the specific forms and accompanying information that must be filed with a new application. The rule is necessary to provide consistent procedures for the filing of pawnshop license applications and to advise the public and the industry of the filing requirements. Additionally, in subsection (c) the rule implements the provisions of House Bill 1878 regarding the distance requirement of a new pawnshop from existing pawnshops in counties with a population of greater than 250,000.

Section 85.203 prescribes the requirements for relocating a pawnshop license. The rule states the specific forms and accompanying information that must be filed with the relocation application. The rule is necessary to provide consistent procedures for the filing and processing of pawnshop license applications and to advise the public and the industry of the filing requirements. Additionally, in subsection (f) the rule implements the provisions of House Bill 1878 regarding the distance requirement of existing pawnshop licenses from existing pawnshops in counties with a population of greater than 250,000. Specifically, the rule is necessary to fairly interpret and consistently apply the provisions of §371.059 of the Texas Pawnshop Act. During the legislative enactment of House Bill 1878, the legislative history indicates that §371.059(b)(2) was intended to apply to licenses that are not actively being used for the operation of a pawnshop. The rule is drafted to apply the statute in that fashion.

Section 85.204 addresses the requirement for active operation of approved applications and provides authority for the approval of a temporary facility. The rule discusses the appropriate time frames for both of these requirements. The rule is necessary to provide consistent procedures, to prevent circumvention of the distance requirements, and to prevent a person from monopolizing a trade location and area without the intention of opening and operating a pawnshop.

Section 85.205 prescribes the requirements for filing an application for the transfer of ownership of a pawnshop license. The rule states the specific forms and accompanying information that must be filed with the application. The rule is necessary to provide consistent procedures for the filing of pawnshop license applications and to advise the public and the industry of the filing requirements.

Section 85.206 discusses the procedures that will be used in processing and evaluating license applications for pawnshops. The rule defines when an application will be accepted, the order in which decisions on competing applications will be made, and the procedures for protesting an application.

Section 85.207 states the process that will be followed if the commissioner requires a bond of an applicant.

Section 85.208 discusses the notification and transfer requirements of a pawnshop licensee if the licensee has a change in the organizational form of business or a change in proportionate ownership of the licensee.

Section 85.209 requires an applicant to file supplemental information to an application if any subsequent action or additional information would have required a different response than that filed in the original application. This rule is necessary to advise the commissioner of relevant facts to be considered in determining whether to grant the application or to investigate changed circumstances regarding a licensee's fitness to be or to remain licensed.

Section 85.210 provides the authority for a licensee to designate a license from an active status to an inactive status. The rule also requires a licensee who desires to activate an inactive license to comply with the requirements for relocation of a license.

Section 85.211 encompasses the fee schedule for pawnshop licenses. The fees stated in this section are consistent with the fees set by the statute and the existing fee structure for administrative licensing activities. The fees are required in order to allow the agency to recover the costs associated with performing the licensing function.

Section 85.212 explains the treatment of license applications and associated documents received by the agency as open records under the Texas Government Code. The rule is necessary to advise applicants of the treatment and the public nature of documents that are filed with the agency.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five- year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules. There is no anticipated impact on local or state employment as a result of implementing the proposed rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification and accessibility of the procedures and requirements for pawnshop licensing. Persons who are required to comply with the rules are required to make certain filings as prescribed in §§85.202, 85.203 and 85.205. The majority of these filings are simply copies of business records that a pawnshop should maintain during the ordinary course of business. It is estimated that the costs of making these copies of records should not exceed $50. In order to comply with the distance requirements of the statute, it is possible that a pawnshop applicant would have to obtain an official survey instrument to demonstrate the distance between the proposed location and existing pawnshops. If a pawnshop were required to obtain this, the costs could range from $200 to $500. Persons who are required to comply with the rules as proposed will be expected to pay the fees as printed in the fee schedule (§85.211). The fees are related to each pawnshop licensee and fingerprint fees relate to the number of principal parties associated with an applicant. The investigation fee and annual fee for pawnshop licenses are required by the statute (Texas Finance Code, §§371.055; 371.064). The fingerprint fee is $40 and the fee for a duplicate of a license is $10. The fee for amending a license is $25 unless the amendment to the license is a relocation in a county with a population of 250,000 or more, in which case the fee is $250. An applicant who appeals a denied application may be required to pay the costs associated with the hearing. The hearing costs will vary according to the detailed nature of the hearing. Since 1996, no hearings have been conducted on the appeal of a denied pawnshop license. All cases were either settled and the license approved or the denial decision was not appealed to a hearing. The average cost of a hearing on a denied pawnshop employee license for the same period of time was $500. The estimated cost of an appeal of a denied pawnshop license may run from $500 to $2000. The cost of compliance to appeal a denied application should not vary significantly based upon the size of the operation. The denial of a new application is for a new operation and, therefore, cannot be compared on the basis of the cost per employee or level of sales. If the pawnshop is not authorized to operate, then it likely has no employees and no sales. The agency believes that the rule should not have an adverse economic effect on small businesses compared to large businesses. The agency specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small business. If the rule is believed to have such an effect, then comments are invited on how the agency may legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted. Additionally, if the rule is believed to adversely impact small business, then comments are specifically requested on how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 sales.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt rules of practice relating to the nature and requirements of administrative procedures.

The rules affect Subchapter B of Chapter 371, Texas Finance Code

§85.201. Engaging in Business.

An application must be filed and approved before any person engages in the business of making pawn loans. The application and approval is required without regard to the rate of interest or pawn service charge contracted for, charged, or received, if any. An applicant shall not advertise the opening of a new pawnshop prior to approval.

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted on forms prescribed by the commissioner at the date of filing. The application shall include the following:

(1) Required forms. All questions must be answered.

(A) Application form (Form ADM-10/11).

(i) A physical street address must be listed for the proposed location for which the applicant can show proof of ownership or an executed lease agreement. A post office box or a mail box location at a private mail-receiving service may not be used except for a physical location that does not receive general mail delivery. An application will not be accepted if the address or the full legal property description has not yet been determined or the application is for an inactive license.

(ii) If the applicant is a corporation, then the officers and directors' sections on the form (ADM-011) must be completed.

(iii) The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then a spouse with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming that status must be provided.

(I) Sole proprietorship. The individual owning and operating the business must be named.

(II) General partnership. Each partner must be listed and the percentage of ownership stated.

(III) Corporation. Each shareholder holding voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the

listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(IV) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(V) Limited liability company. Each manager, officer, agent, and member, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes Art. 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(VI) Trusts or estates. Each beneficiary, trustee, and executor must be named.

(iv) Manager. Each person who is responsible for the day-to-day operation of one or more of applicant's proposed locations must be named. The manager must be:

(I) a principal party as defined above;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(v) Supervisor. Each person who will be responsible for the supervision of a licensed location must be named. The supervisor must be:

(I) a principal party as defined above;

(II) a licensed pawnshop employee identified by license number; or

(III) an applicant for a pawnshop employee license with the date of application.

(vi) Signature. On an application for a sole proprietorship or a partnership, each proprietor and general partner must sign. On an application for a corporate applicant, two officers must sign unless only one officer of the corporation has been appointed. On an application for a limited liability company, two authorized members must sign unless the company only has one member. On an application for a trust or an estate, each trustee or executor must sign.

(B) Statutory agent disclosure (Form ADM-13). This form must be completed by all applicants. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is an individual, the address must be a residential address. On an application for a corporation, the statutory agent listed on Form ADM-13 should be the registered agent listed in the articles of incorporation. On an application for a limited liability company, the statutory agent listed on Form ADM-13 must be the registered agent listed in the articles of organization. If the statutory agent is not listed in the relevant organizational document, then the applicant must submit certified minutes appointing the new agent.

(C) Personal affidavit (Form ADM-15/16). Each individual listed on the license application (ADM-10/11) as a principal party, except for a pawnshop employee or an applicant for a pawnshop employee license, must complete this form. The percentage of ownership stated on this form must correspond to the individual's percentage listed on the license application Form ADM-10/11. The record of business association must also include the individual's association with the entity applying for the license.

(D) Fingerprint cards. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in 7 TAC §85.102. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's involvement in the pawnshop operation is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for fingerprint cards may be made by submitting a completed Form ADM-030.

(E) Financial statement (Form ADM-17/18/19).

(i) General information. A financial statement must be dated no earlier than sixty (60) days prior to the date of application. An applicant may also submit an audited financial statement dated within one year prior to the application date in order to expedite verification procedures. A financial statement must be certified as true, correct, and complete by a principal party. A financial statement should be prepared in accordance with generally accepted accounting principles (GAAP). A financial statement must reflect the net assets as defined in the Texas Pawnshop Act §371.003 of at least the lesser of the following amounts:

(I) The amount required in the Texas Pawnshop Act §371.072(a); or

(II) The amount required by the Texas Pawnshop Act §371.072(b) as the license existed or should have existed under the law and rules in effect on August 31, 1999. A change in net asset requirement occurs with respect to any change of ownership or other event causing a change in the net asset requirement that may have occurred prior to September 1, 1999. The change in the net asset requirement is effective as of the date of change of ownership or other event causing the change of the net asset requirement.

(ii) Sole proprietorship. A sole proprietor must complete all sections of Form ADM-17 and the attached schedules, Form ADM-18/19, or provide a personal financial statement that contains all of the information requested by Forms ADM - 17/18/19.

(iii) Partnership. A balance sheet for the partnership itself must be submitted. In addition, each general partner must submit a balance sheet. Each balance sheet for the partnership and the partners must be dated the same day. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application.

(iv) Corporation or limited liability company. A corporation or a limited liability company must file a balance sheet. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(v) Trusts or estates. A trust or an estate must file a balance sheet. The information requested in Schedules 1-6 (ADM-18/19) must be submitted and attached to any balance sheet that is appended to the application. A financial statement is generally not required of related parties, but may be required by the commissioner if the commissioner believes the information is relevant.

(F) Assumed name certificate (Forms ADM-20 and ADM-21). For an applicant that does business under an assumed name as that term is defined in Tex. Bus. & Comm. Code, §36.02(7), an assumed name certificate must be filed as provided in this subsection.

(i) Corporation, limited partnership, or limited liability company. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-21 or its equivalent) in compliance with Tex. Bus. & Comm. Code, §36.0011, as amended. Evidence of the filing bearing the appropriate filing stamp must be submitted or, alternatively, a certified copy.

(ii) All other applicants. An applicant using or planning to use an assumed name must file an assumed name certificate (ADM-20 or its equivalent) with the county clerk of the county where the proposed business is located in compliance with Tex. Bus. & Comm. Code, §36.0010, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(2) Other required filings.

(A) Statement of experience. An applicant for a new license should provide an attached statement setting forth the details of the applicant's prior experience in the pawn or credit-granting business. If an individual named on the application does not have significant experience in the pawnshop business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant experience and why the commissioner should find that the applicant has the necessary experience.

(B) Entity documents.

(i) Partnership. A partnership applicant must submit a complete copy of the partnership agreement. This copy must be signed and dated by each partner. A limited partnership must submit a copy of the articles of partnership filed with the secretary of state, any amendments, and a copy of the secretary of state's acknowledgment.

(ii) Corporation.

(I) A corporate applicant, domestic or foreign, must provide the following documents:

(-a-) A copy of the articles of incorporation and any amendments;

(-b-) A copy of the corporate by-laws;

(-c-) Minutes of corporate meetings that record the election of each current officer and director as listed on the license application (Form ADM-10/11); and

(-d-) A certificate of good standing from the comptroller of public accounts.

(II) A foreign corporate applicant must provide a certificate of authority to do business in Texas; and

(III) A publicly held corporation or an applicant owned by a publicly held corporation must submit the most recent quarterly and annual reports required by §15(d) of the Securities Exchange Act of 1934 (Form 10-K and Form 10-Q) for the applicant or for the parent company respectively.

(iii) Trusts. A copy of the instrument that created the trust and the trust agreement must be filed with the application.

(iv) Estates. A copy of the instrument establishing the estate must be filed with the application.

(C) Map. A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop, the location, including the name and address, of each pawnshop within three miles of the location, and the scale at which the map was constructed. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(D) Zoning. Each applicant shall file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(E) Lease agreement or proof of ownership. Each applicant shall file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(F) Proof of general liability and fire insurance. Each applicant shall file a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry. The policy must explicitly cover loss of pledged goods.

(b) Subsequent applications. If the applicant is currently licensed and filing an application for a new location, the applicant must provide the forms and other information that are unique to the new location including the application form (ADM 10/11) and an updated financial statement as provided in this section. Other information required by this section need not be filed if the information on file with the agency is current and valid.

(c) Distances shall be measured in a direct line despite travel patterns and natural or manmade obstacles and shall be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for a new license may not be approved unless the eligibility requirements are met and the proposed facility is within:

(1) a county with a population of less than 250,000 according to the most recent decennial census regardless of distance from another operating pawnshop;

(2) a county with a population of 250,000 or more according to the most recent decennial census and the pawnshop is not less than two miles from another operating pawnshop .§85.203. Relocation.

(a) Definition.

(1) As used in this section, a "relocation" occurs whenever an existing licensee desires to locate a pawnshop to a location different from that listed on the license.

(2) As used in §371.059 of the Texas Pawnshop Act and in this section, "the relocation of a licensed pawnshop" means the act of moving an existing pawnshop license from a location at which or premises in which a pawnbroker holds a pawnshop license to a new location.

(b) Approval of relocation. A pawnshop may not be relocated without the prior approval of the commissioner. When a relocation is requested, an application for relocation must be filed.

(c) Filing requirements. An application for relocation must be submitted on forms prescribed by the commissioner. The application for relocation shall include the following:

(1) Change of address application form (Form ADM-22).

(2) Financial statement (ADM-17/18/19). If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, an updated financial statement is required. The instructions in 7 TAC §85.202 are applicable to this filing.

(3) Other required filings.

(A) Map. A map must be provided of the area where the proposed license will be situated graphically defining the site of the proposed pawnshop, the location, including the name and address, of each pawnshop within three miles of the location, and the scale at which the map was constructed. The commissioner may require a survey to determine the distance from the proposed pawnshop location to existing operating pawnshops.

(B) Zoning. Each applicant shall file a certificate of occupancy or other evidence that the operation of a pawnshop is permitted at the proposed site.

(C) Lease agreement or proof of ownership. Each applicant shall file an executed lease agreement, deed, or other evidence that the entity has control of the proposed site.

(D) Proof of general liability and fire insurance. If the license requested for relocation includes the activation of a license that is inactive at the date of the request for relocation, a copy of a general liability and fire insurance policy in an amount sufficient to protect pledged goods including jewelry must be filed. The policy shall explicitly cover loss of pledged goods.

(d) Engaging in business. An applicant may not advertise the opening of a relocated pawnshop prior to approval, except that a pawnbroker who intends to relocate a pawnshop may, beginning 90 days or less prior to the projected date of relocation, post a sign inside the existing shop and give customers a written notice of the anticipated relocation pursuant to the subsection below.

(e) Notice to customer. A written notice of relocation must be given to each pledger whose pledged goods will be moved. Five days prior to relocation the pawnbroker must mail written notices to each pledger who has not been given a written notice prior to that date. A notice must identify the pawnshop, both the old and the new location, the telephone number of the new location, and the date the relocation is effective. The commissioner may modify the notification requirement if the relocation adversely affects pledgers. The modification may require the pawnbroker to extend the maturity date of pawn transactions or waive the collection of pawn service charges which may accrue after relocation. No relocation may be made which will adversely affect pledgers to the extent that redemption is unreasonable or impossible due to the distance between the locations. The commissioner may approve notification by signs in lieu of notification by mail if no pledgers will be adversely affected.

(f) Relocation distances. Distances shall be measured in a direct line despite travel patterns and natural or manmade obstacles, and shall be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for relocation may not be approved unless the eligibility requirements are met.

(1) If the proposed facility is within a county with a population of less than 250,000 according to the most recent decennial census, there is no distance requirement from another operating pawnshop;

(2) If the proposed facility is within a county with a population of 250,000 or more according to the most recent decennial census and:

(A) if the pawnshop was licensed and was not operating on September 1, 1999, and prior to this application had not begun or reinstated operations since September 1, 1999, it may locate not less than one mile from an operating pawnshop;

(B) if the pawnshop has been operating continuously at its current location for at least three years, it may locate within one mile of its current location regardless of distance from another operating pawnshop;

(C) if the pawnshop has been operating continuously at its current location for at least three years, it may locate not less than one mile from an operating pawnshop;

(D) if the pawnshop license was designated to an inactive status after September 1, 1999, and remains in an inactive status continuously for at least three years, it may locate within one mile from an operating pawnshop; or

(E) if the pawnshop has been operating at its current location for less than three years it may locate not less than two miles from another operating pawnshop.

§85.204. Temporary and Permanent Operation of Facility.

(a) The pawnshop must commence operation within a period of six months after the date of approval unless an extension is granted, in writing, by the commissioner. No more than one six- month extension will be approved by the commissioner, unless good cause for the extension is shown. At the end of any approved extension, if the pawnshop has not been opened, the authority for approval of the pawnshop shall be forfeited.

(b) The commissioner may approve opening and operating a temporary facility for an approved application, provided that the facility is within a one-half mile radius of the approved, permanent site. The operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy. The temporary facility shall not operate longer than 18 months unless extended in writing by the commissioner.

§85.205. Transfer of License.

(a) Definition. As used in this section, a "transfer of ownership" occurs whenever an existing owner relinquishes any interest in a licensee or an entirely new person has obtained an ownership interest in the licensee. This term also includes any purchase or acquisition of control over more than 5% of the outstanding voting stock of any licensed corporation or of any corporation which is the parent or controlling stockholder of a licensed corporation. This term also includes any acquisition of a license by gift, devise, or descent.

(b) Approval of transfer. No pawnshop license may be sold, transferred, or assigned without written approval of the commissioner.

(c) Filing requirements. An application for transfer of a pawnshop license must be submitted on forms prescribed by the commissioner. The application for transfer must include the following:

(1) Application form (Form ADM-10/11). The instructions in 7 TAC §85.202 are applicable to this filing.

(2) Statutory agent disclosure (Form ADM-13). The instructions in 7 TAC §85.202 are applicable to this filing.

(3) Personal affidavit (Form ADM-15/16). Each individual listed on the license application (ADM-10/11) who is a principal party, except for a pawnshop employee or an applicant for a pawnshop employee license, of the transferee must complete this form. The instructions set forth in 7 TAC §85.202 are applicable to this filing.

(4) Fingerprints. A complete set of legible fingerprints shall be provided for each individual having a substantial relationship with the applicant. An individual has a substantial relationship with an applicant if it is a "principal party" as that term is defined in 7 TAC §85.102. An individual who has previously been licensed by the commissioner or a principal party of an entity currently licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee or another person with some relationship to the applicant if the commissioner believes that the individual's background history is relevant to the applicant's eligibility for a license. All fingerprints should be submitted on a format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-030.

(5) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application. This must include one of the following:

(A) a copy of the asset purchase agreement when the license or other assets have been purchased, including a statement relating to the sale of the license;

(B) a copy of the stock purchase agreement or other evidence of a stock transfer; or

(C) a copy of any document that transferred ownership in a licensee by gift, devise, or descent, such as a probated will or a court order.

(6) Financial statement (ADM-17/18/19). The instructions in 7 TAC §85.202 are applicable to this filing.

(7) Other required filings. All filings required of new license applicants pursuant to 7 TAC §85.202 must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the information that is unique to the new location. Other information required by this subsection need not be filed if the information on file with the agency is current and valid.

(d) Transferee operating under transferrers license. No business under the license may be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved by the commissioner. The commissioner may approve a written agreement after the transfer application has been filed whereby a transferrer grants a transferee the authority to operate under the transferrers license pending approval of the transferee's license application. The agreement must provide that the transferrer accepts full responsibility to the commissioner and any customer of the licensed business for any acts of the transferee in connection with the operation of the business. The written agreement between the transferrer and the transferee must be submitted with a request to operate under the transferrers license. The agreement may include a provision whereby the transferee may operate using the transferee's name during the pendency of the application if the transferee has an existing pawnshop license issued under this chapter. The agreement shall be for a limited time as provided in the agreement and in no case may such authority extend beyond 180 days. The commissioner may deny a request for permission to operate during the pendency of the application.

(e) Application filing deadline. An application filed in connection with a transfer of ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual transfer.

§85.206. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 10 working days of receipt stating that the application is accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Application acceptance. An application will not be accepted until it contains the appropriate fees and substantially all of the items required in accordance with 7 TAC §§85.202, 85.203, or 85.205 as appropriate.

(c) Complete application. An application is complete when it:

(1) conforms to the statutes, rules, and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(d) Competing application. An application in a county with a population of 250,000 or more will be acted upon based on the chronological order in which the application was accepted pursuant to Subsection (b) of this section. A competing application may not be granted until a final ruling on any preceding competing application has been made.

(e) Notice of application and protest procedures. A notice of the application will be mailed to each pawnshop licensee in the county of the proposed location. The notice will state a date and time, 10 working days following the date of notice, by which any interested person may request a hearing. Any pawnbroker who believes that the applicant's proposed pawnshop will significantly affect that pawnbroker's current business may submit a sworn petition to be admitted as a party in opposition to an application for a new or relocated pawnshop. The petition must present the commissioner with relevant facts designed to show how the protesting pawnshop licensee will be affected by the approving of the proposed application and the basis for the protest. Upon a showing that the pawnshop licensee would be significantly affected by the granting of the license, the commissioner shall admit the protesting pawnshop licensee as a party. Any person intending to appear, present evidence, and be heard on a license application may do so only if written notice of the intention is filed and received by the commissioner as required in the notice of application. A copy of the written notice shall be delivered to the applicant and certification of that delivery shall be made to the commissioner at the time of filing.

(f) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner shall approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information described in 7 TAC §85.601 and the applicant's conduct and activities as described in 7 TAC §85.602.

(ii) A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the commissioner will consider an applicant's background and history. If the commissioner questions the applicant's ability to meet this standard, the commissioner may require further conditions, such as probation, to favorably consider an applicant for a license.

(iii) Financial responsibility. In evaluating the financial responsibility of an applicant, the commissioner may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes, and judgments, if any, and handling of financial affairs generally.

(iv) Experience. In evaluating experience, the commissioner will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(v) General fitness to command the confidence of the public. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the agency may be grounds for denial.

(vi) Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those assets that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(B) Distance requirement. A pawnshop within a county with a population of 250,000 or more must be not less than two miles from an existing pawnshop or if the application is for a relocation it must meet the requirements in 7 TAC §85.202(f)(2).

(2) Denial.

(A) If an application has not been completed within 30 days after notice of deficiency has been sent to the applicant, the application may be denied.

(B) The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements or the applicant fails to meet the distance requirements.

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e), a hearing shall be set. This hearing shall be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and 7 TAC §9.01 et seq. The commissioner shall make a final decision approving or denying the license.

(h) Processing time. The commissioner shall ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time if previous competing applications are on file, the placement of a reinstated expired pawnshop license would have an impact on the approval of an application, or where other good cause exists as defined by Texas Government Code, §2005.004 for exceeding the established time periods in this section.

§85.207. Bond.

The commissioner may require a bond under Texas Pawnshop Act §371.056, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Upon failure to submit a bond within 40 calendar days of the date of the commissioner's notice, the pending application may be denied.

§85.208. Change in Form or Proportionate Ownership.

(a) Organizational form. If a licensee desires to change the organizational form of its business (e.g. from sole proprietorship to corporation), the licensee must advise the commissioner in writing of the change within ten (10) calendar days by filing the appropriate transfer documents as provided in 7 TAC §85.205.

(b) Merger. A merger of a corporate licensee is a change of ownership and requires the filing of a transfer application pursuant to 7 TAC §85.205. A merger of the parent corporation of a licensee with another corporation that results in the creation of a new corporate entity requires a transfer application pursuant to 7 TAC §85.205. A merger of the parent corporation of a licensee with another corporation that results in the situation where the surviving corporation is not the existing parent corporation requires a transfer application pursuant to 7 TAC §85.205. A merger of another corporation with a beneficial interest beyond the parent corporation only requires notification within 10 calendar days.

(c) Proportionate ownership. A mere change in the proportion of ownership among the current owners does not require the filing of a transfer application. A change in the proportionate interests of two or more current owners of pawnshop licenses must be reported in writing.

(d) Notice deadline. A notice filed in connection with a change in proportionate ownership may be filed in advance but must be filed no later than ten (10) calendar days following the actual change.

§85.209. Amendments to Pending Applications.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact, or information.

§85.210. Designation of Active or Inactive Status.

(a) Inactivation of an active license. A licensee may cease operating a pawnshop and render the license inactive by giving notice of the cessation of operations to the commissioner not less than 30 days prior to the anticipated cessation date. Notification must be filed on the license amendment form (ADM-22). The notice must include a valid mailing address, the fee for amending the license, a certification that no loans will be made or collected under this license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for

redemption. If an active license is not being used for the active operation of a pawnshop, the commissioner may unilaterally place the license in inactive status.

(b) Activation of an inactive license. Activation of an inactive license to a location other than that listed on the license must comply with the relocation requirements set forth in 7 TAC §85.203.

§85.211. Fees.

(a) New licenses. A $500 investigation fee is assessed each time an application for a new license is filed and is non-refundable. In addition, the applicant is initially required to pay an annual license fee of $100 that is not prorated but is refundable if the license application is denied.

(b) Subsequent licenses. A $250 investigation fee is assessed each time an application for a new license of an existing licensee is filed or if the application involves substantially identical principals and owners of a licensed pawnshop and is non-refundable. In addition, the applicant is initially required to pay an annual license fee of $100 that is not prorated but is refundable if the license application is denied.

(c) License transfers. An investigation fee of $500 for the first license transfer and $250 on each additional license transfer sought simultaneously is required and is non-refundable. If the application involves substantially identical principals and owners of a licensed pawnshop, then the fee is $250 for the first license transfer.

(d) Fingerprint checks. The fee to investigate each applicant's fingerprint record is $40 per set and is non-refundable. This fee must be paid for each set of fingerprints filed with applications for new licenses or license transfers.

(e) Annual Renewal Fee. A $125 annual renewal fee is required by June 30 each year to keep a license from expiring.

(f) License amendment. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office. An activation or relocation in a county with a population of 250,000 or more shall require a $250 investigation fee and other fees as may be required of a new license applicant.

(g) License duplicate. The fee for a license duplicate is $10.

(h) Each applicant for a new or relocated license shall pay $1.00 to the commissioner for each notice of application that is required to be mailed.

(i) Costs of hearing. The commissioner or administrative law judge may assess the costs of an administrative appeal hearing afforded under 7 TAC §85.206(g), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing. If it is determined that a protest is frivolous or without basis, then the cost associated with the hearing may be assessed solely to the protesting party.

(j) Excess payment of fees. Any excess payment of fees received by the commissioner may be held to offset anticipated fees that may be owed by the licensee or applicant.

§85.212. Applications and Notices as Public Records.

Once a license application or notice is accepted by the commissioner, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Certain information, such as social security numbers, may be protected under the provisions of the Texas Government Code. Under Texas Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the commissioner may not return any original documents associated with a license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904017
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Subchapter C. Pawnshop Employee License

7 TAC §§85.301–85.307

The Office of Consumer Credit Commissioner (the commissioner) proposes the adoption of new §§85.301-85.307 concerning pawnshop employee licensing.

Section 85.301 prescribes the requirements for filing a new pawnshop employee application. The rule states the specific forms and accompanying information that must be filed with a new application. The rule is necessary to provide consistent procedures for the filing of pawnshop employee license applications and to advise the public and the industry of the filing requirements.

Sections 85.302 and 85.303 require a pawnshop to notify the commissioner when a licensed pawnshop employee is terminated or hired by the pawnshop. These sections are necessary to ensure the accuracy of the agency's records concerning the location of employment for licensed pawnshop employees. The agency will provide the appropriate forms to pawnshops for the notification.

Section 85.304 states the procedures that will be applied in processing a new pawnshop employee license. The rule discusses when an application will be accepted, how a decision on an application occurs, the permissibility of a probationary license, the procedures for a hearing on a denied application, and general application processing time lines. The rule is necessary to provide consistent procedures for the processing of pawnshop employee license applications and to advise the public and the industry of the procedures.

Section 85.305 requires an applicant to file supplemental information to an application if any subsequent action or additional information would have required a different response than that filed in the original application. This rule is necessary to advise the commissioner of relevant facts to be considered in determining whether to grant the application or to investigate changed circumstances regarding a licensee's fitness to be or to remain licensed.

Section 85.306 encompasses the fee schedule for pawnshop employee licenses. The fees stated in this section are consistent with the fees set by the statute and the existing fee structure for administrative licensing activities. The fees are required in order to allow the agency to recover the costs associated with performing the licensing function.

Section 85.307 explains the treatment of license applications and associated documents received by the agency as open records under the Texas Government Code. The rule is necessary to advise applicants of the treatment and the public nature of documents that are filed with the agency.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five- year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules. There is no anticipated impact on local or state employment as a result of implementing the proposed rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification and accessibility of the procedures and requirements for pawnshop employee licensing. Persons who are required to comply with the rules as proposed will be expected to pay the fees as printed in the fee schedule (§85.306). The fees are related to each employee required to be licensed by the statute. The fee for a new pawnshop employee license of $25 and the annual renewal fee of $15 are required by the statute (Texas Finance Code, §§371.103; 371.106). The fingerprint fee is $40 and the fee for a duplicate of a license is $10. An applicant who appeals a denied application may be required to pay the costs associated with the hearing. The hearing costs will vary according to the detailed nature of the hearing. Of the hearings conducted since 1996 on an appeal of a denied employee license, the average cost for a denial hearing of a pawnshop employee license was $500. The cost of compliance with this section is based upon costs per employee. The economic effect should be proportional to the size of the business and especially proportional to the number of employees of the pawnshop. The agency specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small business. If the rule is believed to have such an effect, then comments are invited on how the agency may legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted. Additionally, if the rule is believed to adversely impact small business, then comments are specifically requested on how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each $100 sales.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Finance Code, §371.006 which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act. Additionally, these rules of procedure are proposed pursuant to Texas Government Code, §2001.004, requiring an agency to adopt rules of practice relating to the nature and requirements of administrative procedures.

The rules affect Subchapter C of Chapter 371, Texas Finance Code.

§85.301. Filing of New Application.

An application for issuance of a new employee license must be submitted on forms prescribed by the commissioner. The application shall include the following required forms. All questions must be answered.

(1) Application form (Form ADM-30/31).

(A) Identifying information. The application shall contain complete and accurate information identifying the applicant.

(B) Residence information. The application shall report a continuous five-year residential history.

(C) Employment information. The application shall report a continuous five-year employment history. If an applicant was unemployed for a period of time or was enrolled as a student during a period of time, the application shall state that fact.

(D) Background and history. Any response about an employee's background and history must be true, correct, and complete. Additional information as required must be provided as an attachment to the application.

(E) Signature. The applicant must sign and affirm the application as true, correct, and complete.

(2) Fingerprint cards. A complete set of legible fingerprints shall be provided for each applicant. An individual who has previously been licensed by the commissioner is not required to provide fingerprints. The commissioner may require fingerprints of an employee if the commissioner believes that the individual has not been fingerprinted for a significant amount of time and believes a new set of fingerprints might provide additional information about the person's criminal background. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation. A request for acceptable fingerprint cards may be made by submitting a completed Form ADM-025.

§85.302. Notification of Termination.

It is the responsibility of a pawnshop to notify the commissioner within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. Notification of Hiring.

It is the responsibility of a pawnshop to notify the commissioner when a licensed employee begins working at a pawnshop within a reasonable period of time whose address is different from that printed on the employee's license. A reasonable period of time is within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

(a) Application acceptance. An application for a pawnshop employee license will not be accepted until it contains the appropriate fees and the items required in accordance with 7 TAC §85.301.

(b) Complete application. An application is complete when:

(1) the application conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Decision on application. The commissioner may approve or deny an application.

(1) Approval. The commissioner shall approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

(A) Good moral character. In evaluating an applicant's moral character, the commissioner will consider criminal history information described in 7 TAC §85.601 and the applicant's conduct and activities as described in 7 TAC §85.602.

(B) Good business repute. In evaluating an applicant's business repute, the commissioner will consider the applicant's background and history.

(C) Character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly. The applicant's overall background and history will be considered. Providing misleading information on the application or failing to disclose information to the agency may be grounds for denial.

(2) Denial.

(A) If an application has not been completed within 30 days after notice of delinquency has been sent to the applicant, the application may be denied.

(B) The commissioner may also deny an application when the applicant fails to demonstrate the eligibility requirements.

(d) Probationary license. The commissioner may conditionally approve an application for a probationary period of time when an employee's background and history indicate that confidence in the employee's ability to operate lawfully within the purposes of the Texas Pawnshop Act is questionable. If the commissioner determines that the terms of the probation are not being met, the commissioner may issue an order setting a hearing to suspend or revoke the employee's license.

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and 7 TAC §9.01 et seq. When a hearing is requested following an initial license application denial, the hearing shall be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner shall make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) Processing time. The commissioner shall ordinarily approve or deny a license application within 60 days after the date the application is complete. The commissioner may take more time where good cause exists, as defined by Texas Government Code, §2005.004.

§85.305. Amendments to Pending Applications.

Each applicant shall provide the commissioner with information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported to the commissioner within 10 business days after the person has knowledge of the action, fact, or information.

§85.306. Fees.

(a) New licenses. A $25 investigation fee is assessed each time an application for a new license is filed and is non-refundable. The fee is not refundable if the license application is denied.

(b) Fingerprint checks. The fee to investigate each applicant's fingerprint record is $40 per set and is non-refundable. This fee must be paid for each set of fingerprints filed with applications.

(c) Annual Renewal fee. The annual renewal fee for a pawnshop employee license is $15. The fee must be paid by June 30 each year.

(d) License amendment. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation shall require notice on the form provided by the commissioner to the pawnshop.

(e) License duplicate. The fee for a license duplicate is $10.

(f) Cost of hearing. The commissioner or the administrative law judge may assess the cost of an administrative appeal hearing afforded under 7 TAC §85.304(e), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing.

§85.307. Applications and Notices as Public Records.

Once a license is accepted with the commissioner, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Certain information, such as social security numbers, may be protected under the provisions of the Texas Government Code. Under Texas Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the commissioner may not return any original documents associated with a license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904018
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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Subchapter F. License Revocation, Suspension, and Surrender

7 TAC §§85.601–85.603

The Office of Consumer Credit Commissioner (the commissioner) proposes the adoption of new §85.601 concerning the

effect of criminal history information on licenses and license applications, §85.602 addressing the licensee's or applicant's conduct, and §85.603 relating to reinstatement of an expired pawnshop license.

Section 85.601 defines the crimes that are considered to be directly related to the duties and responsibilities of a pawnbroker, the persons whose conviction of such a crime could adversely affect a proposed or existing license, and specifies the administrative remedy available if a criminal conviction results in the denial or a license application.

Section 85.602 defines the type of conduct by the applicant for a license or by the licensee that may be considered to be directly related to the duties and responsibilities of a pawnbroker. This conduct may be evaluated in determining whether to deny a license or to initiate an enforcement action against a licensee.

Section 85.603 provides the procedure for the reinstatement of an expired pawnshop license.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five- year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules. There is no anticipated impact on local or state employment as a result of implementing the proposed rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules will be that applicants for a license can better assess the prospects of obtaining a license prior to expending the resources necessary to do so when a principal party of the applicant has a criminal conviction, and existing license holders may avoid adverse action with respect to the license because of such conviction. There will be no anticipated economic cost to persons who are required to comply with the sections as proposed, unless, however, a principal party or an applicant has a criminal conviction or has engaged in conduct that may affect the underlying basis for determining whether to deny a license or to initiate an enforcement action. It is possible that either of these actions may result in an administrative hearing. It is also possible that as a result of the administrative hearing costs may be assessed against the individual. The costs vary significantly based upon the details of the case. Of the hearings conducted since 1996 on the denial of a pawnshop employee license, the average cost for the hearing was $500. Section 85.603 explains the right of reinstatement for an expired pawnshop license. If a pawnshop chooses to avail themselves of this provision, the fee is $1000. This fee is set by statute.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Finance Code, §371.006, which authorizes the commissioner to adopt rules to administer and enforce the Texas Pawnshop Act.

The rules affect Subchapter C of Chapter 371, Texas Finance Code.

§85.601. Effect of Criminal History Information on Licenses and Applications.

(a) In submitting an application for a license, a principal party to an applicant for a pawnshop license or an applicant for an employee license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history information. The commissioner will continue to receive information on new criminal activity reported to those agencies after the fingerprints have been processed through those agencies. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history information obtained to issue a denial or initiate a revocation or suspension action. Criminal history information relates to good moral character and the information gathered is relevant to the licensing or enforcement action decision as described below:

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions shall be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (c), including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the individual has maintained a record of steady work history and has supported the individual's dependents and has otherwise maintained a record of good conduct. At a minimum the individual must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects on an applicant's honesty and moral character.

(c) Effect of criminal conviction on an applicant for or a holder of a pawnbroker license.

(1) The commissioner may deny an application for a license if the applicant is an individual who has been convicted of any felony or a crime involving moral character that is reasonably related to the individual's fitness to hold a license. For purposes of this subsection, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing pawnshops of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report; or

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes.

(2) Effect of other criminal convictions on proposed or existing license. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the license applicant or holder has been convicted of a crime that directly relates to the duties and responsibilities of a pawnbroker. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating circumstances and rights of the applicant or licensee.

(3) Crimes directly related to fitness for a license. Being a pawnbroker involves or may involve representations to borrowers and sellers, maintenance of accounts to make loans and replace

lost or damaged goods, and compliance with reporting requirements to governmental agencies relating to certain transactions including firearms. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, or a crime involving failure to file a governmental report or filing a false report is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial or revocation.

(4) Mitigating considerations. In determining whether a conviction for a crime renders a person or an entity related to the person unfit to be a license holder, the commissioner shall consider:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the time elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) the person's present fitness for a license, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person, the sheriff and chief of police in the community where the person resides, and other persons in contact with the convicted person.

§85.602. Licensee's or Applicant's Conduct.

Upon submission of application for a license a principal party to an applicant for a pawnshop license or an applicant for an employee license is investigated by the commissioner. If the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the information obtained to issue a denial or initiate an enforcement action. Certain conduct relates to good moral character and the ability of the applicant to operate lawfully and fairly within the Texas Pawnshop Act. The commissioner may revoke a license or deny an application for a license if an individual is found to have engaged in conduct that is reasonably related to the individual's fitness to hold a license. For purposes of this subsection, any conduct related to the items listed below are considered to be relevant to moral character:

(1) Fraud, misrepresentation, deception, or forgery;

(2) Breach of trust or other fiduciary duty;

(3) Dishonesty or theft;

(4) Assault;

(5) Violation of a statute governing pawnshops of this or another state; or

(6) Attempt, preparation, or conspiracy to evade the Texas Pawnshop Act and its provisions or to evade the laws relating to the receiving or conveyance of stolen property.

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires on June 30 for failure to pay the annual renewal fee, the commissioner shall by July 31 of that same year notify the pawnshop license holder via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the $125 annual fee and a $1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to administrative action of the commissioner including revocation should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904019
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 936–7640

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TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 45. Marketing Practices

Subchapter A. Standards of Identity for Distilled Spirits

16 TAC §45.4

The Alcoholic Beverage Commission proposes an amendment to §45.4 governing the permissible classifications of distilled spirits that may be sold in the state. The proposed amendment adds a classification of distilled spirits specialties.

Lou Bright, General Counsel, has determined that for the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule. Mr. Bright has determined that the public will benefit from this rule in that a greater array of alcoholic beverage products will become available for affected members of the alcoholic beverage industry to sell and for consumers to buy. There is no anticipated impact on small businesses as a result of this rule.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711.

This amendment is proposed under Alcoholic Beverage Code, §5.31, which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §5.38, is affected by this amendment.

§45.4. The Standards of Identity.

Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows.

(1)-(13) (No change.)

(14) Class 14 distilled spirits specialties. Distilled spirits specialities are products which are bottled at not less than 48 proof and are obtained by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and/or containing sugar, dextrose, or levulose, or a combination thereof, in an amount less than 2-1/2% by weight of the finished product.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 1999.

TRD-9903857
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 206-3204

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 39. Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§39.1, 39.101, 39.151, 39.201, 39.251, 39.253, and 39.301 and new §§39.302, 39.351, 39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418-39.421, 39.423, 39.425, 39.501, 39.503, 39.509, 39.551, 39.553, 39.601-39.606, 39.651, 39.653, 39.701- 39.703, 39.705, 39.707, 39.709, 39.711, and 39.713, concerning public notice. The commission also proposes the repeal of §39.401 (renumbering it as new §39.351).

BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, SB 1308, and HB 1479, 76th Legislature (1999). Certain portions of the proposed amendments and new sections are proposed to clarify the applicability of existing notice provisions, to correct, clarify, or update certain public notice rules with regard to notices for air quality applications and the air quality permit amendment process. Also, certain rules concerning a portion of the proposal will constitute a revision to the state implementation plan (SIP). Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP. Concurrently with this rulemaking, the commission is proposing the review of Chapter 39, concerning public notice, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Notices relating to certain air quality permit and permit exemption public notification and public participation requirements currently under Chapters 116 and 106 are proposed to be incorporated into Chapter 39 as part of this consolidation.

OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 apply to certain permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit 30 days after declaration of administrative completeness. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county, and, in most cases, to publish newspaper notice of the executive director's preliminary decision of the application. In addition, the bill requires the commission to establish by rule the form and content of the notices and to mail notice to certain persons. It also authorizes the executive director to hold public meetings regarding applications which are required if requested by a legislator or if the executive director determines there is substantial public interest in the proposed activity. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. It requires the commission to prescribe alternative cost-effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

OVERVIEW OF SB 7 AND IMPLEMENTATION

SB 7, also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Texas Health and Safety Code. SB 7 provides that initial issuance of these permits require notice and comment proceedings. However, amendment and renewal

of these permits requires notice, comment, and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and, to a limited extent, to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA, Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

OVERVIEW OF SB 1308 AND IMPLEMENTATION

SB 1308 allows the executive director to approve water quality management plans (WQMPs) and revisions, so long as an opportunity for public participation has been provided. This bill, which amends Texas Water Code, §26.037, also requires rules to provide for commission review of the executive director's decision on a plan approval or revision. This proposal incorporates these requirements through §§39.401, 39.403, and 39.553.

In addition to the changes required by legislation, the TNRCC is making several other changes to the public notice rules in Chapter 39.

OVERVIEW OF HB 1479 AND IMPLEMENTATION

HB 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit; and for Texas Pollutant Discharge Elimination System (TPDES) permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

OVERVIEW OF SB 211 AND IMPLEMENTATION

SB 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55, and 80.

OVERVIEW OF CHANGES NOT RELATED TO HB 801

For air permits, there are several changes regarding notice. First, all permit amendment applications for construction of new facilities or for modifications of existing permits which have significant emission increases must comply with the notice requirements in Chapter 39. The rules also clarify when alternative language publication for an air application is required and the appropriate locations of notice signs. The requirement that notice for certain air applications be published in two consecutive issues of a newspaper has been changed to publication in one issue of a newspaper. Other changes made in this rulemaking proposal which are not related to HB 801 include those revisions necessary to incorporate by rule those changes made by SB 766 to the TCAA regarding exemptions from permitting and permits by rule and public notification and comment procedures for voluntary emission reduction permits. This proposal also incorporates public notification and current procedures required under SB 7 for electric generating facility permits. The notice text for air applications has also been changed to make clear which air contaminants should be included in the text of the notice.

Chapter 39 also incorporates a procedure that allows the agency to suspend review of and return an application to an applicant if the applicant does not publish notice. A second application fee will not be required if the applicant wishes to resubmit the application within six months. This change in procedure is not required by HB 801. However, it is consistent with the goal of ensuring the most effective use of agency resources, avoiding unwarranted delay in permit processing, and encouraging early public participation in the permit process.

The rules have been revised to reflect that there is no right to a contested case hearing on weather modification permits or licenses under Chapter 18, Texas Water Code, reflecting the interpretation of law given in commission orders which have addressed hearing requests on these applications.

The proposed changes made in this rule proposal would also, in most cases, provide that judges will no longer accept public comment at evidentiary hearings. If there is significant public interest in an application, the agency will hold a separate public meeting. This change is intended to provide a forum for public comment that is more appropriate and more informal than a proceeding subject to formal rules of evidence and civil procedure. The rules regarding freezing the process for certain hearings in Chapter 80, Subchapter E, are also proposed to be deleted because the commission has found that these rules have not been used and does not believe they are needed for future proceedings. Further, the goals sought to be achieved by these rules (i.e., streamlining the contested case hearing process) is achieved by the proposed rules implementing HB 801. Finally, the commission has determined that the executive director and public interest counsel should not be aligned with any other party in a contested case hearing.

EXPLANATION OF PROPOSED RULES

ORGANIZATION OF CHAPTER

HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules, Subchapters A-F are amended to apply only to applications that were administratively complete *before* September 1, 1999. At the same time, new Subchapters H-M apply only to applications that are administratively complete

on or after September 1, 1999. Generally, Subchapters H-M are duplicated versions of the existing rules in Subchapters A-F, modified to incorporate substantive changes either related to HB 801 implementation, implementation of other bills, or other changes proposed under this chapter. To facilitate this reorganization, §39.401 (related to Public Notice for Applications for Consolidated Permits) is repealed and renumbered as §39.351. Section 39.351 applies to all permit applications, regardless of when they become administratively complete.

In this proposal, only the applicability sections of Subchapters A-F are reproduced. For Subchapters H-M, the entire new subchapters are printed. Many of the sections of Subchapters H-M are the same or very similar to sections in Subchapters A-F. Where possible, section numbers are parallel; for example, §39.5 (General Provisions) is similar to §39.405 (General Provisions). Nonetheless, since Subchapters H-M are entirely new, it may be difficult to quickly see the differences between those new and existing Subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801.

Generally, Chapter 39 is proposed to be changed to incorporate certain statutory requirements of HB 801, to clarify and modify certain requirements for public notification and public participation, and to modify the processing of applications for air quality permits.

The proposed revisions to Chapter 39 contain general provisions that apply to all affected programs and program-specific requirements. The latter are largely derived from statutory differences related to various programs included in HB 801 and applicable statutes. Generally, the provisions of Subchapters H-M apply to permit applications issued under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code that are administratively complete on or after September 1, 1999.

Portions of Chapter 39 are proposed to be changed to incorporate some aspects of SB 766 and SB 7. For example, the proposal includes reference to permits and public notification requirements for VERPs under THSC, §382.0519, permits for electric generating facilities subject to §39.264 of the Utilities Code, and the use of exemptions from permitting and permits by rule for construction of facilities and modification of existing facilities under TCAA, §382.057 and §382.058. Portions of Chapter 39 are proposed to implement SB 1308 relating to water quality management plan approval.

COMMENTS REQUESTED

The commission solicits, in particular, comments regarding the requirements in §39.101(e)(2) and §39.501(d)(2) (Municipal Solid Waste applications); §39.503(d)(2)(B) (Industrial or Hazardous Waste applications); §39.651(d)(2) and §39.651(e)(2)(B) (Injection Well applications); and §39.603(a)(2) (Air Quality Permit applications) on the size of newspaper notice. The commission recognizes that the measurements in the rules do not necessarily reflect the measurements that newspapers use for advertisements. Recommendations on more appropriate terminology would be appreciated.

SECTION BY SECTION ANALYSIS

The commission proposes to amend §§39.1, 39.101, 39.151, 39.201, 39.251, 39.253, and 39.301 and to renumber §39.401 to §39.351. The commission also proposes new §§39.302, 39.351, 39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418-39.421, 39.423, 39.425, 39.501, 39.503, 39.509, 39.551, 39.553, 39.601-39.606, 39.651, 39.653, 39.701- 39.703, 39.705, 39.707, 39.709, 39.711, and 39.713, concerning public notice.

The commission proposes amended §39.1 (Applicability) to provide that permit applications declared administratively complete before September 1, 1999 are subject to Subchapters A-F of Chapter 39 and that Subchapters H-M apply to permit applications declared administratively complete on or after September 1, 1999. This amendment also provides that consolidated permit applications declared administratively complete before or on or after September 1, 1999 are subject to Subchapter G. The amendments proposed by this section are intended to conform with the changes made by HB 801 and which provide that former law is continued in effect for applications declared administratively complete before September 1, 1999 and that the changes made by the new law are applicable only to applications administratively complete on or after September 1, 1999.

Amended §39.101 (Application for Municipal Solid Waste Permit), §39.151 (Application for Wastewater Discharge Permit), §39.201 (Application for a Preconstruction Permit), §39.251 (Application for Injection Well Permit, §39.301 (Notice of Declaration of Administrative Completeness), and §39.302 (Applicability) are proposed to likewise reflect that rules in effect before September 1, 1999 continue to apply to applications declared administratively complete before that date. These amendments also provide that Subchapters H-M apply to applications administratively complete on or after that date. These changes are intended to incorporate the effective date and savings clause of HB 801.

Existing §39.401 (Public Notice for Applications for Consolidated Permits) is proposed to be repealed and renumbered as §39.351. No limiting applicability provision is added to this section since it will apply to all applications regardless of when they become administratively complete. This section provides that combined notice for consolidated applications can be provided so long as all statutory and regulatory requirements for public notice are met.

Proposed new §39.401 (Purpose), states that the purpose of Chapter 39 is to specify notice requirements for certain applications, including notices for public meetings, contested case hearings, comment hearings, and WQMPs. This provision is very similar to existing §39.3 except that it updates this provision to reflect the applicability to comment hearings for certain permit applications (notice of which is currently covered by Chapter 39) and WQMPs (incorporating changes made by SB 1308 which modified the procedures for notice and public participation for these actions).

Proposed §39.403 (Applicability) identifies the applications and actions to which Subchapters H and M apply. Proposed §39.403(a) explains that Subchapters A-F apply to applications that were administratively complete before September 1, 1999, while Subchapters H-M apply to applications that were administratively complete on or after September 1, 1999. Proposed §39.403(b) includes most of the language in existing §39.1 with some additions and clarifications, including those necessary

to reflect that notice requirements for air applications are now contained in Chapter 39 rather than Chapter 116 and to incorporate some of the changes resulting from SB 7 and SB 766. Those types of applications which would be newly subject to the provisions in the proposed additions to Chapter 39 include: (1) applications for air quality permits under §382.0518 and §382.055 of the Texas Health and Safety Code, unless otherwise specified in this section; (2) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction; (3) concrete batch plants (CBP) registered under 30 TAC Chapter 106 (relating to Exemptions from Permitting) unless the facility is to be located in, or contiguous to, the right-of-way of a public works project; (4) applications for voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code; (5) applications for permits for electric generating facilities under §39.264 of the Utilities Code; (6) applications subject to the requirements of Chapter 116, Subchapter G of this title (relating to Flexible Permits); and (7) permit amendments under §116.116(b) of Chapter 116 for: (A) construction of any new facility; (B) modification of an existing facility which results in a significant increase in allowable emissions of any air contaminant; or (C) other changes when required by the executive director; and (8) Water Quality Management Plan updates processed under Texas Water Code, Chapter 26, Subchapter B.

Proposed new §39.403(c) generally mirrors the language in existing §39.1(2)(b) regarding those applications that are not subject to Chapter 39. In addition, since certain air notice requirements are now included in Chapter 39, it specifies that the following are not subject to Chapter 39 (such as applications under Chapter 122, relating to Federal Operating Permits), standard permits under Chapter 116, Subchapter F, and exemptions from permitting and permits by rule under Chapter 106, with the exception of concrete batch plants, as described in §39.403(b)(10).

Proposed new §39.403(d) states that applications for initial issuance of voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code and initial issuance of permits for electric generating facilities under §39.264 of the Utilities Code are subject only to §§39.405, 39.409, 39.411, 39.418 39.419, 39.602, 39.603, 39.604, and 39.605 of proposed Subchapter K. This is consistent with TCAA, §382.0519 and §382.05191 and the provisions of SB 7 (§39.264 of the Utilities Code). These permit applications are subject to notice, public comment, and public meetings, but not contested case hearings or requests for reconsideration of the executive director's decision.

Proposed §39.403(e) includes in one provision all of those sections in Chapter 39 that do not apply to radioactive materials licenses, and reflects the somewhat unique notice requirements for these applications. This section states that radioactive material licenses under Chapter 336 of this title are not subject to the public notice requirements in §§39.405(c), 39.405(f), 39.405(h), 39.413, 39.418, 39.419, and 39.420. Radioactive material licenses are generally subject to applicable public notice requirements in Subchapter A, and specific public notice requirements under new Subchapter M. Subchapter M contains equivalent requirements for §39.405(c) and (f) in §39.705 and §39.711 respectively. Requirements in §39.405(h) for broadcast notice of applications do not apply to applications for radioactive material licenses under Chapter 336. Additionally, as radioactive materials licenses are not affected by the changes in law made by HB 801, proposed requirements implementing HB 801 in new §39.420, relating to Transmittal of Executive Director's Response to Comments and Preliminary Decision, do not apply to Chapter 336 applications for radioactive material licenses. The changes made related to notice for radioactive materials licenses are primarily organizational in nature and are made to improve readability.

Proposed new §39.405 contains general notice provisions that apply to more than one program area and has some similarities to existing §39.5. However, § 39.405(a) adds the requirement that notice must be published within 30 days after the executive director declares the application administratively complete. The amendment reflects the notice requirement in new Texas Water Code, §5.552, as added by HB 801.

Not related to HB 801, but included to avoid undue delay in permit processing, this section adds a provision that, for applications subject to Chapter 39, Subchapters H-M, the executive director may suspend further processing and return the application for failure to publish notice in a timely manner. This procedure is already available for air quality permits. This rule as proposed would provide that a new permit application fee will not be required if the applicant resubmits the application within 6 months of its being returned.

Proposed new §39.405(b) and (c) mirror existing §39.5(b) and (c) with only slight modifications.

Proposed new §39.405(d) reflects the consolidation of air notice requirements into Chapter 39 consistent with the goal of putting all permitting notice requirements in one place, and also reflects the applicability of Subchapters H-M to permit applications.

Proposed new §39.405(e) is similar to existing §39.5(e) except that changes are proposed to allow a combination of notices under any circumstances as long as all applicable notice requirements are satisfied. This change is intended to maximize the flexibility allowed for issuing notice while ensuring compliance with applicable requirements.

Proposed new §39.405(f) is similar to existing §39.5(f) except that new §39.405(f) is proposed to impose a ten business day deadline for submitting an affidavit with the chief clerk as proof of publication. While the requirement in existing §39.5(f) allowed, in some cases, up to 30 days for submission of the affidavit, the time period for filing was shortened since the 10 business day time frame was considered sufficient to allow an applicant to show that it has complied with the notice requirements and in order to avoid undue delay in permit processing.

Proposed new §39.405(g) is similar to existing §39.5(g); however, changes are made to make the notice requirements for solid waste applications consistent with the notice requirements of HB 801 and with applicable statutory requirements including §361.0791 and §361.0665 of the Texas Health and Safety Code.

The commission proposes new §39.407 (Mailing Lists) which mirrors the language in existing §39.7 which allows persons who have participated in past agency permit proceedings to request to be on a mailing list. A conforming change is proposed which will replace all references to "commission" with "agency" in order to be consistent with the terms defined in 30 TAC Chapter 3. As defined in the commission's rules, "agency" means the commission, the executive director, and their staffs.

Proposed new §39.409 (Deadline for Public Comment, Requests for Reconsideration and Contested Case Hearing or Notice and Comment Hearing) is similar to existing §39.9 (Deadline for Public Comment and Hearing Requests) except that it adds deadlines for filing requests for reconsideration (a new public participation mechanism allowed under HB 801) as well as requests for notice and comment hearings since some air applications which currently fall within the scope of Chapter 39 include this requirement. The amendment is necessary to implement the requirements of HB 801 that require the commission, by rule, to establish the time period for filing hearing requests and requests for reconsideration. Proposed §39.411 incorporates the requirements in §5.552, Texas Water Code and §382.056, Texas Health and Safety Code, as amended by HB 801. This section includes the requirements necessary when notice by publication or by mail is required by this chapter.

New proposed §39.411(a) is similar to existing §39.11. However, it adds a new requirement that applicants shall use the notice text provided and approved by the agency. The executive director may approve changes before notice is given. The more significant changes proposed to §39.411, as compared to current §39.11, include: (1) a brief description of public comment procedures, including a statement that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The description of public comment procedures shall be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice. The notice must also include the time and place of any public meeting or public hearing, if known at the time of notice; (2) either a statement of procedures by which the public may participate in the final permit decision, including how to request a contested case hearing (or reconsideration) of the executive director's decision, or a statement that later notice will describe procedures for public participation. The statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; (3) a statement that a contested case hearing request must include the requestor's location relative to the proposed facility or activity; (4) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a contested case hearing request (if applicable) is filed with the chief clerk; (5) the deadline to file comments, or requests for reconsideration or hearing; (6) a statement of the executive director's preliminary decision and whether the executive director has prepared a draft permit, if applicable; (7) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application or executive director's preliminary decision is available for review and copying; and (8) a description of how a person may be placed on a mailing list in order to receive additional information about the application.

These changes incorporate, in part, a number of requirements imposed for the text of notices issued for applications subject to the requirements of HB 801. In addition, certain changes are made in the provisions relating to notices of air applications in this section indicating which criteria pollutants will be emitted under the permit.

Proposed new §39.413 (Mailed Notice) is similar to existing §39.13, except that the reference providing that the section does not apply to applications for radioactive material licenses is removed since it is now reflected in proposed new §39.705.

Proposed new §39.418 (Notice of Receipt of Application and Intent to Obtain Permit), describes the requirements and procedures for an applicant to publish the notice of receipt of application and notice of intent to obtain a permit, a new requirement imposed by HB 801 to §5.552 of the Texas Water Code and §382.056(a) of the Texas Health and Safety Code.

These proposed rules implement this newspaper publication requirement in different ways for different programs. It is proposed that the applicant be required to publish the notice of intent to obtain a permit once in the newspaper of largest circulation in the county, except for air applications which publish in a paper of general circulation in the municipality nearest the facility. Slightly different newspaper publication requirements are proposed for solid waste permit applications to satisfy both the amendments made by HB 801 and Texas Health and Safety Code, Chapter 361 requirements. The chief clerk would also mail this notice to those listed in proposed new §39.413, and for air applications, the chief clerk would also mail notice according to proposed new §39.602.

Proposed new §39.419 (Notice of Application and Preliminary Decision) follows the requirements in Texas Water Code, §5.553 and Texas Health and Safety Code, §382.056(g), as added by HB 801. It requires that, after technical review is complete, the executive director files the preliminary decision and the draft permit with the chief clerk, except for certain air applications that follow different procedures specified in §39.419(f). It requires that an applicant publish notice of the preliminary decision in a newspaper at least once in the same paper as the notice of intent unless otherwise required in Chapter 39. The requirement that an applicant publish in the same newspaper as that used for the notice of intent is established as a matter of convenience and consistency. Proposed §39.419 also includes a list of those circumstances where an applicant for an air quality permit is not required to publish notice of the preliminary decision consistent with the language in §382.056(g) as amended by HB 801. Applicants would not have to publish this notice if the following occurs: (1) as a result of publication of Notice of Receipt of Application and Intent to Obtain a Permit, no hearing requests have been received or all hearing requests have been withdrawn by the time the executive director has made a preliminary determination; or (2) the application is for any amendment, modification, or renewal application which does not result in an increase in allowable emissions nor the emission of a new air contaminant. In accordance with TCAA, §382.056(p), a new proposed §39.419(f)(3) has been added to require this notice (for air quality permit applications) to meet federal program requirements. This includes nonattainment permits, prevention of significant deterioration permits, and actions relating to Hazardous Air Pollutants for Major Sources.

Proposed new §39.420 relates to transmittal of the executive director's response to comments and opportunity to request reconsideration or hearing, and mirrors the requirements in Texas Water Code, §5.553 and Texas Health and Safety Code, §382.056(m) as added by HB 801. This section establishes the duties of the chief clerk to transmit the executive director's preliminary decision, responses to comments, and instructions for requesting that the commission reconsider the executive director's decision to hold a contested case hearing.

To mirror existing §39.21 (Notice of Commission Meeting to Evaluate a Hearing Request on an Application), the commission proposes new §39.421 (Notice of Commission Meeting to

Evaluate a Request for Reconsideration or Hearing on an Application). However, new §39.421 adds a requirement to notify all persons who commented (or a representative of a group or association) to the list of persons who receive notice of a commission agenda when a hearing request will be considered. The title of the section is modified to indicate that it applies to requests for reconsideration provided for under HB 801, as well as to hearing requests.

New §39.423 (Notice of Contested Case Hearing) mirrors existing §39.23, but is changed to clarify the requirements for the notice of a contested case hearing on a commission referral to the State Office of Administrative Hearings on the sole question of whether a hearing requestor is an affected person. Section 39.423 is also proposed to be changed to reflect the concept in SB 211, that when a notice is mailed, a party is presumed to actually receive notice 3 days after mailing. Thus, instead of requiring the chief clerk to mail notice 10 days before a hearing, the proposed rule requires notice to be mailed 13 days before the hearing.

Proposed new §39.425 (Notice of Contested Enforcement Case Hearing) is similar to current §39.25. However, while §39.25 simply says that the chief clerk shall give notice, as required under §2001.052 of the APA; proposed §39.425 reflects both the 10 days notice required under the Administrative Procedure Act (APA), §2001.051(1), and adds the additional 3 days for mailed notice, to harmonize with SB 211.

The commission proposes new §39.501 (Application for Municipal Solid Waste Permit). This new section is similar to existing §39.101, but replaces the current requirement for Notice of Intent to Obtain a Permit with the new HB 801 requirement for Notice of Receipt of Application and Notice of Intent to Obtain a Permit. Thus, the requirements in §39.501 will satisfy the statutory requirements of §331.0665, Health and Safety Code. However, it will not satisfy §361.067, which requires that the agency mail a copy of the application or a summary of its contents to the mayor, county judge, and health authority. Although, under HB 801, they also receive the concurrent Notice of Receipt of Application and Intent to Obtain Permit, the §361.067 requirement is retained in §39.501(b)(2)(C), since the notice under HB 801 is expressly in addition to any notice required under Chapter 361.

Proposed new §39.501 does not include subsection (c) from current §39.101, because requirements for the notice of draft permit are replaced by the requirements in proposed §39.419 (Notice of Application and Preliminary Decision). The language in existing §39.101(d), relating to notice of public meeting, is proposed to be included in the new §39.501(d), and has a grammatical change from §39.101(d). Section 39.501(e)(3)(B) contains grammatical changes from its counterpart in §39.101(e)(3)(B).

Proposed §39.503 (Application for Industrial or Hazardous Waste Facility Permit) parallels current §39.103, except that §39.503 has been modified to more closely mirror the statutory provisions. As required under HB 801, amending §5.553, Texas Water Code, the proposed rule adds an additional published notice in §39.503(b)(2)(A), which requires Notice of Receipt of Application and Intent to Obtain Permit under proposed §39.418. Proposed §39.503(b)(2)(B) also retains the requirement that the agency mail a copy of the application or a summary of its contents to the mayor, county judge, and health authority. Although under HB 801 those persons also receive the concurrent Notice of Receipt of Application and Intent to Obtain Permit, the requirement, from §361.067, Texas Health and Safety Code, is retained in §39.501(b)(2)(C), since the notice under HB 801 is expressly in addition to any notice required under Chapter 361.

The proposed rule also significantly changes the notice requirements for a Class 3 modification of an industrial or hazardous waste permit, currently in §39.109 and proposed for §39.509. Currently, pursuant to federal regulations, applicants for Class 3 modifications must publish notice of receipt of application no later than 7 days after the commission receives the application. Now, in addition, HB 801 appears to require applicants for Class 3 modifications to publish Notice of Receipt of Application and Intent to Obtain Permit, as well as the Notice of Application and Preliminary Decision. The Notice of Receipt of Application and Intent to Obtain Permit must be published within 30 days after the application is declared administratively complete. While §39.405(e) allows applicants to combine notices, it will be rare that the application will be administratively complete soon enough to allow the applicant to publish within 7 days after the agency receives the application. Comments on this section are invited.

The commission proposes new §39.551 to implement the HB 801 requirements for Notice of Receipt of Application and Intent to Obtain Permit in proposed §39.418 and the Notice of Application and Preliminary Decision in proposed new §39.419. Under this proposal, the Notice of Receipt of Application and Intent to Obtain Permit replaces the notice of administrative completeness. Also, the Notice of Receipt of Application and Intent to Obtain Permit would be required to be published by the applicant no later than the 30th day after the date the executive director determines the application to be administratively complete.

Proposed §39.551 clarifies that water quality applications have certain requirements in addition to those listed in §39.418. Section 39.461(b) reflects requirements that are in addition to those listed in §39.419. The commission also proposes to include the section to notify persons that the Notice of Application and Preliminary Decision may be combined with the notice in §39.418. The deadline for hearing requests is not included because at that point in the process the only thing the commission is seeking is public comment. In addition, proposed changes are made throughout the section to reflect the new Notice of Application and Preliminary Decision required by sections in Chapter 5, Texas Water Code as amended by HB 801 and to delete language in §39.551(c)(1)(B) and replace it with a reference to §39.413. The deleted language is redundant in that the persons listed are also included in §39.413.

Proposed §39.551(c)(1)(C) explains that the Notice of Application and Preliminary Decision must include a deadline for a person to file a public comment or to request a public meeting. Under this proposal, this notice will not include an opportunity to request a contested case hearing. Under proposed new §39.420, persons who submit comments subsequent to this notice will be included in the transmittal of the executive director's preliminary decision and the executive director's response to comments, and will be instructed on how to request a reconsideration of the executive director's decision or request a contested case hearing.

New §39.551(d) is proposed to incorporate the requirements in HB 801 in the notice for a minor amendment of a water

quality permit. The proposed amendment further states that the executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 (Public Comment Processing).

The commission proposes new §39.551, relating to WQMP updates. This new proposed section mandates that the commission's chief clerk publish public notice of the WQMP updates in the *Texas Register* . The chief clerk would mail notice to persons known by the commission to be interested in the WQMP update or identified on mailing lists maintained by the chief clerk. The proposed rule identifies the specific contents of the text of the public notice, provides a 30-day public comment period, and allows for a public meeting on a WQMP update, in accordance with §55.25 (Public Comment Processing). A 30-day public comment period is consistent with the public notice period for other water quality permitting matters, federal requirements for processing of TPDES permits, and federal guidelines governing the state Continuing Planning Process. This new section also identifies procedures for the executive director to respond to all significant public comments received by the commission before the end of the comment period. Finally, new §39.463 identifies that the executive director may certify the WQMP update and provides for the commission's chief clerk to mail a copy of the response to comments as well as the certified WQMP update, to all persons who submitted timely comments.

Proposed new §39.601 will make Subchapter K apply to certain new source review air permit applications. Section 39.601 is proposed to be amended to explain that Chapter 39, Subchapters H-M will apply to any air application or registration that is declared to be administratively complete by the executive director on or after September 1, 1999. All other applications shall be subject to the requirements of the version of §116.130 that was effective March 21, 1999 or the version of §106.5 that was effective December 24, 1998.

Proposed §39.602 clarifies the requirements for mailed notice of air quality permit applications. To codify existing commission practice, only certain provisions of proposed §39.413 apply to permits for air quality. The section is also proposed to require that mailed notice be given to the state senator and representative who represent the area in which the facility is or will be located when Notice of Receipt of Application and Intent to Obtain Permit is mailed by the chief clerk, as required by Texas Health and Safety Code, §382.0516.

Proposed §39.603 (Newspaper Notice) incorporates the requirements in Texas Health and Safety Code, §382.056(a) and (g), regarding newspaper notices required for air quality applications. The proposed language also incorporates provisions currently set out in §116.132(b). The proposal includes a description of the requirements for general newspaper notice, alternative language newspaper notice which has been revised to reflect current practice, and alternative publication procedures for small businesses. The requirements for general newspaper notice and alternative language newspaper notice are incorporated from §116.132 which is being proposed for repeal. However, the requirement to publish in two consecutive issues of a newspaper has been deleted to lessen the financial burden on applicants. The alternative publication procedures for small businesses is authorized by language in §382.056(a), Texas Health and Safety Code, as amended by HB 801. This procedure allows small businesses to be exempt from the requirement to publish the display notice.

There are two criteria for defining small business to qualify for the reduced notice. First, the business must be a "small business stationary source, " and second, it must "not have a significant effect on air quality." Section 382.0365 of the Texas Health and Safety Code defines "small business stationary source" as having the meaning assigned by §507(c) of the Federal Clean Air Act (42 United States Code §7551f), as added by §501 of the federal Clean Air Act Amendments of 1990 (Public Law Number 101-549). Meanwhile, HB 801 adds the condition that, to qualify for the reduced notice, the source must not have a significant effect on air quality. It is left to the agency to determine what a "significant effect" is. The rule proposes to use the agency's existing practice of the quantities defined for the exemptions from permitting under Chapter 106 to delineate those emissions that will not cause or contribute to a condition of air pollution. Proposed §39.603(c)(2) provides that the executive director may post certain information concerning pending air permit applications on the agency's website.

Proposed §39.604 lists the requirements that an applicant for an air quality permit must follow regarding the posting of a sign or signs notifying the public about the filing of an application for the air quality permit and how the commission may be contacted. The sign posting requirements in the proposed section are similar to the language in existing §116.133, relating to sign posting requirements, except for §39.604(c). The term "thoroughfare" has been replaced with the terms "public highway" and "road," in order to clarify that a sign is not required to be posted on a waterway following Air Rule Interpretation Memo R6-133.001. Sign posting certification is required 10 business days after the end of the comment period.

Proposed §39.605 (Notice to Affected Agencies) incorporates the language in existing §116.134, relating to notification of affected agencies. In addition, proposed §39.605(c) requires an applicant to furnish a copy of an alternative language waiver certification to those persons listed in subsection (b)(1)-(3) when alternative language waiver certifications are required under the section.

Proposed new §39.606 implements the notice requirements of SB 766, which adds TCAA, 382.05191. This section provides that the executive director may approve variations from the requirements of this chapter for voluntary emission reduction permit applications which are also small business stationary sources if the alternative publication results in equal or better communication with the public.

Proposed new §39.651 (Application for Injection Well Permit), is similar to §39.251, but changes subsection (b) by deleting language pertaining to notice of receipt of an application, because the language is included in proposed new §39.418. Section 39.651(b) reflects the changes, including the new Notice of Application and Preliminary Decision, mandated by Chapter 5, Texas Water Code as amended by HB 801. Proposed §39.651(c) includes a clarification that there are requirements in addition to those in proposed §39.419 and that the additional notice required in §39.651(c) may be combined with the notice in §39.418, if the newspaper meets the requirements of both rules.

New §39.651(c)(4) also clarifies that the Notice of Application and Preliminary Decision is required to comply with §39.411. Language in current §39.201(d)(4) regarding the deadline to file comments or hearing requests is replaced in proposed §39.651(c)(4) with a reference to 39.411. Like-

wise, §39.651(e)(3)(B), which essentially mirrors existing 39.251(f)(3)(B), does not itself include the requirement that an applicant file an affidavit of compliance with notice requirements, because this requirement is included in §39.405(f).

Proposed Subchapter M mirrors current Subchapter F, except for minor changes to correct references to Subchapter F and Subchapter H of Chapter 336. New §39.701 clarifies that proposed Subchapter M only applies to those radioactive material licenses declared administratively complete on or after September 1, 1999. Current Subchapter F will remain effective and apply to all applications declared administratively complete before September 1, 1999.

Proposed new §39.702 (Notice of Declaration) mirrors language in §39.301 regarding mailing of Notice of Declaration of Administrative Completeness, except for the renumbering of the section to accommodate the applicability section. All other sections in this proposed subchapter mirror the language in Subchapter F, except that references in §39.707(c) and §39.709(b) to Chapter 336, Subchapters F and H have been corrected to state the full titles of those subchapters.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. A proposed amendment requires the applicant for a permit to make a copy of the application available for review and copying at a public place in the county in which the facility is located or proposed to be located. It is anticipated that the number of permit applications received will vary greatly depending on the number of total permit applications generated by applicants in the county. The TNRCC anticipates reviewing over 9,600 permit applications statewide in fiscal year 1999. It is anticipated that units of local government or other facilities choosing to provide storage and copying facilities for the proposed permits and amendments, will charge and collect fees to offset the costs of storage and copy services.

The proposed rules establish new procedures for providing public notice, public comment, and public hearings. The proposed amendments to the rules would implement certain provisions contained in: House Bill 801, 76th Legislature, Regular Session (R.S.), 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC, and portions of the provisions in Senate Bills 7, 76th Legislature, R.S., 1999, an act relating to electric utility restructuring; Senate Bill 211, 76th Legislature, R.S., 1999, an act relating to the notice of a decision in an administrative hearing before a state agency; and Senate Bill 766, 76th Legislature, R.S., 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

In addition, the proposed amendments consolidate procedures for public notice for air, water, and waste programs, provide continuity between Chapter 39, Public Notice, and other chapters with references to public notice, public meetings, the scope and level of discovery in contested cases, permits by rule, and requirements for certain concentrated animal feeding operations. The proposed amendments also provide Chapter 39 continuity with changes to: Chapter 50, Actions on Applications; Chapter 55, Requests for Contested Case Hearings; Chapter 80, Contested Case Hearings; Chapter 106, Exemptions from Permitting, regarding public notice; Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, regarding general applications, application review schedule, changes to facilities, and public notice and comment; Chapter 122, Federal Operating Permits, regarding public notice; and Chapter 305, Consolidated Permits, regarding applicability and renewal.

The proposed amendments also incorporate various changes from the review mandated by the General Appropriations Act, Article IX.

The proposed amendments to the rules affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public will also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 39 are in effect the public benefit anticipated from enforcement of, and compliance with, the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC, increased standardization for notice requirements, more efficient contested case hearings, and enhanced conformance of state and federal public notice requirements.

The proposed amendments to the rules are not anticipated to have a significant impact on current public notice procedures for water and waste permits. Currently, Texas applicants for air permits are required to publish notice of intent to obtain an air permit in two successive issues of a newspaper. The public notice consists of a Legal Notice and a larger Display Notice regarding their intent to apply for an air quality permit. Generally, notice is required to be published in a newspaper of general circulation that is published in the municipality in which the facility is located or proposed to be located. If a newspaper is not published in the municipality, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. In addition, there is a requirement for applicants to publish notice once in each language for which bilingual education programs are required by the Texas Education Code in the elementary or middle school nearest to the facility or proposed facility.

The costs for public notice may vary significantly depending on the location of the permitted facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. A recent survey indicated that a large city newspaper would charge approximately $3,000 for the Display Notice and approximately $450 for the Legal Notice. A smaller city newspaper would charge approximately $210 for the Display Notice and $20 for the Legal Notice. The cost for alternative language publication is estimated to be approximately $150 for each notice. It is estimated that total current costs for public notice for each application are in the range of $610 to $7,050 for large and small businesses requiring two legal and display notices and one alternative language notice.

The proposed amendments specify that the air permit applicant publish notice in one issue of the newspaper of general circulation in the municipality in which the facility is located or proposed to be located. The proposed amendments have the effect of eliminating half of the required public notices for most large businesses. Alternate language provisions remain unchanged. The impact on small business is contained in the Small Business Analysis of this fiscal note.

With the proposed amendments, it is estimated that 85% of large businesses will only be required to publish one Display Notice instead of two, one Legal Notice instead of two, and the alternative language notice when applicable. Some large businesses will not be significantly affected by the proposed amendments because an estimated 15% of large businesses will require a second notice because of their federal permit or will require a second notice in the event of a hearing request. With the proposed amendments, it is estimated that total cost of public notice for each permit application for large businesses will be approximately 50% to 60% of current costs or in the range of $380 to $3,600. These costs are inclusive of alternate language notice. In addition, the proposed amendments will also require an applicant for an amendment to an existing permit due to construction of a new facility or for some modifications to existing facilities to publish notice and provide the opportunity for a hearing. It is anticipated that an additional 420 facilities will be required to publish notice. Using current statistics, it is anticipated that the number of additional hearings resulting from these notices will not be significant.

SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 39 of the rules because public notice requirements for small business have been significantly reduced. With the proposed amendments, most small businesses will be required to publish one Display Notice, one Legal Notice, and the alternative language notice when applicable. The proposed amendments have the effect of eliminating approximately three-fourths of the currently required notices for most small businesses. It is also anticipated that some small businesses whose emissions do not have a significant effect on air quality will only be required to publish the Legal Notice and the alternate language notice when applicable. The total cost of public notice for each application for these stationary source small businesses will be approximately 9% to 27% of current costs inclusive of the alternate language notice. It is anticipated that the proposed amendments will provide significant cost reductions in costs of public notice and will have a positive fiscal impact.

REGULATORY IMPACT EVALUATION

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 the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

"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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing as well as consolidate existing notice procedures for some air permitting programs, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the Statutory Authority section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting contested case hearings as well as specific procedures for hearings. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs, correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules rather than substantive requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

Subchapter A. Applicability and General Provisions

30 TAC §39.1

STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems

necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 of the Texas Government Code.

§39.1. Applicability.

Any permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A-F of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, Public Notice of Other Specific Applications, and Public Notice for Radioactive Material Licenses). Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), regardless of when they were declared administratively complete. [~~This chapter applies to:~~]

(1)-(8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903954
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter B. Public Notice of Solid Waste Applications

30 TAC §39.101

STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants;

§401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.101. Application for Municipal Solid Waste Permit.

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter I of this chapter (relating to Public Notice of Solid Waste Applications).

(b)[~~(a)~~] Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing shall be by certified mail.

(c)[~~(b)~~] Notice of intent to obtain a permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, the following actions shall be taken.

(A) The applicant shall publish notice of intent to obtain a permit at least once under §39.5(g) of this title (relating to General Provisions).

(B) The chief clerk shall publish notice of the application in the *Texas Register*.

(C) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(D) The executive director shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(d)[~~(c)~~] Notice of draft permit.

(1) The applicant shall publish notice at least once under §39.5(g) of this title.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(3) The notice shall specify the deadline to file public comment or hearing requests, which shall be not less than 30 days after newspaper publication.

(e)[~~(d)~~] Notice of public meeting.

(1) If the application proposes a new facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [~~(a)~~] of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f)[~~(e)~~] Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.5(g) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file an affidavit certifying compliance with this paragraph with the chief clerk. Filing an affidavit certifying facts that constitute compliance with the notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection shall be completed at least 30 days before the hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903955
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter C. Public Notice of Water Quality Applications

30 TAC §39.151

STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.151. Application for Wastewater Discharge Permit, Including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter J of this chapter (relating to Public Notice of Water Quality Applications and Water Quality Management Plans).

(b)[~~(a)~~] Notice of receipt of application and administrative completeness. The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115(c) apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for:

(1) an application to renew a permit; or

(2) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(c)[~~(b)~~] Notice of draft permit. For all draft permits except those in subsection (d) [~~(c)~~] of this section, the following provisions apply.

(1) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit. For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.13 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment or hearing requests with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment or hearing requests.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.11 of this title (relating to Text of Public Notice); and

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(d)[~~(c)~~] Notice of certain draft TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply. [~~:~~]

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the following mailed and published notice is required.

(A) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutant are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists);

(vii) any other person the executive director or chief clerk may elect to include; and

(viii) if applicable, the secretary of the Coastal Coordination Council.

(C) The notice must set a deadline to file public comment, to request a public meeting, or to request a public hearing with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.11 of this title;

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (c) [~~(b)~~] of this section.

(e)[~~(d)~~] Notice for other types of applications. Except as required by subsections (b), (c), and (d) [~~(a), (b), and (c)~~] of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title (relating to Amendment, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the following requirements apply.

(A) The chief clerk shall mail notice of the application and draft permit, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 CFR §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits, notice shall be published in the *Texas Register*.

(C) The text shall meet the requirements in §39.11 of this title and subsection (b)(4) of this section.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all significant public comments received by the commission under §55.25 of this title (relating to Public Comment Processing).

(f)[~~(e)~~] Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.11 of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(g)[~~(f)~~] Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subpart D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903956
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter D. Public Notice of Air Quality Applications

30 TAC §39.201

STATUTORY AUTHORITY

The amendment is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.201. Application for a Preconstruction Permit.

(a) Applicability. This section applies to the following types of actions that are declared administratively complete before September 1, 1999 :

(1)-(2) (No change.)

(b) (No change.)

(c) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter K of this chapter (relating to Public Notice of Air Quality Applications).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903957
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter E. Public Notice of Other Specific Applications

30 TAC §39.251, §39.253

STATUTORY AUTHORITY

The amendments are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.251. Application for Injection Well Permit.

(a) Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b) [~~(a)~~] Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be mailed to the mayor of the municipality.

(c) [~~(b)~~] Notice of receipt of application. When the executive director receives an application for, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(d) [~~(c)~~] Notice of administratively complete application.

(1) The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(2) After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(e) [~~(d)~~] Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title [~~(relating to Mailed Notice)~~], to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title (relating to General Provisions).

(4) The notice shall specify the deadline to file public comment or hearing requests. The deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(f) [~~(e)~~] Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (b) [~~(a)~~] of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(g) [~~(f)~~] Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.5(g) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.13 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(B) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subsection.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.5(h) of this title.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

§39.253. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control) that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter L of this chapter (relating to Public Notice of Injection Well and Other Specific Applications).

(b)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903958

Margaret Hoffman
Director, Envoronmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter F. Public Notice of Radioactive Material License Applications

30 TAC §39.301, §39.302

STATUTORY AUTHORITY

The amendment and new section are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment and new section implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.301. Notice of Declaration of Administrative Completeness.

Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter M of this chapter (relating to Public Notice of Radioactive Material License Applications). When an application under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice in accordance with the requirements of this subchapter.

§39.302. Applicability.

Any permit applications that are declared administratively complete before September 1, 1999 are subject to this subchapter. Any applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapter M of this chapter (relating to Public Notice of Radioactive Material License Applications).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903959
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter G. Public Notice for Applications for Consolidated Permits

30 TAC §39.351

STATUTORY AUTHORITY

The new section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.351. Public Notice for Applications for Consolidated Permits. Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

(1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903960
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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30 TAC §39.401

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level

of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.401. Public Notice for Applications for Consolidated Permits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903961
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter H. Applicability and General Provisions

30 TAC §§39.401, 39.403, 39.405, 39.407, 39.409, 39.411, 39.413, 39.418, 39.419, 39.420, 39.421, 39.423, 39.425

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.401. Purpose.

Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) specify notice requirements for applications and certain other actions described in these subchapters such as notices for public meetings, contested case hearings on permit applications and enforcement cases, comment hearings, and Water Quality Management Plan (WQMP) updates.

§39.403. Applicability.

(a) Permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses). Permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A-F of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Other Specific Applications, and Public Notice for Radioactive Material Licenses). All consolidated permit applications are subject to Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits).

(b) Subchapters H-M of this chapter apply to:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, Chapter 26, including:

(A) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); and

(B) applications for individual permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations);

(3) applications for underground injection well permits under Texas Water Code, Chapter 27, or under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations under Chapter 331 of this title (relating to Underground Injection Control);

(5) hearings on contested cases under Chapter 80 of this title (relating to Contested Case Hearings);

(6) applications for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules);

(7) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing);

(8) applications for air quality permits under §382.0518 and §382.055 of the Texas Health and Safety Code, unless otherwise specified in this section;

(9) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Exemptions from Permitting) unless the facility is to be located in or contiguous to the right-of-way of a public works project;

(11) applications for voluntary emission reduction permits under Texas Health and Safety Code, §382.0519;

(12) applications for permits for electric generating facilities under §39.264 of the Utilities Code;

(13) applications for initial issuance of permits subject to the requirements of Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(14) applications for permit amendments under §116.116(b) of this title (relating to Amendments) or §116.710(a)(2) and (3) of this title (relating to Applicability) for:

(A) construction of any new facility as defined in §116.10(4) and (10) of this title (relating to Definitions);

(B) modification of an existing facility as defined in §116.10(9) of this title which results in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) and of sources defined in §106.4(a)(2) and (3) of this title (relating to Requirements for Exemptions from Permitting); or

(C) other changes when required by the executive director; and

(15) Water Quality Management Plan (WQMP) updates processed under Texas Water Code, Chapter 26, Subchapter B.

(c) Notwithstanding subsection (b) of this section, Subchapters H-M of this chapter do not apply to:

(1) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), except for applications for individual permits under Subchapter B of that chapter;

(2) applications for registrations and notifications under Chapter 312 of this title (relating to Control of Certain Activities by Rule);

(3) applications under Chapter 332 of this title (relating to Composting);

(4) applications under Chapter 122 of this title (relating to Federal Operating Permits);

(5) applications under Chapter 116, Subchapter F of this title (relating to Standard Permits); or

(6) applications under Chapter 106 of this title, except for concrete batch plants specified in §39.403(b)(11) of this title (relating to Applicability) .

(d) Applications for initial issuance of voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code and initial issuance of electric generating facility permits under

§39.264 of the Texas Utilities Code are subject only to §39.405 of this title (relating to Applicability), §39.409 of this title (relating to General Provisions), §39.411 of this title (relating to Text of Public Notice), §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.419 of this title (relating to Notice of Application and Preliminary Decision), and §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), and §39.605 of this title (relating to Notice to Affected Agencies), except that any reference to requests for reconsideration in §39.411 of this title (relating to Text of Public Notice) and §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) shall not apply.

(e) Applications for Radioactive Materials Licenses under Chapter 336 of this title are not subject to §39.405(c) and (f) of this title (relating to General Provisions), §39.413 of this title (relating to Mailed Notice), §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.419 of this title (relating to Notice of Application and Preliminary Decision), and §39.420 of this title (relating to Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application).

§39.405. General Provisions.

(a) If the chief clerk prepares a newspaper notice that is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits) and the applicant does not cause the notice to be published within 45 days of mailing of the notice from the chief clerk, or for Notice of Receipt of Application and Intent to Obtain Permit, within 30 days after the executive director declares the application administratively complete, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication. If the applicant fails to publish notice or fails to submit the affidavit required in subsection (f) of this section, the executive director may suspend further processing and return the application. If the application is resubmitted within six months of the date of the return of the application, it shall be exempt from any application fee requirements.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When Subchapters H-L of this chapter or Subchapter G of this chapter require notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a prepaid, properly addressed wrapper, in a post office or official depository of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in Subchapters H-M of this chapter or Subchapter G of this chapter, public notice requirements apply to applications for new permits, concrete batch plant air quality exemptions from permitting or permits by rule, and applications to amend, modify or renew permits.

(e) Notice may be combined to satisfy more than one applicable section of this chapter.

(f) When Subchapters H-L of this chapter or Subchapter G of this chapter require an applicant to publish notice, the applicant must file a copy of the published notice and an affidavit with the chief clerk certifying facts that constitute compliance with the requirement. The deadline to file the affidavit is 10 business days after the last date of publication for each notice. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with the requirement to publish notice.

(g) When this chapter requires notice to be published under this subsection:

(1) the applicant shall publish notice in the newspaper of largest circulation in the county in which the facility is located or proposed to be located; and

(2) for applications for solid waste permits, the applicant shall publish notice in the newspaper of largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. The requirements of §39.405(g)(1) and (2) of this title (relating to General Provisions) may be satisfied by one publication if the newspaper is both published in the county and is the newspaper of largest general circulation in the county.

§39.407. Mailing Lists.

The chief clerk shall maintain mailing lists of persons requesting notice of certain applications. Persons, including participants in past agency permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

§39.409. Deadline for Public Comment and Requests for Reconsideration and Contested Case Hearing or Notice and Comment Hearing.

Notice given under this chapter will specify a deadline to file public comment and, if applicable, requests for reconsideration, contested case hearing, or notice and comment hearing. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

§39.411. Text of Public Notice.

(a) Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given.

(b) When notice by publication or by mail is required by Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Mailed Notice for Radioactive Material Licenses) or Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), the text of the notice must include the applicable information in paragraphs (1)-(18) of this subsection:

(1) the name and address of the agency and the telephone number of an agency contact from whom interested persons may obtain further information;

(2) the name, address, and telephone number of the applicant and a description of the manner in which a person may contact the applicant for further information;

(3) a brief description of the location and nature of the proposed activity;

(4) a brief description of public comment procedures, including a statement in the notice for any permit application for which there is an opportunity for contested case hearing, that only relevant and material issues raised during the comment period can be considered if a contested case hearing is granted. The public comment procedures must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(5) a statement of procedures by which the public may participate in the final permit decision and how to request a contested case hearing, reconsideration of the executive director's decision, or a notice and comment hearing, as applicable, or a statement that later notice will describe procedures for public participation, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(6) a statement that a contested case hearing request must include the requestor's location relative to the proposed facility or activity;

(7) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(8) the application or permit number;

(9) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless a contested case hearing request or a request for reconsideration (if applicable) is filed with the chief clerk;

(10) the deadline to file comments, or requests for reconsideration or hearing;

(11) a statement of the executive director's preliminary decision and whether the executive director has prepared a draft permit;

(12) if applicable, a statement that the application or requested action is subject to the Coastal Management Program and must be consistent with the Coastal Management Program goals and policies;

(13) for radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules), if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted;

(14) the location, at a public place in the county in which the facility is located or proposed to be located, at which a copy of the application and the executive director's preliminary decision is available for review and copying;

(15) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(16) for notices of air applications:

(A) at a minimum, a listing of criteria pollutants regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Control of Air Pollution from Toxic Materials, Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability), a statement that any person is entitled to request a hearing from the commission. If notice is for any air application, a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a hearing;

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas Natural Resource Conservation Commission;" and

(17) for notices of municipal solid waste applications, a statement that a person who may be affected by the facility or proposed facility is entitled to request a contested case hearing from the commission. This statement must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(18) any additional information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

§39.413. Mailed Notice.

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) The county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations, §124.10(c);

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory Council;

(11) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists);

(12) any other person the executive director or chief clerk may elect to include;

(13) if applicable, the secretary of the Coastal Coordination Council; and

(14) persons who filed public comment or hearing requests on or before the deadline for filing public comment or hearing requests.

§39.418. Notice of Receipt of Application and Intent to Obtain Permit.

Not later than 30 days after the executive director declares an application administratively complete:

(1) the applicant shall publish Notice of Receipt of Application and Intent to Obtain Permit once under §39.405 (g)(1) of this title (relating to General Provisions) and, for solid waste applications only, also under §39.405(g)(2) of this title (relating to General Provisions);

(2) the chief clerk shall mail Notice of Receipt of Application and Intent to Obtain Permit to those listed in §39.413 of this title (relating to Mailed Notice), and to:

(A) the state senator and representative who represent the general area in which the facility is located or proposed to be located; and

(B) the river authority in which the facility is located or proposed to be located if the application is under Chapter 26, Texas Water Code;

(3) for air applications, paragraphs (1) and (2) of this section do not apply. The applicant shall publish notice in the newspaper and post signs as specified in Subchapter K of this chapter (relating to Public Notice of Air Quality Applications). The chief clerk shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(4) the notice must include the applicable information required by §39.411 of this title (relating to Text of Public Notice).

§39.419. Notice of Application and Preliminary Decision.

(a) After technical review is complete, the executive director shall file the preliminary decision and the draft permit with the chief clerk, except for air applications under subsection (f)(1) of this section.

(b) The applicant shall publish Notice of Application and Preliminary Decision in a newspaper at least once in the same paper as the Notice of Receipt of Application and Intent to Obtain Permit, unless there are different requirements in this section or a specific subchapter in this chapter for a particular type of permit.

(c) The chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice).

(d) The notice must include:

(1) the applicable information required by §39.411 of this title (relating to Text of Public Notice);

(2) a summary of the executive director's preliminary decision;

(3) the location, in a public place in the county in which the facility is located or proposed to be located, at which a copy of the complete application and executive director's preliminary decision is available for review and copying;

(4) a description of the manner in which comments regarding the executive director's preliminary decision may be submitted; and

(5) any other information required by the executive director or needed to satisfy public notice requirements of any federally authorized program.

(e) The applicant shall make a copy of the complete application and executive director's preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(f) For air applications:

(1) the applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) no hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit;

(B) a hearing request is submitted in response to the Notice of Receipt of Application and Intent to Obtain Permit and the request is withdrawn before the date the preliminary decision is issued; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted;

(2) the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice); and

(3) Notice of Application and Preliminary Decision shall be published as specified in Subchapter K of this chapter (relating to Public Notification of Air Quality Applications) for permits that are not exempt under (1)(A)-(C) of this section or are for the following federal preconstruction approvals:

(A) applications under Chapter 116, Subchapter B, Division 5 of this title (relating to Nonattainment Review);

(B) applications under Chapter 116, Subchapter B, Division 6 of this title (relating to Prevention of Significant Deterioration Review); and

(C) applications under Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

§39.420. Transmittal of Executive Director's Response to Comments and Decision.

After the close of the comment period, the chief clerk shall transmit the executive director's decision, the executive director's response to public comments, and except for air applications under §39.419(f)(1)(C) of this title (relating to Notice of Application and Preliminary Decision), instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action;

(4) any person who timely filed a request for a public hearing in response to the Notice of Receipt of Application and Intent to Obtain Permit for an air application;

(5) Office of Public Interest Counsel; and

(6) Office of Public Assistance.

§39.421. Notice of Commission Meeting to Evaluate a Request for Reconsideration or Hearing on an Application.

If, under Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), a request for reconsideration or hearing on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, all persons who commented (or a representative of a group or association), and the persons making the request, no later than 30 days before the first meeting at which the commission considers the request.

§39.423. Notice of Contested Case Hearing.

(a) The chief clerk shall mail notice of a contested case hearing to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed public comment, or requests for reconsideration or contested case hearing. The notice shall be mailed to the parties no less than 13 days before the hearing. The chief clerk may combine the mailed notice required by this section with other mailed notice of hearing required by this chapter. If the commission refers an application to SOAH on the sole question of whether the requestor is an affected person, the notice in this subsection shall be the only notice required.

(b) For specific types of applications, additional requirements for notice of hearing are in Subchapters H-M of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, Public Notice of Injection Well and Other Specific Applications, and Public Notice for Radioactive Material Licenses).

(c) After an initial preliminary hearing, the judge shall give reasonable notice of subsequent prehearing conferences or the evidentiary hearing by making a statement on the record in a prehearing conference or by written notice to the parties.

§39.425. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall mail notice to the parties no less than 13 days before a hearing in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903962
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter I. Public Notice of Solid Waste Applications

30 TAC §§39.501, 39.503, 39.509

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the re-

view and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.501. Application for Municipal Solid Waste Permit.

(a) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The executive director shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. The executive director shall also mail notice to the appropriate regional solid waste planning agency or council of government. The mailing shall be by certified mail.

(b) Notice of receipt of application and intent to obtain a permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice shall be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit) and, if a newspaper is not published in the county, then the applicant shall publish notice:

(i) in a newspaper of the largest general circulation in the county in which the facility is located or proposed to be located; and

(ii) in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located;

(B) the chief clerk shall publish Notice of Receipt of Application and Intent to Obtain Permit in the *Texas Register* ; and

(C) the executive director or chief clerk shall mail notice of the determination of administrative completeness, along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions).

(d) Notice of public meeting.

(1) If the application proposes a new facility, the agency shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting, under §39.405(g)(2) of this title (relating to General Provisions), once each week during the three weeks preceding a public meeting. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(e) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(g)(2) of this title.

(3) Mailed notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing.

(B) If the applicant proposes to amend a permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3)(B) of this subsection shall be completed at least 30 days before the hearing.

§39.503. Application for Industrial or Hazardous Waste Facility Permit.

(a) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality. Mailed notice shall be by certified mail. When the applicant submits the notice of intent to the executive director, the applicant shall publish notice of the submission in a paper of general circulation in the county in which the facility is to be located.

(b) Notice of receipt of application and intent to obtain permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete:

(A) notice shall be given as required by §39.418 of this title (relating to Receipt of Application and Intent to Obtain Permit);

(B) the executive director or chief clerk shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions). In addition to the requirements of §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which is adjacent or contiguous to each county in which the proposed facility is located. This notice may be combined with the notice in §39.405(g)(2) of this title, if the newspaper meets the requirements of both rules.

(2) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(3) The notice shall comply with §39.411 of this title (relating to Text of Notice). The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(d) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, this subsection applies if a person affected files a request for public meeting with the chief clerk concerning the application before the deadline to file public comment or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided under this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice under §39.405(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to General Provisions).

(e) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(g)(2) of this title (relating to General Provisions). The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.413 of this title, except that the chief clerk shall not mail notice to the persons listed in paragraph (1) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing under subsection (c)(2) of this section.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

(f) This section does not apply to applications for an injection well permit.

§39.509. Application for a Class 3 Modification of an Industrial or Hazardous

Waste Permit. In addition to complying with §39.418 and §39.419 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit and Notice of Application and Preliminary Decision), the applicant for a Class 3 modifications shall comply with §305.69(d)(2) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903963

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999

For further information, please call: (512) 239–1932

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Subchapter J. Public Notice of Water Quality Applications and Water Quality Management Plans

30 TAC §39.551, §39.553

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.551. Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Notice of receipt of application and intent to obtain permit. In addition to the requirements of §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), the chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115(c) apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. Mailed notice to adjacent or downstream landowners is not required for:

(1) an application to renew a permit; or

(2) an application for a new Texas Pollutant Discharge Elimination System (TPDES) permit for a discharge authorized by an existing state permit issued before September 14, 1998 for which the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment).

(b) Notice of application and preliminary decision. In addition to §39.419 of this title (relating to Notice of Application and Preliminary Decision), for all applications except applications to renew permits and those in subsection (c)(1) of this section, the following provisions apply.

(1) The applicant shall publish notice of application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. This notice may be combined with the notice in §39.419 of this title. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice). For any application involving an average daily discharge of five million gallons or more, in addition to the persons listed in §39.413 of this title, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment with the chief clerk that is not less than 30 days after newspaper publication. However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment.

(4) For TPDES permits, the text of the notice shall include:

(A) everything that is required by §39.11 of this title (relating to Text of Public Notice);

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(c) Notice of application and preliminary decision for certain TPDES permits. For a new TPDES permit for which the discharge is authorized by an existing state permit issued before September 14, 1998, the following shall apply:

(1) If the application does not propose any term or condition that would constitute a major amendment to the state permit under §305.62 of this title (relating to Amendment), the following mailed and published notice is required.

(A) The applicant shall publish notice of the application and preliminary decision at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(B) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments, to request a public meeting, or to request a public hearing to those listed in §39.413 of this title.

(C) The notice must set a deadline to file public comment, or to request a public meeting, with the chief clerk that is at least 30 days after newspaper publication.

(D) The text of the notice shall include:

(i) everything that is required by §39.411 of this title (relating to Text of Public Notice);

(ii) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(iii) for applications concerning the disposal of sludge:

(I) the use and disposal practices;

(II) the location of the sludge treatment works treating domestic sewage sludge; and

(III) the use and disposal sites known at the time of permit application.

(2) If the application proposes any term or condition that would constitute a major amendment to the state permit under §305.62 of this title, the applicant must follow the notice requirements of subsection (b) of this section.

(d) Notice for other types of applications. Except as required by subsections (a), (b), and (c) of this section, the following notice is required for certain applications.

(1) For an application for a minor amendment to a permit other than a TPDES permit, or for an application for a minor modification of a TPDES permit, under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), the chief clerk shall mail notice, that the executive director has determined the application is technically complete and has prepared a draft permit, to the mayor and health authorities for the city or town, and

to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment, which shall be no earlier than ten days after mailing notice.

(2) For an application for a renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, for which the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal, no notice is required.

(3) For an application for a minor amendment to a TPDES permit under Chapter 305, Subchapter D of this title, the following requirements apply.

(A) The chief clerk shall mail notice of the application and preliminary decision, providing an opportunity to submit public comments and to request a public meeting to:

(i) the mayor and health authorities of the city or town in which the facility is or will be located or in which pollutants are or will be discharged;

(ii) the county judge and health authorities of the county in which the facility is or will be located or in which pollutants are or will be discharged;

(iii) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations (CFR) §124.10(c);

(iv) if applicable, persons on a mailing list developed and maintained according to 40 CFR §124.10(c)(1)(ix);

(v) the applicant;

(vi) persons on a relevant mailing list kept under §39.407 of this title (relating to Mailing Lists); and

(vii) any other person the executive director or chief clerk may elect to include.

(B) For TPDES major facility permits, notice shall be published in the *Texas Register* .

(C) The text shall meet the requirements in §39.411 of this title and subsection (b)(4) of this section.

(D) The notice shall provide at least a 30-day public comment period.

(E) The executive director shall prepare a response to all relevant and material or significant public comments received by the commission under §55.152 of this title (relating to Public Comment Processing).

(e) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) everything that is required by §39.411 of this title;

(B) a general description of the location of each existing or proposed discharge point and the name of the receiving water; and

(C) for applications concerning the disposal of sludge:

(i) the use and disposal practices;

(ii) the location of the sludge treatment works treating domestic sewage sludge; and

(iii) the use and disposal sites known at the time of permit application.

(f) Notice for discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 CFR Part 124, Subpart D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

§39.553. Water Quality Management Plan Updates.

(a) Notice of Water Quality Management Plan (WQMP) updates.

(1) The chief clerk shall publish notice of the WQMP update in the *Texas Register* .

(2) The chief clerk shall mail the notice of the WQMP update to persons known to the commission to be interested in the WQMP update, and to persons requesting notices of the WQMP identified on mailing lists maintained by the chief clerk, in accordance with §39.407 of this title (relating to Mailing Lists).

(3) Section 39.411 of this title (relating to Text of Public Notice) does not apply to WQMP updates. However, the notice of the WQMP update shall:

(A) include the name and address of the agency;

(B) provide an opportunity to submit written comments on the proposed WQMP update;

(C) describe the public comment procedures and the time and place of any public meeting; and

(D) include the name, address, and telephone number of an agency contact person from whom interested persons may obtain information.

(4) The notice shall provide at least a 30-day public comment period.

(5) Any public meeting shall be held and conducted in accordance with the requirements and procedures of §55.156 of this title (relating to Public Comment Processing).

(b) The executive director shall prepare a response to all significant public comments received by the commission before the end of the comment period. The executive director may revise the WQMP update based on public comment, if appropriate.

(c) As described in §50.133 of this title (relating to Executive Director Action on Application or WQMP Update), the executive director may certify the WQMP update.

(d) After the executive director certifies a WQMP update, the Chief Clerk shall mail a copy of the Response to Comments and certified WQMP update to all persons who submitted timely comments.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903964
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter K. Public Notice of Air Quality Applications

30 TAC §§39.601–39.606

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196,

382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.601. Applicability.

Applications or registrations that are declared administratively complete before September 1, 1999 are subject to the requirements of Chapter 116, Subchapter B, Division 3 (relating to Public Notification and Comment Procedures) (effective March 21, 1999) or §106.5 of this title (relating to Public Notice) (effective December 24, 1998). Applications or registrations that are declared administratively complete by the executive director on or after September 1, 1999 are subject to this subchapter.

§39.602. Mailed Notice.

When this subchapter requires mailed notice, the chief clerk shall mail notice only to those persons listed in §39.413 (a)(9), (11), (12), and (14) of this title (relating to Mailed Notice). When Notice of Receipt and Intent to Obtain a Permit is required, mailed notice shall be sent to the state senator and representative who represent the area in which the facility is or will be located.

§39.603. Newspaper Notice

(a) General newspaper notice. Unless otherwise specified, when this chapter requires published notice of an air application, the applicant shall publish notice in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility, as follows.

(1) One notice shall be published in the public notice section of the newspaper and shall comply with §39.411 of this title (relating to Text of Notice).

(2) Another notice shall be published in a prominent location elsewhere in the same issue of the newspaper, with a size of at least 96.8 square centimeters (15 square inches) and with the shortest dimension of at least 7.6 centimeters (three inches). This notice shall contain the following information:

(A) permit application number;

(B) company name;

(C) type of facility;

(D) description of the location of the facility; and

(E) a note that additional information is in the public notice section of the same issue.

(b) Alternative language newspaper notice.

(1) This subsection applies whenever either the elementary or middle school nearest to the facility or proposed facility is required to provide a bilingual education program as required by Chapter 29, Subchapter B, Education Code, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs) and one of the following conditions is met:

(A) students are enrolled in a program at that school;

(B) students from that school attend a bilingual education program at another location; or

(C) the school that otherwise would be required to provide a bilingual education program waives out of this requirement under 19 TAC §89.1205(g).

(2) Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(e), and are not otherwise affected by 19 TAC §89.1205(a), will not trigger the requirements of this subsection.

(3) The notice shall be published in a newspaper or publication that is published primarily in the alternative languages in which the bilingual education program is or would have been taught, and the notice must be in those languages.

(4) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located. Notice under this subsection shall only be required to be published within the United States.

(5) The requirements of this subsection are waived for each language in which no publication exists, or if the publishers of all alternative language publications refuse to publish the notice. If the alternative language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(6) Each alternative language publication shall follow the requirements of this chapter that are consistent with this section.

(7) If a waiver is received under this section, the applicant shall complete a certification and submit it as required under §39.605(c) of this title (relating to Notice to Affected Agencies).

(c) Alternative publication procedures for small businesses.

(1) The applicant does not have to comply with subsection (a)(2) of this section if all of the following conditions are met:

(A) the applicant and source meets the definition of a small business stationary source in §382.0365 of the Texas Health and Safety Code including, but not limited to, those which:

(i) are not a major stationary source for federal air quality permitting;

(ii) do not emit 50 tons or more per year of any regulated air pollutant;

(iii) emit less than 75 tons per year of all regulated air pollutants; and

(iv) are owned or operated by a person that employs 100 or fewer individuals; and

(B) the application will not have a significant effect on air quality if total actual emissions from the proposed facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO_x); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO_2) or inhalable particulate matter (PM_{10}); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) The executive director may post information regarding pending air permit applications with notice on its website, such as the permit number, company name, project type, facility type, nearest city, county, date public notice authorized, information on comment periods, and information on how to contact the agency for further information.

§39.604. Sign-Posting.

(a) At the applicant's expense, a sign or signs shall be placed at the site of the existing or proposed facility declaring the filing of an application for a permit and stating the manner in which the commission may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements.

(1) Signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches.

(2) Signs shall be headed by characters of no less than two-inch bold face block printed capital lettering.

(3) Signs shall be headed by the words:

(A) "PROPOSED AIR QUALITY PERMIT" for new permits and permit amendments; or

(B) "PROPOSED RENEWAL OF AIR QUALITY PERMIT" for permit renewals.

(4) Signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch bold-face block printed capital lettering. More than one application number may be included on the signs if the respective public comment periods coincide.

(5) Signs shall include the words "for further information contact" in no less than 1/2-inch lettering.

(6) Signs shall include the words "Texas Natural Resource Conservation Commission," and the address of the appropriate commission regional office in no less than one-inch boldface capital lettering and 3/4-inch boldface lower case lettering.

(7) Signs shall include the telephone number of the appropriate commission office in no less than two-inch boldface numbers.

(b) The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period. The applicant must provide a certification that the sign posting was conducted according to this section.

(c) Each sign placed at the site must be located within ten feet of every property line paralleling a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public highway, street, or road. The executive director may approve variations from these requirements if it is determined that alternative sign posting plans proposed by the applicant are more effective in providing notice to the public. This section's sign requirements do not apply to properties under the same ownership which are noncontiguous or separated by intervening public highway, street, or road, unless directly involved by the permit application.

(d) The executive director may approve variations from the requirements of this subsection if the applicant has demonstrated that it is not practical to comply with the specific requirements of this subsection and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the executive director under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) Alternative language sign posting is required whenever alternative language newspaper notice would be required under §39.603(b)(1) and (2) of this title (relating to Newspaper Notice). The applicant shall post additional signs in each alternative language in which the bilingual education program is taught. The alternative language signs shall be posted adjacent to each English language sign required in this section. The alternative language sign posting requirements of this subsection shall be satisfied without regard to whether alternative language newspaper notice is waived under §39.703(b)(5) of this title (relating to Newspaper Notice). The alternative language signs shall meet all other requirements of this section.

§39.605. Notice to Affected Agencies.

In addition to the requirements in §39.405(f) of this title (relating to General Provisions):

(1) when newspaper notices are published under this section, the applicant shall furnish a copy of the notices and affidavit to:

(A) the EPA regional administrator in Dallas;

(B) all local air pollution control agencies with jurisdiction in the county in which the construction is to occur; and

(C) the air pollution control agency of any nearby state in which air quality may be adversely affected by the emissions from the new or modified facility;

(2) when sign posting is required under this section, the applicant shall furnish a copy of sign posting certifications, within 10 business days after the end of the comment period, to:

(A) the chief clerk;

(B) the executive director; and

(C) those listed in paragraph (1)(A)-(C) of this section; and

(3) when alternative language waiver certifications are required under this section, the applicant shall furnish a copy to those listed in paragraph (2)(A)-(C) of this paragraph.

§39.606. Alternative Means for Certain Actions.

(a) An applicant for a voluntary emission reduction permit, under §382.05191 of the Texas Health and Safety Code, for a facility that constitutes or is part of a small business stationary source, as defined in §382.0365(g)(2) of the Texas Health and Safety Code, may request approval of alternative means from the notice methods required under this subchapter.

(b) The executive director may approve the request upon a determination that the alternative means will result in equal or better communication with the public, considering the following factors:

(1) the effectiveness of the method of notice in reaching potentially affected persons;

(2) the cost of the method of notice; and

(3) whether the method is consistent with federal requirements.

(c) The applicant may not use the alternative means of notice until the executive director gives written approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903965
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter L. Public Notice of Injection Well and Other Specific Applications

30 TAC §39.651, §39.653

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.651. Application for Injection Well Permit.

(a) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be mailed to the mayor of the municipality.

(b) Notice of receipt of application and intent to obtain permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, the following persons shall be notified:

(A) the School Land Board if the requirements of Texas Water Code, §5.115 apply to an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section;

(B) the persons listed in §39.413 of this title (relating to Mailed Notice); and

(C) the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(3) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to:

(A) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(B) county judge and the health authority of the county in which the facility is located.

(c) Notice of application and preliminary decision. The notice required by §39.419 of this title (relating to Application and Preliminary Decision) shall be published once under §39.405(g)(2) of this title (relating to General Provisions). In addition to the requirements of §39.419 of this title, the following requirements apply:

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county which is adjacent or contiguous to each county in which the proposed facility is located. This notice may be combined with the notice in §39.419 of this title, if the newspaper meets the requirements of both rules and that section.

(2) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice), to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(c)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(4) The notice shall comply with §39.411 of this title (relating to Contents of Notice). The deadline for public comments on industrial solid waste applications shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(d) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment or requests for reconsideration or hearing. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(e) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(g)(2) of this title. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title.

(B) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(c)(2) of this title).

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the contested case hearing.

§39.653. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of administratively complete application. The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice).

(c) Notice of executive director's preparation of draft production area authorization. The chief clerk shall mail notice to the persons listed in §39.413 of this title. The notice shall specify the

deadline to file with the chief clerk public comment, which is 30 days after mailing.

(d) Notice of contested case hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once under §39.405(g)(2) of this title (relating to General Provisions).

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(4) Notice under paragraphs (2) and (3) this subsection shall be completed at least 30 days before the hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903966

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999

For further information, please call: (512) 239–1932

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Subchapter M. Public Notice for Radioactive Material Licenses

30 TAC §§39.701–39.703, 39.705, 39.707, 39.709, 39.711, 39.713

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the general jurisdiction of the commission; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.132, which requires notice for water rights permits; §11.133, which requires the commission to hold hearings for water rights permits; §12.013, which requires the commission to determine certain water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA, §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA, §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA, §382.017, which establishes the commission's rulemaking authority under the TCAA, §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment, and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides

a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, and 382.058 of the HSC, and §2001.42 and §2003.0437 of the Texas Government Code.

§39.701. Applicability

Any license application under Chapter 336 of this title (relating to Radioactive Substance Rules) that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

§39.702. Notice of Declaration of Administrative Completeness.

When an application under Chapter 336 of this title (relating to Radioactive Substance Rules) has been declared administratively complete, the chief clerk shall mail notice under this subchapter.

§39.703. Notice of License Applications Upon Completion of Technical Review.

(a) When the executive director has completed the technical review of an application for a license, major amendment, or renewal of a license issued under Chapter 336 of this title (relating to Radioactive Substance Rules) or for a minor amendment issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed and published under this subchapter. The deadline to file public comment, protests, or hearing requests is 30 days after publication.

(b) For any other application for a minor amendment to a license issued under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed under this subchapter. The deadline to file public comment, protests, or hearing requests is ten days after mailing.

§39.705. Mailed Notice for Radioactive Material Licenses.

When notice by mail is required under this subchapter, the chief clerk shall mail notice under only §39.413 (b), (c), (h), (i), and (l) of this title (relating to Mailed Notice), and to each owner of property adjacent to the proposed site. For purposes of determining the ownership of property adjacent to the proposed site under this subchapter, the applicant shall provide the chief clerk with the names of the landowners from the county tax rolls that are available no more than 30 days before the date of newspaper publication of the notice.

§39.707. Published Notice.

(a) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), when notice is required to be published under this subchapter, the applicant shall publish notice at least once in a newspaper of largest general circulation in the county in which the facility is located.

(b) For applications for a new license, renewal license, or major amendment to a license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), when notice is required to be published under this subchapter, the applicant shall publish notice in a newspaper published in the county or counties in which the facility is or will be located. If no newspaper is published in the county or counties in which the facility is or will be located, a written copy of the notice shall be posted at the courthouse door and five other public places in the immediate locality to be affected. The notice shall be posted for at least 31 days.

(c) In addition to published notice requirements in subsection (b) of this section, for an amendment of a license under Chapter 336, Subchapter H of this title, the chief clerk shall publish notice once in the *Texas Register*.

§39.709. Notice of Contested Case Hearing on Application.

(a) The requirements of this section apply when an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(b) For applications under Chapter 336, Subchapter F of this title (relating to Alternative Methods of Disposal of Radioactive Material), notice shall be mailed no later than 30 days before the hearing. For applications under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste), notice shall be mailed no later than 31 days before the hearing.

§39.711. Proof and Certification of Notice.

(a) Notice shall be mailed by certified mail, return receipt requested. Proof of mailing to the proper address on the return receipt shall be accepted as conclusive evidence of the fact of the mailing.

(b) The applicant shall file proof of publication with the chief clerk within 30 days after publication. Acceptance of an affidavit executed by the publisher accompanied by a printed copy of the notice as published creates a rebuttable presumption of compliance with the requirement to publish notice.

(c) The applicant shall file proof of posting with the chief clerk within 30 days of posting. Proof of posting may be made by the return affidavit of the sheriff or constable, or, by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

§39.713. Public Notification and Public Participation.

Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under §336.607 of this title (relating to Criteria for License Termination under Restricted Conditions) or §336.609 of this title (relating to Alternate Criteria for License Termination), or whenever the commission deems notice to be in the public interest, the commission shall:

(1) notify and solicit comments from:

(A) local and state governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(B) the United States Environmental Protection Agency for cases where the licensee proposes to release a site under §336.609 of this title (relating to Alternate Criteria for License Termination); and

(2) publish a notice in the *Texas Register* and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Chapter 50. Action on Applications and Other Authorizations

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§50.2, 50.13, and 50.31, and new §§50.102, 50.113, 50.115, 50.117, 50.119, 50.131, 50.133, 50.135, 50.137, 50.139, 50.141, 50.143, and 50.145, concerning action on applications.

BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and SB 1308, 76th Legislature (1999). This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Concurrently with this rulemaking, the commission is proposing the review of Chapter 50, concerning Action on Applications, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code, Chapter 5, Subchapter M; revised Texas Health and Safety Code, Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment, or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

OVERVIEW OF SB 7 AND IMPLEMENTATION

SB 7, also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Texas Health and Safety Code. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and to a limited extent to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

OVERVIEW OF SB 766 AND IMPLEMENTATION

SB 766, enacted by the 76th Legislature, also amends TCAA Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

OVERVIEW OF SB 1308 AND IMPLEMENTATION

SB 1308 allows the executive director to approve water quality management plans (WQMP) and revisions, so long as an opportunity for public participation has been provided. This bill, which amends Texas Water Code §26.037, also requires rules to provide for commission review of the executive director's decision on a plan approval or revision. This proposal incorporates these requirements through §§39.401, 39.403, and 39.553.

OVERVIEW OF HB 1479 AND IMPLEMENTATION

HB 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's

ability to comply with a material term of its permit; and for TPDES permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

OVERVIEW OF SB 211 AND IMPLEMENTATION

SB 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55, and 80.

EXPLANATION OF PROPOSED RULES

ORGANIZATION OF CHAPTER

HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules in Chapter 50, Subchapters A-C are amended to apply only to applications that were administratively complete *before* September 1, 1999. Subchapter D is not used here; it is reserved for future rulemaking. At the same time, new Subchapters E-G apply only to applications that are administratively complete *on or after* September 1, 1999. Generally, new Subchapters E-G are duplicated versions of the existing rules in Subchapters A-C, modified to incorporate substantive changes either related to HB 801 implementation, implementation of other bills, or other changes proposed under this chapter.

In this proposal, only the applicability sections of Subchapters A-C are reproduced. For Subchapters E-G, the entire new subchapters are printed. Many of the sections of Subchapters E-G are the same or very similar to sections in Subchapters A-C. Where possible, section numbers are parallel; for example, §50.13 (Action on Applications) is similar to §50.113 (Action on Applications). Nonetheless, since Subchapters E-G are entirely new, it may be difficult to quickly see the differences between those new and existing subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the commission's website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

SECTION BY SECTION ANALYSIS

Proposed §50.2 (Applicability) states that Subchapter A applies to any application for a permit that is declared administratively complete before September 1, 1999, and that the similar Subchapter E applies to any application that is declared administratively complete on or after September 1, 1999. Section 50.2(c) clarifies that this chapter does not apply to Federal Operating Permits, which continue to be regulated under the provisions of Chapter 122 (Federal Operating Permits).

Proposed §50.13 (Action on Application) states that Subchapter B applies to any application for a permit that is declared administratively complete before September 1, 1999, and that Subchapter F applies to any application that is declared administratively complete on or after September 1, 1999.

Proposed §50.31(b) (Purpose and Applicability) states that Subchapter C applies to any application for a permit that is declared administratively complete before September 1, 1999, and that Subchapter G applies to any application that is declared administratively complete on or after September 1, 1999.

Proposed §50.102 (Applicability) which parallels current §50.2, states that applications declared administratively complete on or after September 1, 1999 are subject to the requirements of Subchapters E-G; while those declared administratively complete before September 1, 1999 are subject to Subchapters A-C. Paralleling proposed §50.2(c), proposed new §50.102(f) states that Subchapters E-G do not apply to air quality applications for Federal Operating Permits, which continue to be regulated under Chapter 122 of this title (Federal Operating Permits). Voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code, and emission reduction permits for electric generating facilities under §39.264 of the Texas Utilities Code, are only subject to §§50.117, 50.131, 50.133, 50.135, and 50.145 of this chapter.

Proposed §50.113, while mirroring current §50.13 (Action on Application), introduces the request for reconsideration provided by HB 801. Requests for reconsideration are considered on the same schedule as hearing requests, so in most sections where a hearing request is mentioned in current rules, provision for requests for reconsideration is added. Under proposed §50.113 (Action on Application), the commission may act on an application without holding a contested case hearing (1) when no timely hearing requests have been received, (2) when all timely filed requests for reconsideration or contested case hearing have been withdrawn or denied, or (3) when an application has been remanded because of a settlement. Additionally, proposed §50.113(a)(4) departs from current §50.13 by adding the HB 801 provisions that allow the commission to act on certain applications without a contested case hearing only if the commission finds that there are no issues involving disputed questions of fact, that were raised during the comment period, and that are relevant and material to the decision on the application.

Proposed §50.113(b) provides that the commission may act on an application for a renewal, modification, or amendment of an air permit if doing so will not result in an increase of emissions or the emission of an air contaminant not previously emitted. However, this does not include air applications involving a facility with unresolved, recurring, or egregious compliance violations. See §382.056(o), Texas Health and Safety Code. Similarly, proposed §50.113(b)(2) implements Section 4 of HB 801, allowing the commission to act without a contested case hearing on hazardous waste permit renewals under §305.631(a)(8). Similarly, implementing HB 1479, this section allows the commission to act without a hearing on wastewater discharge permit renewals or amendments under §26.028(d) of the Texas Water Code. While 26.028 has long allowed the commission to act on certain permit amendments without offering the opportunity for a hearing, HB 1479 granted that option to renewal applications.

New §50.115 (Scope of Proceedings) proposes to substantially change current §50.15 to implement HB 801. Proposed §50.115 (Scope of Proceedings) requires the commission to specify the number and scope of issues that may be referred to hearing. Section 50.115(b) states that an issue may not be referred for contested case hearing unless the commission determines that the issue involves a disputed question of fact which is relevant and material to a decision on the application. Section 50.115(c) requires the commission to estimate the

maximum expected duration of each hearing. The commission proposes to interpret the maximum expected duration to end when the judge submits the proposal for decision to the commission. Additionally, the commission proposes to specify that the maximum duration, for the most complex hearings, should not exceed one year. Less complex hearings should take less time. Subsection (d) of proposed §50.115 mirrors the language in current §50.15, and (d)(2) incorporates existing statutory requirements from Texas Health and Safety Code §382.055. Finally, subsection (e) applies to those applications that are not under Chapters 26 and 27 of the Texas Water Code or Chapters 361 or 382 of the Texas Health and Safety Code. Subsection (e) implements Section 6 of HB 801, which amends Texas Government Code §2003.047 and requires the commission to submit a list of disputed issues. The rule proposes, for those programs other than those under Chapters 26 and 27 of the Texas Water Code or Chapters 361 or 382 covered by Section 2 and 5 of HB 801, that the list of disputed issues shall be those issues defined by the law governing those applications. This is proposed because it does not appear to be the intent of HB 801 to involve those applications in all of the procedures required by HB 801.

Proposed §50.117(a)-(e) mirrors current §50.17 (Commission Action). To comply with HB 801 and the requirements of federally authorized programs, proposed §50.117(f) (Commission Actions) provides that the commission shall consider all public comments received on an application, and shall either adopt the executive director's response to comments or prepare its own response.

Proposed §50.119 (Notice of Commission Action, Motion for Rehearing) substantially parallels current §50.19, but §50.119(a) adds persons who submit requests for reconsideration to the list of people who get notice of a commission action. Section 50.119(b) refers to proposed §80.272, rather than the current §80.271, to which §50.19 refers. Subsection (b) also provides that a person is presumed to have been notified of the commission's decision three days after the decision is mailed by first class mail, in conformity with §2001.42(c), Texas Government Code, which was enacted by SB 211.

Proposed Subchapter G of Chapter 50 parallels current Subchapter C (Action by the Executive Director). Proposed §50.131 (Purpose and Applicability) parallels current §50.31, except in three respects. First, proposed §50.131(b) delegates to the executive director the authority to certify WQMP updates, implementing SB 1308. Second, proposed §50.131(c) does not contain the statement that this subchapter does not apply to air federal operating permits under Chapter 122. This was deleted because §50.2 and §50.102 are proposed to contain a more general statement that none of Chapter 50, except §50.17 and §50.117, apply to federal operating permits. Third, the current reference to §50.39 in §50.31(d) is changed in proposed §50.139 to the parallel §50.131(d).

Proposed §50.133 (Executive Director Action on Application and WQMP Update) parallels current §50.33 and sets out the circumstances under which the executive director may act on an application. New §50.133 differs slightly from §50.33 because it implements certain provisions of HB 801 and SB 1308. Section 50.133(a)(1) adds the requirement that the executive director must consider public comment and prepare a response before acting on an application. New language is proposed under §50.133(a)(5)(D) and (E) to provide that an application is also considered uncontested if it (1) has been remanded because of a settlement, or a contested case hearing request has been filed but no opportunity for hearing is provided by law, or (2) when the application for renewal, modification or amendment of an air permit would not result in an increase in emissions or the emission of a new contaminant. Proposed §50.133(b) and (c) mirror current §50.33(b) and (c), describing how persons who submit comments will be notified of the executive director's action and the opportunity to file a motion for reconsideration.

Proposed §50.133(d) incorporates a new requirement allowing the executive director to certify a WQMP update after notice and, if appropriate, after revisions have been made to the WQMP in response to those comments. Additionally, the title of the section is proposed to be amended to include a reference to WQMP updates. These proposed changes implement requirements in SB 1308.

Proposed §50.135 (Effective Date of Executive Director Action) parallels current §50.35, providing that a permit is effective when signed by the executive director, but adding "unless otherwise specified in the permit," to allow flexibility.

Proposed new §50.137 (Remand for Action by Executive Director), mirrors current §50.37, stating that an application subject to this subchapter may be remanded to the executive director if all timely filed requests for reconsideration and requests for hearing are withdrawn or denied. The departure from §50.37 is the addition of request for reconsideration to implement HB 801.

Proposed new §50.139 (Motion for Reconsideration of Executive Director's Action), like current §50.39, allows a motion for reconsideration of the executive director's decision on an application or WQMP update certification. This section also identifies the manner in which an interested person may seek commission review of an executive director's action on a WQMP update. The title of the section is proposed to be changed to add "of Executive Director's Action" to emphasize that a Motion for Reconsideration is filed in response to the executive director's final action on an application, whereas a Request for Reconsideration, provided for in Chapter 55, is properly filed while an application is still subject to commission consideration. A *Request* for Reconsideration is not a prerequisite to a *Motion* for Reconsideration, but a *Request* for Reconsideration would come first in time before a *Motion* for Reconsideration.

A Motion for Reconsideration must be filed no later than 20 days after notice of the executive director's action is mailed. Persons who file timely comments on WQMP update certifications, and who wish to file a motion for reconsideration, must do so within 20 days after the executive director's response to comments is mailed. The executive director's action on an application is not affected by a motion for reconsideration, unless the commission otherwise orders. Procedures relating to motions for rehearing do not apply to motions for reconsideration.

Proposed §50.141 deletes language pertaining to the pendency of delegation of the National Pollutant Discharge Elimination System authority because the commission received authorization to operate the program on September 14, 1998.

Proposed §50.143 is unchanged from current §50.43 except for the removal of the sentence allowing the agency to return classified or confidential portions of an application to an applicant. This change conforms to changes to §1.5 (Records of the Agency) and to the Texas Public Information Act. A cross refer-

ence to Commission Action on Hearing Request has been updated to refer to proposed §80.272 rather than current §80.271.

Proposed §50.145 (Corrections to Permits), mirrors §50.15 of this title and includes no substantive changes. This section, like many others, is added solely so that, after all applications that were administratively complete before September 1, 1999 have been processed, Subchapters A-C may be repealed. At that time, Subchapters E-G will contain all of the then-current rules for Action on Application.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 50, Actions on Applications, would implement certain provisions contained in HB 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the commission. It also incorporates changes required by SB 1308, an act relating to approval of WQMPs, and changes required by SB 211, an act relating to the notice of a decision in an administrative hearing, and changes required by HB 1479, an act relating to wastewater permits.

The proposed amendments establish the circumstances when the commission may act on an application without holding a contested case hearing; require the commission to limit the number and scope of issues in permit applications referred to hearing; establish procedures regarding public comment on permit applications; clarify procedures regarding Motions for Rehearing or Reconsideration; delegate authority to the executive director to take action on certain applications and certifications; establish circumstances when the executive director may act on an application; establish the effective date of a permit; clarify when the State Office of Administrative Hearings may remand an application to the executive director. The proposed amendments also provide that the executive director may certify WQMP updates, and that a party is presumed to have been notified on the third day after a final order is mailed.

The proposed amendments affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Additionally, applicants for any other permit or approval subject to commission or executive director action may be affected by these amendments. Persons involved in the permitting process, including members of the general public, will also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 50 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by the commission, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures that will enhance public participation in certain commission permitting processes, as well as to implement recent legislation allowing the executive director to approve WQMP updates; allowing commission action without a hearing on certain air, hazardous waste, and wastewater permit renewals and amendments; and adding three days to the time a person is presumed to have received mailed notice of a final order or decision. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence.

SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 50 of the rules because the amendments modify or clarify requirements currently in existence.

REGULATORY IMPACT EVALUATION

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 the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

"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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with actions on permit applications, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the

agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M, and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the commission's rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs; correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §281.40, et seq).

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239- 4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030- 039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

Subchapter A. Purpose, Applicability, and Definitions

30 TAC §50.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes

the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.2. Applicability.

(a) This subchapter [~~chapter~~] applies to any application to issue, amend, modify, renew, correct, endorse, or transfer a permit, license, registration, or other authorization or approval that is declared administratively complete before September 1, 1999. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter E of this chapter (relating to Purpose, Applicability, and Definitions).

(b) (No change.)

(c) Subchapters A - C of this chapter (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by Executive Director) do not apply to air quality applications under Chapter 122 of this title (relating to Federal Operating Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903988
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter B. Action by the Commission

30 TAC §50.13

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing

for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.13. Action on Application.

Any permit application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter F of this chapter (relating to Action by the Commission). After the time for filing a hearing request as provided in §55.21 [~~§55.21(d)~~] of this title (relating to Requests for Contested Case Hearings, Public Comment), the commission may act on an application without holding a contested case hearing when:

(1)-(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903989
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter C. Action by the Executive Director

30 TAC §50.31

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste per-

mit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendment implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.31. Purpose and Applicability.

(a) (No change.)

(b) This subchapter applies to applications for new permits, or to renew, modify, amend, correct, endorse, or transfer permits and to applications seeking orders that have the effect of issuing, renewing, modifying, amending, or transferring permits. Any application that is declared administratively complete before September 1, 1999 is subject to this subchapter. Any application that is declared administratively complete on or after September 1, 1999 is subject to Subchapter G of this chapter (relating to Action by the Executive Director). Except as provided by subsection (c) of this section, this subchapter applies to:

(1)-(20) (No change.)

(c)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903990
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter E. Purpose, Applicability, and Definitions

30 TAC §50.102

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which

establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.102. Applicability.

(a) Any permit applications that are declared administratively complete before September 1, 1999 are subject to Subchapters A - C of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by Executive Director). Any permit applications that are declared administratively complete on or after September 1, 1999 are subject to Subchapters E - G of this chapter (relating to Purpose, Applicability and Definitions; Action by the Commission; and Action by the Executive Director).

(b) This chapter applies to any permit application to issue, amend, modify, renew, correct, endorse, or transfer a permit.

(c) This chapter applies to certification of water quality management plan (WQMP) updates.

(d) Only the following sections of this subchapter apply to initial applications for voluntary emission reduction permits under §382.0519 of the Texas Health and Safety Code or electric generating facility permits under §39.264 of the Texas Utilities Code:

(1) §50.117 of this title (relating to Commission Actions);

(2) §50.131 of this title (relating to Purpose and Applicability);

(3) §50.133 of this title (relating to Executive Director Action on Application or WQMP update);

(4) §50.135 of this title (relating to Effective Date of Executive Director Action); and

(5) §50.145 of this title (relating to Corrections to Permits)

(e) This chapter does not apply to applications for emergency or temporary orders or temporary authorizations.

(f) Subchapters E - G of this chapter do not apply to air quality applications under Chapter 122 of this title (relating to Federal Operating Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903991

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter F. Action by the Commission

30 TAC §§50.113, 50. 115, 50.117, 50.119

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.113. Action on Application.

(a) After the deadline for filing a request for reconsideration or contested case hearing under §55.201 of this title (relating to Requests for Reconsideration or Contested Case Hearing), the commission may act on an application without holding a contested case hearing or acting on a request for reconsideration, if:

(1) no timely request for reconsideration or hearing has been received;

(2) all timely requests for reconsideration or hearing have been withdrawn or denied by the commission;

(3) a judge has remanded the application because of settlement; or

(4) for applications under Chapters 26 and 27 of the Texas Water Code and 361 and 382 of the Texas Health and Safety Code, the commission finds that there are no issues that:

(A) involve a disputed question of fact;

(B) were raised during the public comment period; and

(C) are relevant and material to the decision on the application.

(b) Without holding a contested case hearing, the commission may act on an application for:

(1) any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. This does not include applications that involve a facility for which the applicant's compliance history contains violations that are unresolved and that constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(2) hazardous waste permit renewals under §305.631(a)(8) of this title (relating to Renewal); and

(3) wastewater discharge permit renewal or amendments under §26.028(d) of the Texas Water Code, unless the commission determines that an applicant's compliance history for the preceding five years raises issues regarding the applicant's ability to comply with a material term of its permit.

§50.115. Scope of Proceedings.

(a) When the commission grants a request for a contested case hearing, it shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.

(b) The commission may not refer an issue to SOAH for a hearing unless the commission determines that the issue:

(1) involves a disputed question of fact;

(2) was raised during the public comment period; and

(3) is relevant and material to the decision on the application.

(c) Consistent with the nature and number of the issues to be considered at the hearing, the commission by order shall specify the maximum expected duration of the hearing by stating the date by which a proposal for decision is expected to be issued by the judge. For any matter referred, the time period from the first day of the preliminary hearing to the date the proposal for decision is issued shall be no longer than one year unless an extension is granted by the judge. An extension may be granted if the judge determines that failure to grant an extension will deprive a party of due process or another constitutional right.

(d) The commission may limit the scope of the proceedings:

(1) to only those portions of a permit for which the applicant requests action through an amendment or modification. All terms, conditions, and provisions of an existing permit remain in full force and effect during the proceedings, and the permittee shall comply with an existing permit until the commission acts on the application; and

(2) to only those requirements in §382.055 of the Texas Health and Safety Code for the review of a permit renewal.

(e) subsections (a)-(c) of this section do not apply to applications other than those under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code. When referring a case to SOAH, applications other than those under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code, the commission or executive director shall provide a list of disputed issues. For hearings on these applications, the disputed issues are deemed to be those defined by law governing these applications.

§50.117. Commission Actions.

(a) The commission may grant or deny an application in whole or in part, suspend the authority to conduct an activity or dispose of waste for a specified period of time, dismiss proceedings, amend or modify a permit or order, or take any other appropriate action.

(b) For applications involving hazardous waste under the Texas Solid Waste Disposal Act, the commission may issue or deny a permit for one or more units at the facility. The interim status of any facility unit compliant with the provisions of Texas Health and Safety Code, §361.082(e), and §335.2(c) of this title (relating to Permit Required) for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(c) If the commission directs a person to perform or refrain from performing any act or activity, the order shall set forth the findings on which the directive is based. The commission may set a reasonable compliance deadline in its order in which to:

(1) terminate the operation or activity;

(2) cease disposal, handling, or storage of any waste;

(3) conform to the permit requirements, including any new or additional conditions imposed by the commission; or

(4) otherwise comply with the commission's order.

(d) For good cause, the commission may grant an extension of time to a compliance deadline upon application by the permittee.

(e) For applications involving radioactive material licenses under the Texas Radiation Control Act, the commission may incorporate in any license at the time of issuance, or thereafter by appropriate rule or order, additional requirements and conditions as it deems appropriate or necessary to:

(1) protect and minimize danger to public health and safety or the environment;

(2) require reports and the keeping of records and to provide for inspections of activities under the license as may be appropriate or necessary; and

(3) prevent loss or theft of radioactive material subject to this subchapter.

(f) Consistent with Chapter 5, Subchapter M of the Texas Water Code (for applications under Chapter 26 or 27 of the Texas Water Code and Chapter 361 of the Texas Health and Safety Code), and for applications under Chapter 382 of the Texas Health and Safety Code, the commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

§50.119. Notice of Commission Action, Motion for Rehearing.

(a) If the commission acts on an application, the chief clerk shall mail notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public

comment, or requests for reconsideration or contested case hearing. The notice shall explain the opportunity to file a motion under §80.272 of this title (relating to Motion for Rehearing). The chief clerk need not mail to persons submitting public comment or requests for reconsideration or contested case hearing who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(b) If the commission acts on an application, §80.272 of this title (relating to Motion for Rehearing) applies. A motion for rehearing must be filed within 20 days after the date the person is notified of the commission's final decision or order on the application. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903992

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999

For further information, please call: (512) 239–1932

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Subchapter G. Action by the Executive Order

30 TAC §§50.131, 50.133, 50.135, 50.137, 50.139, 50.141, 50.143, 50.145

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and Texas Health and Safety Code §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the Texas Water Code under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the Texas Health and Safety Code include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for Federal Operating Permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commis-

sion's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §§2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; 2001.42, which provides a time period for presumed notification by a state agency; and 2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement Texas Water Code, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the Texas Health and Safety Code, and §2001.42 and §2003.0437 of the Texas Government Code.

§50.131. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission.

(b) This subchapter applies to applications for new permits, or to renew, modify, amend, correct, endorse, or transfer permits and to applications seeking orders that have the effect of issuing, renewing, modifying, amending, or transferring permits and to certifications of Water Quality Management Plan (WQMP) updates. Except as provided by subsection (c) of this section, this subchapter applies to:

(1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) appointments to the board of directors of districts created by special law;

(3) certificates of adjudication;

(4) certificates of convenience and necessity;

(5) district matters under Chapters 49 - 66 of the Texas Water Code;

(6) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(7) extensions of time to commence or complete construction;

(8) industrial and hazardous waste permits;

(9) municipal solid waste permits;

(10) on-site wastewater disposal system permits;

(11) radioactive waste or radioactive material permits or licenses;

(12) rate matters for water and wastewater utilities under Texas Water Code, Chapters 11, 12, or 13;

(13) underground injection control permits;

(14) water rights permits;

(15) wastewater permits;

(16) weather modification measures permits;

(17) driller licenses under Texas Water Code, Chapter 32;

(18) pump installer licenses under Texas Water Code, Chapter 33;

(19) irrigator or installer registrations under Texas Water Code, Chapter 34; and

(20) municipal management district matters under Texas Local Government Code, Chapter 375;

(c) This subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under Texas Water Code, Chapters 49 - 66, as follows:

(A) an appeal under Texas Water Code, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under Texas Water Code, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under Texas Water Code, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under Texas Water Code, §54.239, of a board decision involving the cost, purchase, or use of facilities;

(E) an application under Texas Water Code, §49.351 for approval of a fire department or fire- fighting services plan; or

(F) an application under Texas Water Code, §54.030 for conversion of a district to a municipal utility district;

(5) emergency or temporary orders or temporary authorizations;

(6) actions of the executive director under Chapters 101, 111, 112, 113, 114, 115, 117, 118, and 119 of this title (relating to General Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; Control of Air Pollution Episodes; and Control of Air Pollution From Carbon Monoxide);

(7) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting);

(8) concentrated animal feeding operations (CAFOs) under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations);

(9) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375; and

(d) Notwithstanding subsections (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b)-(f) of this title (relating to Motion for Reconsideration of Executive Director's Action) applies. If the rules under which the executive director evaluates a

registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

§50.133. Executive Director Action on Application or WQMP update.

(a) The executive director may act on an application subject to this subchapter if:

(1) public notice requirements have been satisfied and the executive director has considered the public comment and filed a response;

(2) the application meets all relevant statutory and administrative criteria;

(3) the application does not raise new issues that require the interpretation of commission policy;

(4) the executive director's staff and public interest counsel do not raise objections; and

(5) the application is uncontested because:

(A) no timely requests for reconsideration or contested case hearing are filed with the chief clerk;

(B) the applicant and the persons who filed timely requests have agreed in writing to the action to be taken by the executive director;

(C) any timely requests have been withdrawn in writing or have been denied;

(D) a settlement was reached in a contested case hearing, and the application has been remanded from SOAH; or

(E) a contested case hearing request has been filed but no opportunity for hearing is provided by law.

(6) the application is for any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(b) If the executive director acts on an application, the chief clerk shall mail to the applicant, the public interest counsel, and to other persons who timely filed public comment in response to public notice, notice of the action, and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Action), if applicable. The chief clerk need not mail to persons submitting public comment who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted. If there were timely filed hearing requests that the commission denied, the chief clerk should also mail to the persons who timely filed hearing requests.

(c) If an application does not meet the requirements of subsection (a) of this section, the executive director shall refer the application to the chief clerk. The chief clerk shall schedule the application for consideration and action by the commission.

(d) The executive director may certify a water quality management plan (WQMP) update if:

(1) public notice has been issued as required by law and commission rules; and

(2) all significant comments received by the end of the comment are considered by staff and, if appropriate, revisions are made to the WQMP in response to those comments.

§50.135. Effective Date of Executive Director Action.

A permit or other approval is effective when signed by the executive director, unless otherwise specified in the permit.

§50.137. Remand for Action by Executive Director.

At any time during the processing of an application, if all timely requests for reconsideration or hearing on the application are withdrawn or denied, the commission or the general counsel, or the judge if SOAH holds jurisdiction over the application, may remand the application to the executive director. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda.

§50.139. Motion for Reconsideration of Executive Director's Action.

(a) The applicant, public interest counsel or other person may file with the chief clerk a motion for reconsideration of the executive director's action on an application or water quality management plan (WQMP) update certification.

(b) A motion for reconsideration must be filed no later than 20 days after the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(c) For WQMP updates, a motion for reconsideration must be filed no later than 20 days after the response to comments and the WQMP update, certified by the executive director, is mailed to persons who timely commented on the WQMP update.

(d) An action by the executive director under this subchapter is not affected by a motion for reconsideration filed under this section unless expressly ordered by the commission.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for reconsideration and for taking action on the motions so long as the period for taking action is not extended beyond 90 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(f) Disposition of motion.

(1) Unless an extension of time is granted, if a motion for reconsideration is not acted on by the commission within 45 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant, the motion is denied.

(2) In the event of an extension, the motion for reconsideration is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the signed permit, approval, or other written notice of the executive director's action is mailed to the applicant.

(g) Section 80.272 of this title (relating to Motion for Rehearing) and Texas Government Code, §2001.146, regarding motions for rehearing in contested cases do not apply when a motion for reconsideration is denied by commission action or under subsection (e) of this section and no motions for rehearing shall be filed. If applicable, the commission decision may be subject to judicial review under Texas Water Code, §5.351, or the Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

§50.141. Eligibility of Executive Director.

The executive director may issue Texas pollutant discharge elimination system (TPDES) permits or other TPDES-related approvals only if he or she does not receive, and has not during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1) For the purposes of this section:

(A) "Significant portion of income" means 10% or more of gross personal income for a calendar year, except that it means 50% or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement pension, or similar arrangement.

(B) "Permit holders or applicants for a permit" does not include any department or agency of a state government, such as a Department of Parks or a Department of Fish and Wildlife.

(C) "Income" includes retirement benefits, consultant fees, and stock dividends.

(2) For purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

§50.143. Withdrawing the Application.

Upon a request by the applicant at any time before the application is referred to SOAH, the executive director shall allow the withdrawal of the application and shall file a written acknowledgment of the withdrawal with the chief clerk. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda. For purposes of this rule, an application is referred to SOAH when the commission votes during a public meeting for referral or when the executive director or the applicant file a request to refer with the chief clerk under §55.255 of this title (relating to Commission Action on Hearing Request).

§50.145. Corrections to Permits.

(a) This section applies to a permit as defined in §3.2 of this title (relating to Definitions), except that it does not apply to air quality permits under Chapter 122 of this title (relating to Federal Operating Permits). The executive director, on his own motion or at the request of the permittee, may make a nonsubstantive correction to a permit either by reissuing the permit or by issuing an endorsement to the permit, without observing formal amendment or public notice procedures. The executive director must notify the permittee that the correction has been made and forward a copy of the endorsement or corrected permit for filing in the agency's official records.

(b) The executive director may issue nonsubstantive permit corrections under this section:

(1) to correct a clerical or typographical error;

(2) to change the mailing address of the permittee, if updated information is provided by the permittee;

(3) if updated information is provided by the permittee, to change the name of an incorporated permittee that amends its articles of incorporation only to reflect a name change, provided that the secretary of state can verify that a change in name alone has occurred;

(4) to describe more accurately the location of the area certificated under a certificate of convenience and necessity;

(5) to update or redraw maps that have been incorporated by reference in a certificate of convenience and necessity;

(6) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water;

(7) to describe more accurately the location of the authorized point or place of discharge, injection, deposit, or disposal of any waste, or the route which any waste follows along the watercourses in the state after being discharged;

(8) to describe more accurately the pattern of discharge or disposal of any waste authorized to be disposed of;

(9) to describe more accurately the character, quality, or quantity of any waste authorized to be disposed of; or

(10) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision.

(c) Before the executive director makes a correction to a permit under this section, the executive director shall inform the general counsel of the proposed correction, and shall provide a copy of such information to the public interest counsel. Review by the general counsel and the public interest counsel under this subsection does not apply to a correction described in subsection (b)(2) or (3) of this section. The public interest counsel shall advise the general counsel of any objections to the proposed correction. The general counsel shall act within five business days of receiving the executive director's proposal. If the general counsel determines that the proposed correction should not be issued under this section, the executive director shall not issue the correction, but may set the matter for commission action during a commission meeting. If the general counsel fails to act within five business days, the executive director may issue the correction as proposed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903993
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Chapter 55. Requests [~~Request~~] for Reconsideration and Contested Case Hearings; Public Comment

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §55.1 and §55.21 and new §§55.101, 55.103, 55.150, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.205, 55.206, 55.209, 55.211, 55.250, 55.251, 55.252, 55.253, 55.254, 55.255, and 55.256, concerning Requests for Contested Case Hearing; Public Comment.

BACKGROUND The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and HB 1479, 76th Legislature (1999). The proposed amendments and new sections are intended to establish avenues for public participation in the permitting process for water, waste, and air applications. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Concurrently with this rulemaking, the commission is proposing the review of Chapter 55, concerning Requests for Contested Case Hearing; Public Comment, in accordance with

the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

OVERVIEW OF HB 801 AND IMPLEMENTATION HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code, (THSC), Solid Waste Disposal Act, §361.088; revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment received in response to the notices or at public meetings, and file the responses with the chief clerk. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

OVERVIEW OF SB 7 AND IMPLEMENTATION Senate Bill (SB 7), also enacted by the 76th Legislature, restructures electric utility service in Texas. Owners of grandfathered facilities that generate electric energy for compensation are required to apply for an electric generating facility permit from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the Health and Safety Code. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing.

The notice provisions for electric generating facility permits are implemented through changes to Chapters 39 and to a limited extent to Chapters 50 and 55. Amendments and renewals are subject to Chapters 50, 55, and 80 as amended. Additional implementation of the requirements of SB 7 is expected in future rulemaking proposals by the commission.

OVERVIEW OF SB 766 AND IMPLEMENTATION SB 766, enacted by the 76th Legislature, also amends TCAA, Chapter 382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit (VERP) for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to VERPs under SB 766 are included in these chapters, specifically §39.403(11) and §39.606. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

OVERVIEW OF HB 1479 AND IMPLEMENTATION House Bill (HB) 1479 amended §26.028 of the Texas Water Code and allows the commission to approve an application to renew or amend a permit without the necessity of a public hearing if the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or changing materially the pattern or place of discharge; the activities to be authorized will maintain or improve the quality of waste; and the applicant's compliance history raises no issues regarding the applicant's ability to comply with a material term of its permit; and for TPDES permits, notice and opportunity to comment is provided in accordance with federal program requirements. This proposal implements these provisions.

OVERVIEW OF SB 211 AND IMPLEMENTATION Senate Bill (SB) 211 amends §2001.142(c) of the Texas Government Code relating to notice of decision in an administrative hearing and provides that a party is presumed to have been notified on the third day after notice has been mailed. The requirement in SB 211 regarding presumed notice within three days of mailing has also been implemented and has guided rule drafting in Chapters 39, 50, 55 and 80.

ORGANIZATION OF CHAPTER HB 801 applies only to certain applications that are administratively complete on or after September 1, 1999. Thus, in the proposed rules in Chapter 50, Subchapters A-B are amended to apply only to applications that were administratively complete before September 1, 1999. At the same time, new Subchapters D-G apply only to applications that are administratively complete *on or after* September 1, 1999. More specifically, Subchapter G applies to applications other than those under Chapter 26 or 27, Texas Water Code and Chapter 361 or 382, Texas Health and Safety Code that are declared administratively complete on or after September 1, 1999. Subchapter C is not used here; it is reserved for future rulemaking.

Many of the sections of Subchapters D-G are the same or very similar to sections in Subchapters A-B. Nonetheless, since Subchapters D-G are entirely new, it may be difficult to quickly see the differences between those new and existing Subchapters. In the section-by-section analysis in this preamble, the agency has tried to point out any important differences. Additionally, to facilitate review, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and As-

sessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

EXPLANATION OF PROPOSED RULES The primary purpose of the proposed new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and HB 1479, 76th Legislature (1999). HB 801 establishes new procedures for public participation in environmental permitting proceedings. It establishes procedures for providing public notice, an opportunity for public comment, and an opportunity for public hearing for certain actions. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy air quality federal program authorization requirements. More specifically, HB 801 revises the public participation in environmental permitting procedures of the commission by adding new statutory provisions to Texas Water Code (TWC), Chapter 5, Subchapter M; revisions to Solid Waste Disposal Act, Texas Health and Safety Code (THSC), §361.088; revisions to Texas Clean Air Act, THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 116, 122, 305 and 321; changes for all of these chapters are published in this edition of the *Texas Register.* Concurrently with this rulemaking the commission is proposing the review of 30 TAC Chapter 50 in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The amendments to chapter 55 propose to change the name of this chapter to Requests for Reconsideration and Contested Case Hearings; Public Comment to reflect that the new public participation procedures allow for requests for reconsideration, as well as requests for contested case hearings. HB 801 has provided for the opportunity to file requests for reconsideration, as well as requests for hearing.

The amendments to chapter 55 include a proposed revision to §55.1, Applicability, to reflect that subchapters A and B of this chapter apply to applications declared administratively complete before September 1, 1999. This amendment satisfies the requirement of HB 801, §7(b) that applications declared administratively complete before the effective date of the new legislation are subject to the law in effect before the effective date of that legislation. This section has also been revised to more accurately state that it applies to public comments, as well as hearing requests, received on applications. This section proposes that Chapter 55 does not apply to hearing requests for applications under Chapter 122 (Federal Operating Permits) because there is no right to a contested case hearing on such applications.

Proposed new §55.21(a) likewise provides that subchapter B of chapter 55 applies to applications declared administratively complete before September 1, 1999, in accordance with the requirements of HB 801, §7(b).

Proposed new §55.101 incorporates the requirement of HB 801, §7(b) that applications declared administratively complete on or after September 1, 1999 are subject to the requirements of new subchapters D-G; whereas, applications declared administratively complete before September 1, 1999 are subject to subchapters A and B. Generally, subchapters D-G set forth procedures for commenting and requesting reconsideration or a contested case hearing with respect to an application. Under §55.101(c)(3)-(5), the proposed rule provides that subchapters D-G do not apply to hearing requests related to applications under chapter 122, and applications for initial issuance of voluntary emission reduction permits and permits for electric generating facilities, because there is no right to a contested case hearing on such applications. Proposed §55.101(c)(6) provides that hearing requests on weather modification permits and licenses are not subject to subchapters D-G, because there is no right to a contested case hearing under Chapter 18, Texas Water Code, in keeping with the interpretation of law given in commission orders which have addressed hearing requests on these applications. Because certain air quality permit exemptions and permits by rule are not subject to contested case hearings, proposed §55.101(c)(7)-(8) provide that hearing requests on these applications are not subject to subchapters D-G. Hearing requests on certain utility matters specified in §55.101(d) are not subject to the procedures of subchapters D-F because, under the procedures set forth in subchapter G, the executive director, rather than the commission, determines the sufficiency of hearing requests on these applications.

Proposed new §55.103, concerning Definitions, provides that the terms specified in this section shall have certain meanings and has deleted the qualifying phrase "unless the context clearly indicates otherwise" to eliminate ambiguity. This section has also been revised to reflect that it now applies to subchapters D-G of this chapter, rather than the entire chapter. The section includes the same definition of affected person contained in existing §55.3, relating to definitions.

Proposed new §55.150, concerning Applicability, incorporates the requirement of HB 801, §7(b) by providing that new subchapter E, regarding procedures for processing public comment and requests for reconsideration or hearing, applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382 that are declared administratively complete on or after September 1, 1999.

Proposed new §55.152, concerning Public Comment, provides that public comment must be filed within the time period set forth in the Notice of Receipt of Application and Preliminary Decision, which shall be 30 days from the date of last publication unless stated otherwise. Proposed new §55.152(a)(1)-(6) provides the length of the comment period for specific applications, and is revised to reflect that what was formerly a standard exemption for a concrete batch plant is now a concrete batch plant exemption from permitting or permit by rule under chapter 106 of this title. The section reflects that public comment is now made in response to the Notice of Application and Preliminary Decision required by HB 801, rather than in response to a notice of draft permit.

The proposed amendments to Chapter 55 create new §55.154, relating to Public Meetings. This new section will address public meetings with respect to applications subject to Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382; whereas proposed §55.253 will address public meetings concerning other applications declared administratively complete on or after September 1, 1999. In accordance with the requirements of HB 801, proposed §55.154(b) provides that during technical review of an application, the applicant, in cooperation with the executive director, may hold a public meeting in the county affected by the application. The

language in §55.154(c)(1) has also been revised to incorporate the provisions of the HB 801, new §5.554, Texas Water Code, that the executive director may hold a public meeting when there is substantial public interest in activity proposed under the application. The proposed section retains the provisions from §55.25 that public meetings are not contested case hearings under the Administrative Procedure Act (APA) and the comment period for any application is automatically extended to the end of the any public meeting.

Proposed new §55.156, concerning Public Comment Processing, provides that the executive director, the applicant, the office of public interest counsel and the office of alternative dispute resolution shall receive copies of all documents submitted on an application. Proposed §55.156(b)(1) requires the executive director to prepare a response to all relevant and material or significant comments received in response to a Notice of Receipt of Application and Intent to Obtain Permit on an air application or received during the comment period in response to a notice of the executive director's preliminary decision. This requirement has been included to satisfy the requirement in HB 801 that the executive director file a response to comments. Requiring a response to relevant and material or significant comments is intended to satisfy not only the requirements for the executive director to respond to comments under HB 801, but also existing requirements for federally delegated programs. Comments received in response to an air Notice of Receipt of Application and Intent to Obtain Permit have been distinguished from comments received during the comment period given in response to a Notice of Application and Preliminary Decision. In accordance with the HB 801 amendments to §382.056(g), Texas Health and Safety Code, for air applications, there will not be a Notice of Application and Preliminary Decision unless a hearing request was filed in response to the Notice of Receipt of Application and Intent to Obtain a Permit. Accordingly, there may only be an opportunity to submit comments in response to the first notice.

Proposed §55.156(b)(2) provides that the executive director may call a public meeting in response to comments. New language proposed under §55.156(b)(3) requires the executive director's response to comments to be filed with the chief clerk as soon as practical, no later than 60 days after the comment period ends. The executive director needs flexibility for those times the commission has received a voluminous number of applications and comments which need to be processed within a relatively short time, in order to ensure that the responses are thorough. The requirement of §55.25(b)(1)(A)-(B) that the response to comments be "made available to the public" is not included because this requirement is otherwise satisfied by making the comments available in the chief clerk's office under new §55.156(b)(3). Section 55.156(c) also requires the chief clerk to mail the response to comments. The requirement for the commission to adopt the executive director's response to comments or prepare its own response is now contained in §50.117(f) of this title (relating to Commission Action).

Proposed §55.156(c) requires that after the executive director's response to comments has been filed, the chief clerk shall transmit the executive director's decision, the response to comments and instructions for requesting reconsideration or hearing to the applicant, persons who submitted comments, persons who submitted hearing requests in response to the Notice of Receipt of Application and Intent to Obtain Permit for an air application, other persons on the mailing list, the Office of Public Interest Counsel, and the Office of Alternative Dispute Resolution. This requirement is consistent with current rules and also the requirements of HB 801 concerning the transmittal of the executive director's response to comments.

To conform to the changes proposed to implement HB 801, new §55.200 provides that subchapter F (Requests for Reconsideration or Contested Case Hearing) applies only to applications under Chapter 26 or 27, Texas Water Code or Chapter 361 or 382, Texas Health and Safety Code, which are declared administratively complete on or after September 1, 1999.

Proposed new §55.201, which parallels current §55.21, provides the procedures for filing requests for reconsideration and hearing. Subsection (a) requires that requests for reconsideration or hearing must be filed no later than 20 days after the chief clerk mails the executive director's decision and response to comments. A 20 day period has been proposed and is considered adequate, considering that at this point in the process the public will have been given the opportunity to provide input in the decision making process through the comment period provided for under §55.152. Subsection (b) sets forth who may request a contested case hearing. The proposed rule does not include an equivalent to §55.21(a)(5), which gives legislators from the general area of a proposed facility the ability to request hearings on certain air applications, because such hearing requests are no longer authorized by §382.056(g), Texas Health and Safety Code.

Proposed new §55.201(d)(1) requires that requestors now provide their fax numbers, where possible, in addition to the other information previously required to be provided with a hearing request. Consistent with new statutory requirements for limiting the issues which may be referred to hearing, the new §55.201(d)(4) requires a hearing request to list the relevant and material issues which form the basis of the request and states that requestors should specify the factual basis for any disagreement with specific statements made or positions taken in the executive director's response to comments.

Proposed subsection (e) provides that any person may file a request for reconsideration within the period allowed under subsection (a). Subsection (e) further sets forth the requirements for a request for reconsideration, including the requirement that the requestor must expressly state that the person is requesting reconsideration of the executive director's decision and the reasons for the request. Subsection (e) is necessary because HB 801 provides for requests for reconsideration, in addition to requests for contested case hearing.

Under proposed §55.201(f), late filed requests for reconsideration or contested case hearing will be treated as public comment. Proposed §55.201(g) further provides that late filed requests for reconsideration, as well as late filed public comments and requests for hearing, shall be placed in the file, but not processed. Under proposed subsection (h), persons who did not avail themselves of opportunities to comment or request reconsideration or a contested case hearing may file a motion for reconsideration of any executive director action on a permit only to the extent that the final permit differs from the draft permit.

Proposed subsection (i)(1) and (2) states applicable law by providing that there is no right to a contested case hearing on an application for a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this title, or a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title. Also, subsection (i)(3) and

(4) implements new statutory provisions under HB 801 that there is no right a contested case hearing for an amendment, modification or renewal of an air permit that will not increase emissions or result in the emission of a new contaminant unless specific compliance history issues exist, or hazardous waste permit renewals under §305.631(a)(8). Furthermore, subsection (i)(5) implements HB 1479 regarding limitations on the availability of contested case hearings on certain permit amendments or renewals under Chapter 26, Texas Water Code.

Proposed new §55.203, concerning Determination of Affected Person, retains the requirements of §55.29 regarding the determination of whether a hearing requestor is determined to be an affected person with a personal justiciable interest concerning an application. Under HB 801, a person requesting a hearing is still required to demonstrate that the person is an affected person with a personal justiciable interest in order for the request to be granted.

Proposed new §55.205, concerning Request by Group or Association, contains the same requirements for evaluating hearing requests by groups or association set forth in existing §55.23.

Proposed new §55.206, concerning Determination of Relevant and Material Issues, provides standards for determining whether a request for reconsideration or contested case hearing raises issues which are relevant and material to the commission's decision on an application. This section has been proposed in response to the requirement of HB 801 that only relevant and material issues shall be referred to hearing. The commission invites comments on improving these standards for determining the relevance and materiality of the issues.

Proposed new §55.209, concerning Processing Requests for Reconsideration and Contested Case Hearing, includes subsection (a), also in §55.26(a), which provides that §55.209 and §55.211 procedures apply only to timely filed hearing requests. New §55.209 does not require the executive director to file a statement that technical review is complete and to file such a statement before or after notice of the application is issued because, under HB 801, the executive director completes technical review before the issuance of the Notice of Application and Preliminary Decision. New subsection (b), also in §55.26(c), provides that timely filed requests for reconsideration or contested case hearing shall be referred to alternative dispute resolution and also scheduled for a commission meeting approximately 40 days after the final deadline to request reconsideration or hearing. It should be noted that with respect to applications for air permits, there is an initial opportunity to request a hearing in response to the Notice of Receipt of Application and Intent to Obtain Permit; however, if a request for contested case hearing is filed then, triggering the requirement under the HB 801 amendments to §382.056(g), Texas Health and Safety Code that a notice of the executive director's preliminary decision be given following technical review, the final opportunity to request reconsideration or hearing comes after the chief clerk mails notice of the executive director's decision. The subsection reflects that the final request deadline will now always be the last step in the process before processing any timely filed requests. Accordingly, the equivalent of §55.26(c)(2)(B), providing that the request deadline may follow technical review, is not proposed to be included because the final hearing request deadline will always occur after technical review has been completed and the Notice of Application and Preliminary Decision has been issued.

Subsection (b) further provides that if only requests for reconsideration are filed, the requests will be scheduled for consideration only if the general counsel instructs the chief clerk to do so. This is consistent with current procedures under §50.39 that allow for motions for reconsideration concerning executive director action to be overruled by operation of law. New subsection (c) contains the requirements of §55.26(d) amended to require the chief clerk to mail notice of the commission's agenda at which the request for reconsideration or hearing will be considered to "requestors," including persons who submitted either requests for reconsideration or requests for hearing.

New subsections (d) and (e), containing requirements similar to §55.26(c), allows the opportunity for the filing of responses to both requests for reconsideration and requests for hearing. Under subsection (e), responses to hearing requests must address whether the requestor is an affected person and identify which issues raised in the hearing request involve disputed issues of fact raised during the comment period which are relevant and material to the decision on the application. This requirement is intended to facilitate the commission's ability to determine whether relevant and material issues of fact have been raised which may be referred to hearing pursuant to HB 801 requirements. New subsection (g) differs from §55.26(f) in that the new subsection provides that requestors who requested either reconsideration or hearing may file a reply to responses filed on their request no later than ten days before the commission agenda when their request will be considered, rather than six days before agenda. This time period has been changed because the commission will require additional time to consider all filings in order to specify the number and scope of issues, if any, to be referred to State Office of Administrative Hearings (SOAH) in accordance with HB 801.

Subsection (f) provides that responses to hearing requests should address the issues raised in the request. Under proposed §55.209(h), an application may be referred directly to SOAH only if the commission has specified or the parties have agreed to the number and scope of the issues subject to hearing and the maximum expected duration of the hearing. This limitation on the commission's ability to refer an application directly to SOAH is because of the HB 801 requirement that the commission limit the number and scope of issues before any referral to SOAH.

Proposed new §55.211, concerning Commission Action on Requests for Reconsideration and Hearing, is named to include requests for reconsideration, as well as requests for hearing. The proposed amended section describes actions the commission may take after evaluating requests for a contested case hearing. Subsection (a) provides that commission consideration of public comment, as well as consideration of requests for reconsideration and contested case hearing, are not proceedings subject to the APA. Because HB 801 now provides for an opportunity to file requests for reconsideration, subsection (b)(1) provides that the commission may grant or deny any request for reconsideration. Section 55.211(b)(2) remains unchanged and provides that if a hearing request does not meet the requirements of this chapter, the commission may act on the application. The equivalent of §55.27(a)(2), which states that the commission may refer an application to public meeting to develop comment before taking action on hearing requests, is not proposed to be included in light of the new statutory procedures now incorporated into Chapter 55, which provide for increased opportunities for public

comment before the time when hearing requests would be set for commission consideration.

Under proposed §55.211(b)(3), if a hearing request does meet the requirements of this chapter, the commission will further determine if the request raises disputed issues of fact. Under proposed §55.211(b)(3)(A), if disputed issues of fact are raised, the commission will limit the scope and number of issues to be referred to hearing, specify the maximum expected duration of the hearing and direct the chief clerk to refer the issue to the SOAH for a hearing. This provision implements new HB 801 requirements for referring applications to SOAH. Proposed §55.211(b)(3)(B) further provides that the commission may take action on the application if the request raises only disputed issues of law. Proposed §55.211(b)(4) allows commission discretion to refer a hearing request to SOAH on the sole issue of whether the hearing requestor is an affected person; however, SOAH may not proceed with a contested case hearing unless and until the number and scope of the issues subject to hearing and the maximum expected duration of the hearing have been specified by the commission or by the agreement of the parties because of the HB 801 requirement that the commission limit the number and scope of issues.

The proposed amendment eliminates the former §55.27(b)(2)(A) and (B) requirements that a hearing request from an affected person may be granted only when deemed reasonable and supported by competent evidence because these determinations are no longer required by §5.115(a), Texas Water Code. The proposed amendment further eliminates the requirement of existing §55.27(b)(3) to hold a hearing on air permits when requested by legislators representing the general area because this requirement has been removed from §382.056(g), Texas Health and Safety Code.

As required by HB 801, proposed §55.211(d)(1) retains the commission's ability to refer an application to SOAH where there is no valid hearing request, if the commission determines that a hearing would be in the public interest. New §55.211(d)(2) also allows the commission to refer an application for amendment, modification or renewal of an air permit to hearing based on a determination that the applicant's compliance history constitutes a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process. New §55.211(d)(3) further allows the commission to refer an application for renewal of a hazardous waste permit subject to proposed §305.631(a)(8) to hearing if the applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit. These provisions of §55.211(d) implement the provisions of HB 801 relating to the commission's ability to refer these matters to SOAH based on compliance history concerns, notwithstanding the fact that such renewals or modifications are not otherwise subject to contested case hearings under HB 801.

The existing §55.27(e), concerning a commission determination as to the applicability of the freeze rules of Chapter 80, Subchapter E, is not proposed to be included in this section. The freeze rules allow an administrative law judge to limit the issues and the scope of complex proceedings. In light of the commission's ability to limit the issues referred to hearing under §5.556, Texas Water Code and this proposed Chapter 55, former §55.27(e) is not needed. Under proposed §55.211(d), commission decisions on requests for reconsideration, requests for contested case hearing and the referral of an issue are interlocutory. If SOAH holds a hearing, a person whose hearing request was denied may attend the hearing and seek to be admitted as a party to the hearing. Likewise, the administrative law judge presiding over a contested case hearing referred from the commission may consider an issue which was not included in the commission's referral, subject to the restrictions of §80.4(c)(16). Proposed §55.211(f) provides for reconsideration of the executive director's decision, but specifies that a request for reconsideration is denied if the general counsel does not respond in writing within 20 days after the deadline for filing requests. Proposed §55.211(g), which continues to provide that a party has 20 days to file a motion for rehearing after being notified of the denial of a hearing request, now provides that a party or attorney of record is presumed notified on the third day after the date that the decision or order is mailed by first class mail, in conformity with §2001.42(c), Texas Government Code.

There is no need for a section that is equivalent to existing §55.31, concerning Determination of Reasonableness of Hearing Request, because §5.115(a), Texas Water Code, has been amended to no longer require a determination of reasonableness in taking action on hearing requests with respect to applications declared administratively complete on or after September 1, 1999.

Proposed new Subchapter G applies to applications other than applications under Texas Water Code, Chapter 26 or 27 and Texas Health and Safety Code, Chapter 361 or 382. Proposed §55.250 specifies that this subchapter will apply only to such applications declared administratively complete on or after September 1, 1999. The proposed subchapter retains the same comment and hearing request procedures as exist under current rules, with minor modifications.

Proposed §55.251, concerning Requests for Contested Case Hearing, Public Comment, incorporates the requirements of §55.21 except as noted below. The section does not include the provision that legislators from the general area of the proposed facility may request a contested case hearing for applications for certain air permits and authorizations because this provision has been eliminated from §382.056(g), Texas Health and Safety Code. Proposed §55.251(b) has deleted §55.21(b) references to comment periods for applications that will now be processed under subchapters D-F. Proposed §55.251(g) does not contain the §55.21(g) references to the fact that there is no right to a hearing regarding certain applications for amendment or modification of permits subject to Chapter 305, Subchapter D of this title because such applications will now be processed under proposed subchapters D-F, rather than this Subchapter G. Subsection (g) also provides that there is no right to a contested case hearing on an application for a weather modification permit or license to reflect the interpretation of law given in commission orders which have addressed hearing requests on these applications.

Proposed new §55.252, concerning Request by Group or Association, mirrors the requirements of §55.23.

Proposed §55.253, (Public Comment Processing), incorporates the requirements of §55.25, except as noted below. The requirements of §55.25(b) concerning public comment received on applications for hazardous waste permits, underground injection well permits and Texas Pollutant Discharge Elimination System (TPDES) permits are not included because such applications will now be processed under proposed Subchapters D-F, rather than this Subchapter G.

Proposed §55.254, concerning hearing request Processing, mirrors the requirements of 55.26.

Proposed §55.255, concerning Commission Action on Hearing Request, incorporates the requirements of §55.27 except as noted in this paragraph. Under the proposed section, the commission shall determine whether hearing requests have been filed which satisfy the requirements of this subchapter. However, unlike §55.27(a)(2), the proposed section does not provide the commission an option to refer an application to public meeting for development of public comment before taking action on an application because new procedures will allow ample opportunity for public comment before commission consideration of hearing requests. In specifying the circumstances when a hearing request from an affected person shall be granted by the commission, proposed §55.255(b)(2) has deleted the requirements of §55.27(b)(2)(A)-(B) that the request must be reasonable and supported by competent evidence. Under the HB 801 amendments to §5.115, Texas Water Code, determinations of reasonableness and competent evidence will no longer be required in determining the validity of hearing requests on applications declared administratively complete on or after September 1, 1999.

This subsection has also deleted the requirement that the commission grant a hearing request on an air quality permit by a legislator from the general area of the facility because this requirement has been eliminated from §382.056(g), Texas Health and Safety Code. Similar to §55.27(d), proposed §55.255(d) provides that the executive director shall determine the sufficiency of hearing requests on specified utility matters; however, proposed §55.255(d) requires the executive director to provide a list of disputed issues and specify the maximum expected duration of the hearing when making such a referral, in accordance with the requirements of revised §2003.047(e) of the APA .

Proposed new §55.256, concerning Determination of Affected Person, mirrors the language in §55.29.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 55, Request For Contested Case Hearings; Public Comment, would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed amendments establish comment periods and deadlines for public comment and specify procedures for responding to public comment. The proposed amendments also amend a legislator's ability to request a hearing on certain air applications and require a hearing request to list the relevant and material issues which form the basis of the request. The proposed amendments establish procedures regarding requests for Reconsideration or contested case hearing and establish procedures for cases referred to the State Office of Administrative Hearings. Finally, the proposed amendments reorganize some portions of the rules, and delete certain provisions in the rules that conflict with House Bill 801.

The proposed amendments affect permitting processes for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public will also be affected.

PUBLIC BENEFIT Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 55 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures regarding public comment on permit applications and requests for contested case hearings which will enhance public participation in the permitting processes of the TNRCC. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence.

SMALL BUSINESS ANALYSIS No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 55 of the rules because the amendments modify or clarify requirements currently in existence. Specifically, the proposed changes will not impose any additional requirements not already required by state or federal law and the proposed amendments do exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement.

REGULATORY IMPACT EVALUATION 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 the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

"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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with public comment on permit applications and requests for contested case hearing, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas

Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the procedures for requesting a contested case hearing. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC, §§281.40, et seq.).

PUBLIC HEARING A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039- AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239- 6814.

Subchapter A. Applicability and Definitions

30 TAC §55.1

STATUTORY AUTHORITY The new and amended sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates;§13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits;§382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the re-

view and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and amended sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.1. Applicability.

(a) Hearing [~~This chapter applies to hearing~~] requests and comments regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval that are declared administratively complete before September 1, 1999 are subject to Subchapters A - B of this chapter (relating to Applicability and Definitions and Hearing Requests, Public Comment). Requests for public meetings, requests for reconsideration and contested case hearing, and public comments regarding any application that is declared administratively complete on or after September 1, 1999 are subject to Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) This chapter does not apply to hearing requests related to:

(1) (No change.)

(2) applications for temporary or term permits for water rights; and [~~,~~]

(3) applications under Chapter 122 of this title (relating to Federal Operating Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9903976
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter B. Hearing Requests, Public Comment

30 TAC §55.21

STATUTORY AUTHORITY The amended section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates;§13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which

establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits;§382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.21. Requests for Contested Case Hearings, Public Comment.

(a) This subchapter applies to hearing requests and public comments regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval that is declared administratively complete before September 1, 1999. Requests for public meetings, requests for reconsideration and contested case hearing, and public comments regarding any application that is declared administratively complete on or after September 1, 1999 are subject to Subchapters D - G of this chapter (relating to Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) [~~(a)~~] The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant;

(4) affected persons, when authorized by law; and

(5) for applications for air quality permits, or standard exemptions required to provide public notice, a legislator from the general area of the proposed facility.

(c) [~~(b)~~] A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d) of this section.

(d) [~~(c)~~] A hearing request must substantially comply with the following:

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(e) [~~(d)~~] Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end 30 days after the last publication of the notice of application, except that the time period shall end:

(1) 60 days after the last publication of the notice of a Class 3 modification of a solid waste permit under the TSWDA;

(2) 30 days after last publication for a new permit or permit amendment under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(3) 15 days after the last publication for a permit renewal or standard exemption for a concrete plant under Chapter 116 of this title;

(4) ten days after the mailing of notice of the application for the transfer of a permit;

(5) no less than 30 days after the last publication of the notice of draft permit for an application for a municipal solid waste permit or to amend, extend, or renew such a permit;

(6) no less than 30 days after the last publication of the notice of draft permit for an application for an industrial waste facility permit or to amend, extend, or renew such a permit;

(7) no less than 45 days after the last publication of the notice of draft permit for an application for a hazardous waste facility permit or to amend, extend, or renew such a permit;

(8) no less than 30 days after the last publication of the notice of draft permit for an application for a wastewater discharge permit except as provided in paragraph (9) of this subsection;

(9) no less than ten days after the mailing of the notice of draft permit for an application to amend a wastewater discharge permit where the application is to improve the quality of waste authorized to be discharged and does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge;

(10) no less than 30 days after the last publication of the notice of draft permit for an application for an injection well permit or to amend, extend, or renew such a permit;

(11) no less than 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control); or

(12) the time specified in commission rules for other specific types of application.

(f) [~~(e)~~] Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(g) [~~(f)~~] Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.26 of this title (relating to Hearing Request Processing) or under §55.25 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing a hearing request.

(h) [~~(g)~~] There is no right to a hearing on an application for a minor amendment of a permit or a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9904009

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999

For further information, please call: (512) 239-1932

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Subchapter D. Applicability and Definitions

30 TAC §55.101, §55.103

STATUTORY AUTHORITY The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates;§13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits;§382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary

Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new and sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.101. Applicability.

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications).

(b) Subchapters D - G of this chapter apply to hearing requests regarding any application to issue, amend, modify, renew, or transfer a permit, license, registration, or other authorization or approval.

(c) Subchapters D - G of this chapter do not apply to hearing requests related to:

(1) applications for emergency or temporary orders;

(2) applications for temporary or term permits for water rights;

(3) applications under Chapter 122 of this title (relating to Federal Operating Permits);

(4) applications for initial issuance of voluntary emissions reduction permits under §382.0519 of the Texas Health and Safety Code; or

(5) applications for initial issuance of permits for electric generating facility permits under §39.264 of the Utilities Code;

(6) applications for weather modification licenses or permits under Chapter 18 of the Texas Water Code;

(7) air quality standard permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(8) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Exemptions from Permitting) except for concrete batch plants which are not contiguous or adjacent to a public works project.

(d) Subchapters D - F of this chapter do not apply to applications filed under Texas Water Code Chapter 13 and Texas Water Code §§11.036, 11.041, or 12.013. Subchapter G of this chapter applies to those applications. The executive director shall review hearing requests concerning applications filed under these provisions, determine the sufficiency of hearing requests under standards specified by law and may refer the application to the chief clerk for hearing processing.

§55.103. Definitions.

The following words and terms, when used in Subchapters D - G of this chapter (relating to Applicability and Definitions, Public Comment and Public Meetings, Requests for Reconsideration or Contested Case Hearing, and Requests for Contested Case Hearing and Public Comment on Certain Applications) shall have the following meanings. Affected person - A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. The determination of whether a person is affected shall be governed by §55.203 of this title (relating to Determination of Affected Person).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9903977
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter E. Public Comment and Public Meetings

30 TAC §§55.150, 55.152, 55.154, 55.156

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hear-

ings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.150. Applicability.

This subchapter applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

§55.152. Public Comment.

Public comment period. Public comments must be filed with the chief clerk within the time period specified in the notice. The public comment period shall end 30 days after the last publication of the Notice of Application and Preliminary Decision, except that the time period shall end:

(1) 30 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit) for a new permit or permit amendment under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);

(2) 15 days after the last publication of Notice of Receipt of Application and Intent to Obtain Permit under §39.418 of this title for a permit renewal under Chapter 116 of this title or a concrete batch plant exemption from permitting or permit by rule under Chapter 106 of this title (relating to Exemptions from Permitting);

(3) ten days after the mailing of notice of the application for the transfer of a permit;

(4) no less than 45 days after the last publication of the notice of Application and Preliminary Decision for an application for a hazardous waste facility permit or to amend, extend, or renew or to obtain a Class 3 Modification of such a permit;

(5) no less than 30 days after the mailing of the notice of draft production area authorization under Chapter 331 of this title (relating to Underground Injection Control); or

(6) the time specified in commission rules for other specific types of application.

§55.154. Public Meetings.

(a) A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the Administrative Procedure Act.

(b) During technical review of the application, the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility is located or proposed to be located in order to inform the public about the application and obtain public input.

(c) At any time, the executive director or Office of Public Assistance may hold public meetings. The executive director or Office of Public Assistance shall hold a public meeting when:

(1) there is a substantial or significant degree of public interest in an application,

(2) at the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(3) when required by law.

(d) The public comment period shall automatically be extended to the close of any public meeting. The applicant shall attend any public meeting held by the executive director or Office of Public Assistance. A tape recording or written transcript of the public meeting shall be made available to the public.

(e) Public notice of the meeting shall be given as required by commission rule.

§55.156. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the executive director, the public interest counsel, the director of the Office of Public Assistance, the director of the Alternative Dispute Resolution Office, and the applicant copies of all documents filed with the chief clerk in response to public notice of an application.

(b) If comments are received, the following procedures apply to the executive director:

(1) Before an application is approved, the executive director shall prepare a response to all timely, relevant and material, or significant public comment on:

(A) an air Notice of Receipt of Application and Intent to Obtain Permit if no hearing requests received; and

(B) the executive director's preliminary decision and draft permit. The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes.

(2) The executive director may call and conduct public meetings in response to public comment under §55.154 of this title (relating to Public Meetings).

(3) The executive director shall file the response to comments with the chief clerk within the shortest practical time after the comment period ends, not to exceed 60 days.

(c) After the executive director files the response to comments, the chief clerk shall mail (or otherwise transmit) the executive director's decision, the response to comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action;

(4) any person who timely filed a request for a public hearing in response to the Notice of Receipt of Application and Intent to Obtain a Permit for an air application;

(5) Office of Public Interest Counsel; and

(6) Office of Public Assistance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903978
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter F. Requests for Reconsideration or Contested Case Hearing

30 TAC §§55.200, 55.201, 55.203, 55.205, 55.206, 55.209, 55.211

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's ju-

risdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.200. Applicability.

This subchapter applies only to applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code Chapter, 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

§55.201. Requests for Reconsideration or Contested Case Hearing.

(a) The deadline for requesting reconsideration or contested case hearing shall be 20 days after the chief clerk mails the executive director's decision, the response to comments and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing.

(b) The following may request a contested case hearing under this chapter:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(c) A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section.

(d) A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and where possible, fax number, of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) except for hearing requests filed in response to Notice of Receipt of Application and Intent to Obtain Permit for air applications, list all issues of fact that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute; and

(5) provide any other information specified in the public notice of application.

(e) Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section. The request should also contain the name, address, daytime telephone

number, and where possible, fax number, of the person who files the request. The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered.

(f) Documents that are filed with the chief clerk that comment on an application but do not request reconsideration or a contested case hearing shall be treated as public comment.

(g) Late filed public comments, requests for reconsideration or contested case hearing.

(1) A request for reconsideration or contested case hearing or public comment shall be processed under §55.254 of this title (relating to Hearing Request Processing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline. The chief clerk shall accept a request for reconsideration or contested case hearing, or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed to file a request for reconsideration and contested case hearing.

(h) Any person who did not timely file public comment, request for reconsideration or contested case hearing, did not participate in the public meeting held under this subsection, and did not participate in the public hearing held under Chapter 80 of this title (relating to Contested Case Hearings) may file a motion for rehearing under §50.119 of this title (relating to Notice of Commission Action, Motion for Rehearing) or §55.255 of this title (relating to Commission Action on Hearing Request) or §80.272 of this title (relating to Motion for Rehearing) or may file a motion for reconsideration under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Decision) only to the extent of the changes from the draft permit to the final permit decision.

(i) Applications for which there is no right to a hearing include:

(1) a minor amendment or minor modification of a permit under Chapter 305, Subchapter D of this chapter (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(2) a Class 1 or Class 2 modification of a permit under Chapter 305, Subchapter D of this chapter;

(3) any air permit amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. The commission may hold a contested case hearing if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations;

(4) hazardous waste permit renewals under §305.631(a)(8) of this title (relating to Renewals).

(5) an application, under Chapter 26, Texas Water Code, to renew or amend a permit if:

(A) the applicant is not applying to:

(i) increase significantly the quantity of waste authorized to be discharged; or

(ii) change materially the pattern or place of discharge;

(B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

(C) any required opportunity for public meeting has been given;

(D) consultation and response to all timely received and significant public comment; and

(E) determination that the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

§55.203. Determination of Affected Person.

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

(c) All factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health, safety, and use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

§55.205. Request by Group or Association.

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and reply shall be filed according to the procedure in §55.254 of this title (relating to Hearing Request Processing).

§55.206. Determination of Relevant and Material Issues.

For any application, a relevant issue shall be one which is, at a minimum, within the commission's jurisdiction and within the scope of the application being considered. A material issue is one that relates to an ultimate statutory finding required to be considered for

the commission to grant an application and shall be one which, at a minimum, is encompassed within the draft permit terms or would require a change to the draft permit.

§55.209. Processing Requests for Reconsideration and Contested Case Hearing.

(a) This section and §55.211 of this title (relating to Commission Action on Request for Reconsideration or Contested Case Hearing) apply only to requests for reconsideration and contested case hearing that are timely filed.

(b) After the final deadline to submit requests for reconsideration or contested case hearing, the chief clerk shall process any requests for reconsideration or hearing by both:

(1) referring the application and requests for reconsideration or contested case hearing to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the requestors; and

(2) scheduling the hearing request for a commission meeting or, if only a request for reconsideration is submitted, scheduling the request for reconsideration only if the general counsel directs the chief clerk to do so. The chief clerk should try to schedule the requests for a commission meeting that will be held approximately 40 days after the final deadline for timely filed requests for reconsideration or contested case hearing.

(c) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the requestors at least 30 days before the first meeting at which the commission considers the requests. The chief clerk shall explain how to participate in the commission decision, describe alternative dispute resolution under commission rules, and explain the requirements of this chapter.

(d) The executive director, the public interest counsel, and the applicant may submit written responses to the requests no later than 20 days before the commission meeting at which the commission will evaluate the requests. Responses shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, the director of the Office of Public Assistance, the applicant, and any requestors.

(e) Responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;

(2) which issues raised in the hearing request are disputed;

(3) whether the dispute involves questions of fact or of law;

(4) whether the issues were raised during the public comment period;

(5) whether the issues are relevant and material to the decision on the application; and

(6) a maximum expected duration for the contested case hearing.

(f) Responses to requests for reconsideration should address the issues raised in the request.

(g) The requestors may submit written replies to a response no later than ten days before the commission meeting at which the commission will evaluate the request for reconsideration and contested case hearing. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

(h) The executive director or the applicant may file a request with the chief clerk that the application be sent to SOAH for a hearing on the application if either the commission has specified or the parties have agreed to the number and scope of the issues and maximum expected duration of the hearing.

§55.211. Commission Action on Requests for Reconsideration and Contested Case Hearing.

(a) Commission consideration of public comment, executive director's response to comment, or request for reconsideration or contested case hearing is not itself a contested cases subject to the APA.

(b) The commission will evaluate public comment, executive director's response to comment, or requests for reconsideration or contested case hearing and may:

(1) grant or deny the request for reconsideration;

(2) determine that a hearing request does not meet the requirements of this subchapter, and act on the application; or

(3) determine that a hearing request meets the requirements of this subchapter and:

(A) if the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the decision on the application:

(i) specify the number and scope of the issues;

(ii) specify the maximum expected duration for the hearing; and

(iii) direct the chief clerk to refer the issues to SOAH for a hearing; or

(B) if the request raises only disputed issues of law, make a decision on the issues and act on the application; or

(4) the commission may direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the requestor is an affected person. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the APA. If the commission determines that a requestor is an affected person, SOAH may proceed with a contested case hearing on the application if either the commission has specified, or the parties have agreed to, the number and scope of the issues and maximum expected duration of the hearing.

(c) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to Requests for Contested Case Hearings);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law.

(d) Notwithstanding subsections (a) and (b), the commission may refer an application to SOAH if the commission determines that:

(1) a hearing would be in the public interest; or

(2) for an application for an amendment, modification or renewal under Texas Health and Safety Code, §382.0518 or §382.055 that involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute

a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(3) for an application for renewal of a hazardous waste permit, subject to §305.631(a)(8) of this title (relating to Renewal), an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit.

(e) If a hearing is granted, a decision on a request for reconsideration or contested case hearing or referral of an issue is an interlocutory decision on the validity of the request or issue and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties) or the issues referred to SOAH under this section. A judge may consider additional issues beyond the list referred by the commission as provided by §80.4(c)(16) of this title (relating to Judges). A person whose request for reconsideration or contested case hearing or whose request for referral of an issue for hearing is denied may still seek to be admitted as a party under §80.109 of this title if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(f) the commission may consider a request for reconsideration at a commission meeting. If the general counsel does not respond in writing to a request for reconsideration of the executive director's decision within 20 days after the deadline for submitting a request for reconsideration, the request is denied.

(g) If a request for reconsideration or contested case hearing is denied, §80.271 of this title (relating to Motion for Rehearing) applies. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person is notified of the commission's final decision or order on the application. A person is presumed to have been notified on the third day after the date that the decision or order is mailed by first class mail. If the motion is denied under §80.271 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §361.321, or §382.032.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903979
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter G. Requests for Contested Case Hearing and Public Comment on Certain Applications

30 TAC §§55.250-55.256

STATUTORY AUTHORITY

The new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406 which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the THSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641 which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commis-

sion's authority to adopt rules regarding notice, public comment and hearings; §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional, relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC, and §2001.42 and §2003.0437 of the TGC.

§55.250. Applicability.

This subchapter applies to applications filed with the commission except applications filed under Texas Water Code, Chapter 26 or 27 or Texas Health and Safety Code, Chapter 361 or 382. Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this subchapter.

§55.251. Requests for Contested Case Hearing, Public Comment.

(a) The following may request a contested case hearing under this section:

(1) the commission;

(2) the executive director;

(3) the applicant; and

(4) affected persons, when authorized by law.

(b) A request for a contested case hearing by an affected person must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (d) of this section.

(c) A hearing request must substantially comply with the following:

(1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

(d) Deadline for hearing requests; public comment period. A hearing request must be filed with the chief clerk within the time period specified in the notice. The public comment period shall also end at the end of this time period. The time period shall end 30 days after the last publication of the notice of application, except that the time period shall end:

(1) ten days after the mailing of notice of the application for the transfer of a permit; and

(2) the time specified in commission rules for other specific types of application.

(e) Documents that are filed with the chief clerk that comment on an application but that do not request a hearing will be treated as public comment.

(f) Late filed hearing requests and public comment, extensions.

(1) A hearing request or public comment shall be processed under §55.254 of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing) or under §55.156 of this title (relating to Public Comment Processing), respectively, if it is filed by the deadline for hearing requests and public comment. The chief clerk shall accept a hearing request or public comment that is filed after the deadline but the chief clerk shall not process it. The chief clerk shall place the late documents in the file for the application.

(2) The commission may extend the time allowed for filing a hearing request.

(g) There is no right to a hearing on an application for a weather modification license or permit under Chapter 18 of the Texas Water Code.

§55.252. Request by Group or Association.

(a) A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

(b) The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group or association meets the requirements of subsection (a) of this section. The request and response shall be filed according to the procedure in §55.254 of this title (relating to Hearing Request Processing).

§55.253. Public Comment Processing.

(a) The chief clerk shall deliver or mail to the applicant, the executive director, the public interest counsel, Office of Public Assistance, Alternative Dispute Resolution Office, copies of all

documents timely filed with the chief clerk in response to public notice of an application.

(b) The commission may designate an agency office to process public comment under this subsection.

(1) The Office of Public Assistance may evaluate and respond to public comment, other than timely hearing requests, when appropriate.

(A) If the application and timely hearing requests are considered by the commission, the designated office should prepare any response to public comment no later than ten days before the commission meeting at which the commission will evaluate the hearing requests. The response shall be made available to the public and filed with the chief clerk

(B) If the application is approved by the executive director under Chapter 50, Subchapter G of this title (relating to Action by the Executive Director), any response to public comment should be made no later than the time of the executive director's action on the application.

(2) The Office of Public Assistance shall hold a public meeting when there is a significant degree of public interest or when otherwise appropriate to assure adequate public participation. A public meeting is intended for the taking of public comment, and is not a contested case proceeding under the APA. The applicant shall attend any such public meeting held by the designated office. When the designated office holds a public meeting it shall respond to public comment either by giving an immediate oral response or by preparing a written response. The response shall be made available to the public.

§55.254. Hearing Request Processing.

(a) The requirements in this section and §55.255 of this title (relating to Commission Action on Hearing Request) apply only to hearing requests that are filed within the time period specified in §55.251(d) of this title (relating to Requests for Public Hearing, Public Comment).

(b) The executive director shall file a statement with the chief clerk indicating that technical review of the application is complete. The executive director may file the statement with the chief clerk either before or after public notice of the application is issued.

(c) After a hearing request is filed and the executive director has filed a statement that technical review of the application is complete, the chief clerk shall process the hearing request by both:

(1) referring the application and hearing request to the alternative dispute resolution director. The alternative dispute resolution director shall try to resolve any dispute between the applicant and the person making the request for hearing; and

(2) scheduling the hearing request for a commission meeting. The chief clerk should try to schedule the request for a commission meeting that will be held approximately 40 days after the later of the following:

(A) the deadline to request a hearing specified in the public notice of the application; or

(B) the date the executive director filed the statement that technical review is complete.

(d) The chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making a timely hearing request at least 30 days before the first meeting at which the commission considers the request. The chief clerk shall explain how the person may submit public comment to the executive director, describe alternative dispute resolution under commission rules, explain that the agency may hold a public meeting, and explain the requirements of this chapter.

(e) The executive director, the public interest counsel, and the applicant may submit written responses to the hearing request no later than 20 days before the commission meeting at which the commission will evaluate the hearing request. Responses shall be filed with the chief clerk, and served on the same day to the applicant, the executive director, the public interest counsel, the Office of Public Assistance, and any persons filing hearing requests.

(f) The person who filed the hearing request may submit a written reply to a response no later than six days before the scheduled commission meeting at which the commission will evaluate the hearing request. A reply may also contain additional information responding to the letter by the chief clerk required by subsection (d) of this section. A reply shall be filed with the chief clerk, and served on the same day to the executive director, the public interest counsel, and the applicant.

(g) The executive director or the applicant may file a request with the chief clerk that the application be sent directly to SOAH for a hearing on the application. If a request is filed under this subsection, the commission's scheduled consideration of the hearing request will be canceled.

§55.255. Commission Action on Hearing Request.

(a) The determination of the validity of a hearing request is not, in itself, a contested case subject to the APA. The commission will evaluate the hearing request at the scheduled commission meeting, and may:

(1) determine that a hearing request does not meet the requirements of this subchapter, and act on the application;

(2) determine that a hearing request meets the requirements of this subchapter, and direct the chief clerk to refer the application to SOAH for a hearing; or

(3) direct the chief clerk to refer the hearing request to SOAH. The referral may specify that SOAH should prepare a recommendation on the sole question of whether the request meets the requirements of this subchapter. The referral may also direct SOAH to proceed with a hearing on the application if the judge finds that a hearing request meets the requirements of this chapter. If the commission refers the hearing request to SOAH it shall be processed as a contested case under the Administrative Procedure Act, Government Code, Chapter 2001.

(b) A request for a contested case hearing shall be granted if the request is:

(1) made by the applicant or the executive director;

(2) made by an affected person if the request:

(A) complies with the requirements of §55.251 of this title (relating to Requests for Contested Case Hearing);

(B) is timely filed with the chief clerk; and

(C) is pursuant to a right to hearing authorized by law;

(c) The commission may refer an application to SOAH if there is no hearing request complying with this subchapter, if the commission determines that a hearing would be in the public interest.

(d) The executive director shall determine the sufficiency of hearing requests on utility matters listed in this subsection. If

a hearing request meets the requirements in this subsection, the executive director shall refer the hearing request and a list of disputed issues to the chief clerk. The executive director shall review hearing requests concerning the following matters and shall use the specified standards for reviewing the requests shall provide a list of disputed issues and shall specify the date by which the administrative law judge is expected to complete the proceeding and provide a proposal for decision to the commission The term utility matters does not include air permit applications for electric generating facility permits under §39.264 of the Texas Utilities Code.

(1) If a utility files a statement of intent to change rates under Texas Water Code, §13.187, the executive director shall evaluate any complaints or hearing requests received and determine if a hearing is required.

(2) If a person files an application or petition concerning a certificate of convenience and necessity under Texas Water Code, Chapter 13, Subchapter G, the executive director shall evaluate any complaints or hearing requests and determine if a hearing is required.

(3) If a person files an appeal under Texas Water Code, §13.043, invoking the commission's appellate jurisdiction over water, sewer, or drainage rates, the executive director shall evaluate the appeal and determine if a hearing is required.

(e) A decision on a hearing request is an interlocutory decision on the validity of the request and is not binding on the issue of designation of parties under §80.109 of this title (relating to Designation of Parties). A person whose hearing request is denied may still seek to be admitted as a party §80.109 of this title (relating to Designation of Parties) if any hearing request is granted on an application. Failure to seek party status shall be deemed a withdrawal of a person's hearing request.

(f) If a hearing request is denied, the procedures contained in §80.272 of this title (relating to Motion for Rehearing) apply. A motion for rehearing in such a case must be filed no earlier than, and no more than 20 days after, the date the person or his attorney of record is notified of the commission's final decision or order on the application. If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable), the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §401.341.

§55.256. Determination of Affected Person.

(a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest

(b) Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.

(c) All relevant factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health, safety, and use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903980
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Chapter 80. Contested Case Hearings

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§80.1, 80.3, 80.5, 80.17, 80.105, 80.109, 80.137, 80.251, and 80.271 and new §§80.4, 80.6, 80.152, 80.252, and 80.272, concerning contested case hearings. The commission also proposes the repeal of §80.7, §80.111, and all of Subchapter E, including §§80.201, 80.203, 80.205, 80.207, 80.209, 80.213, 80.215.

BACKGROUND

The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7, SB 211, SB 766, and SB 1308, 76th Legislature (1999). The proposed amendments and new sections are intended to establish and clarify the applicability of notice provisions and to provide avenues for public participation in the permitting process for water, waste, and air applications. These changes also update notice rules for air quality permit amendments. The revised public comment and contested case hearing process set out in HB 801 is also incorporated. This proposal represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Also, certain rules in a portion of the proposal will constitute a revision to the state implementation plan (SIP) for air quality permitting actions. Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130- 116.137 are proposed to be deleted from the SIP. Concurrently with this rulemaking, the commission is proposing the review of Chapter 80, concerning Contested Case Hearings, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

OVERVIEW OF House Bill (HB) 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to the Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under

Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided for under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is required to prepare responses to relevant and material public comment. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment, or opportunity for hearing necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The purpose of the proposed changes to Chapter 80 is to modify commission procedures governing contested case hearings to conform with new requirements in HB 801. The most substantive changes in this chapter occur in Subchapter A, General Rules, and in Subchapter D, Discovery.

The commission proposes to maintain most of the current procedures for applications that are declared administratively complete before September 1, 1999, but to change some procedures for applications declared administratively complete on or after September 1, 1999. In order to improve readability and consistency in its rules, the commission has proposed the following new sections, which parallel existing rule sections and incorporate HB 801 requirements: §§80.4, 80.6, 80.152, 80.252, and 80.272.

Proposed amendments to §80.105 and §80.109 and the proposed repeal of §80.111 are made to separate the public comment process from the contested case hearing process.

Some changes to Chapter 80 are not directly related to SB 801 implementation. Proposed language in §80.4(c)(5) prohibits the alignment of the executive director and public interest counsel with any other party in contested case hearings. The proposed repeal of §80.7 regarding the substitution of judges is based on existing overlap between commission and State Office of Administrative Hearings (SOAH) rules. The commission's proposed repeal of Subchapter E is not directly related to HB 801 implementation, but the lack of use of Subchapter E, in addition to equivalent coverage in other HB 801 changes made the subchapter unnecessary. In addition, the change to the notification requirements under proposed rule §80.272(b) incorporate provisions in SB 211.

SECTION BY SECTION ANALYSIS

The commission proposes to amend §80.1 to reflect the proposed changes in applicability to existing rules and new proposed sections of Chapter 80. The proposed amendment to §80.3 specifies that the section applies to applications declared administratively complete before September 1, 1999, in new §80.3(a)(1). The section has been renumbered to allow for this amendment.

Proposed new §80.4, relating to SOAH judges and their authority, mirrors existing §80.3, except that it specifies that it applies to applications declared administratively complete on or after September 1, 1999, in §80.4(a)(1). Additionally, §80.4(c)(5) prohibits the judge from aligning the executive director and the public interest counsel with any other party. This provision is not required by HB 801, but is being incorporated because the executive director and public interest counsel are statutory parties and need to maintain independent judgment in contested case hearings. Proposed §80.4(c)(16) allows a judge to consider issues in addition to those provided on the commission's list of disputed issues referred to SOAH under Chapter 55. However, any additional issue considered by a judge must be material and supported by evidence. Moreover, before considering an additional issue, §80.4(c)(16)(C) requires a judicial finding that there is a good reason for the failure of an interested person to supply available information regarding that issue during the public comment period. New §80.4(c)(17)(A) and (B) give judges the authority to extend the proceeding if they determine that not doing so would deprive a party of due process or some other constitutional right, or if the parties to the proceeding agree to the extension. Sections 80.4(c)(16) and 80.4(c)(17) are based on requirements in HB 801.

The commission proposes to amend §80.5 to specify that this section applies to any permit applications declared administratively complete before September 1, 1999. Proposed §80.6 mirrors existing §80.5, except that it includes language in §80.6(a) that specifies the section applies to all permit applications declared administratively complete on or after September 1, 1999, and it makes other changes based on HB 801. New §80.6(b)(5) would expand the responsibilities of the Chief Clerk in referring cases to SOAH to include sending the commission's list of disputed issues and its determination on the maximum expected duration of the hearing, as required under Chapter 55. Section 80.6(b) does not include language requiring that the commission provide a list of issues or areas that must be addressed by the judge because those requirements are included in proposed Chapter 55. New §80.6(c) maintains the provision, from §80.5(b), that the EDPR shall serve as the list of issues for an enforcement case.

The commission proposes the repeal of §80.7 regarding the substitution of judges. This section is no longer necessary because SOAH has existing authority to substitute judges under its rules in 1 TAC §155.17(c).

Section 80.17 is proposed to be amended by making grammatical changes to §80.17(a) and by adding a phrase allowing the commission to dictate the burden of proof.

The commission has not proposed to significantly amend §80.17 (Burden of Proof) or §80.137 (Summary Disposition) even though the new procedures created by HB 801 may have made changes in an applicant's burden of proof. Apparently, most issues surrounding the application's and draft permit's compliance with commission rules and standards of protectiveness are uncontestable at the contested case hearing, because the commission will have limited the number and scope of issues. However, HB 801 did not explicitly amend the Administrative Procedure Act regarding the content of the administrative record on appeal or the application of the substantial evidence test to the appeal of the permit issuance. The relationship is not clear between the record in the contested case as defined by Texas Government Code, §2001.060, the public comments and the executive director's response to comments, and the final commission order which may incorporate findings both on the issues not submitted to SOAH for hearing and also issues decided in the contested case hearing. The commission invites comments on the following questions and issues:

1. When the commission certifies only a limited number of issues to SOAH after reviewing the public comments, executive director response to comments, and the hearing requests, HB 801 appears to relieve the applicant of any burden of presenting evidence on any other issues arising out of the application. Should §80.17 or §80.137 be amended to reflect this new procedure? Is there a way to use the Summary Disposition procedure to generate a ruling by the judge on the non-contested portion of the application and draft permit? If parties do not object to the absence of issues during the contested case hearing, can there be a presumption that the applicant has met his burden of proof on all uncontested issues and that adequate evidence exists to support findings to that effect?

2. Is the possible absence of evidence in the record on those issues attackable on appeal under the substantial evidence standard of review? Are the application, technical review documents, the public comments and executive director's response to those comments part of the agency administrative record on appeal?

3. Can only those issues litigated at SOAH be the subject of a motion for rehearing or may parties raise issues that the commission either refused to certify or that parties neglected to request to be certified? At what point in the process is or should the commission's refusal to certify an issue become appealable? Should the commission's order certifying a matter to SOAH contain findings of fact and conclusions of law on those matters that will not be part of the contested case hearing or should that occur only after the PFD is considered by the commission?

4. Are there provisions that could be added to the commission rules that might provide certainty to parties and guidance to the judiciary on these questions concerning judicial review of orders issued under the new HB 801 procedures?

In order to incorporate changes to public comment procedures required by HB 801 and to maintain consistency with proposed changes to Chapter 55, the commission is proposing the amendment or repeal of certain sections of Chapter 80. The commission proposes to amend §80.105, to change how SOAH conducts preliminary hearings, by repealing the requirement that judges accept public commentary at the preliminary hearing. In addition, the proposed amendment to §80.109 would remove language in subsection (a) which allows a judge to take written or oral comments from persons who are not parties to the proceeding. Finally, the commission proposes to repeal current §80.111 to clarify the separation between the public comment and contested case hearing processes. Section 80.111 allows persons not designated as parties to register protests or make comments orally or in writing. Under the proposed public comment procedures in Chapter 55, the commission anticipates that all public comment should be received during the designated public comment period so that it will be properly considered by the commissioners when making determinations on permit actions and hearing requests. Once the commission refers the matter to SOAH for a contested case hearing, the public comment period is over and there is no further opportunity to providing comment on the record.

The commission also seeks comments on whether to repeal §80.127(f), which specifically applies to contested case hearings on permits under the Resource Conservation and Recovery Act, the Texas Injection Well Act, and the Texas Pollutant Discharge Elimination System. Subsection (f) requires that all public comment on permit applications received by the commission during the comment period and the executive director's responses to comments be admitted into the evidentiary record. This subsection is proposed for repeal given the approach followed in these rules to clarify the separation between public comment and the contested case hearing process.

The commission proposes to amend §80.137(c), by allowing the record of the commission's consideration of public comment, requests for reconsideration, and hearing requests to be used to support summary disposition on uncontested matters. This may allow parties to use the Summary Disposition procedure to generate a ruling by the judge on the non-contested portion of the application and draft permit. The discussion above provides the reasons for this change.

Proposed new §80.152 defines the scope and level of discovery for applications declared administratively complete on or after September 1, 1999. Proposed §80.152(a) and (b) reflect the commission's determination that HB 801 amendments to Texas Government Code, §2003.047 apply to all contested case hearings, not just those hearings for permits issued under Texas Water Code, Chapters 26 and 27; and to permits under Texas Health and Safety Code, Chapters 361 and 382.

Proposed §80.152(a) specifies that discovery may be conducted on any matter reasonably calculated to lead to admissible evidence regarding an issue on the commission's list of disputed issues referred to SOAH or any issue the judge agrees to consider under §80.4(c)(16). Discovery would include the production of documents reviewed or relied on in the preparation of application materials or in the selection of the site and documents related to the ownership of the applicant or the owner or operator of the facility or proposed facility. Section 6 of HB 801, which amends Texas Government Code, §2003.047, could be read to limit the production of documents only to those specifically listed in §2003.047(g)(2). This would mean the applicant could not request documents from the protestants and the protestants could not obtain documents relating to the applicant's compliance history. The commission believes that the better interpretation of §2003.047(g) is that the listed documents are unquestionably discoverable, but that production of other documents may also be required.

Proposed §80.152(b) defines the level of discovery for contested case hearings. The commission proposes that all contested case hearings shall be Level 3 cases, as that term is defined in Texas Rules of Civil Procedure (TRCP) §190.4, with the exception that oral depositions and interrogatories should be limited as set out in TRCP §190.3. The commission believes that this level of discovery satisfies the rule regarding maximum expected duration of the hearing in proposed new §50.115, while maintaining a certain amount of flexibility necessary for the diversity of commission proceedings. Using Level 3 allows the judge to limit discovery to Level 1 or Level 2 if it is appropriate.

The commission proposes the repeal of Subchapter E which relates to freezing the process. This proposed change is not directly related to HB 801. However, these rules have not been used and the commission has determined that they will not be needed for future proceedings, since many of the concerns the rules were designed to deal with are addressed by HB 801.

Section 80.251 is proposed to be amended to specify that any application declared administratively complete before September 1, 1999 is subject to this section, while an application declared administratively complete on or after September 1, 1999 is subject to §80.252. The existing subsections in §80.251 have been reordered to accommodate proposed subsection (a). Proposed new §80.252 generally mirrors the provisions in §80.251, except that it applies to applications declared administratively complete on or after September 1, 1999. Section 80.252(c) does not include language in existing §80.251(b) which refers to a judge's recommended proposed changes to the draft permit in response to public comment for certain permitting contested case hearings. This language is not included in §80.252(c), because of the changes to public comment procedures required by HB 801 and incorporated in proposed changes to Chapter 55.

The commission proposes to amend §80.271 to specify that any applications declared administratively complete before September 1, 1999 are subject to §80.271. The existing subsections in §80.271 have been reordered to accommodate proposed subsection (a).

The commission proposes new §80.272 to implement SB 211, which adds 3 days to the date on which a party is presumed to have received mailed notice of a decision or order. New §80.272 applies to any applications declared administratively complete on or after September 1, 1999. The rule retains the requirement that a Motion for Rehearing (MFR) be filed within 20 days of notification of the commission decision or order. Under proposed §80.272(b), the commission presumes a party or attorney of record has received notice on the third day after the date the decision or order is mailed.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 80, Contested Case Hearings, would implement certain provisions contained in HB 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC. The proposed amendments would also implement portions of SB 211, an act relating to the notice of a decision in an administrative hearing.

The proposed amendments to Chapter 80 modify commission procedures governing contested case hearings to conform with new requirements in HB 801 and SB 211. Specifically, the substantive changes occur in the General Rules for contested case hearings (Subchapter A), Hearing Procedures (Subchapter C), Discovery (Subchapter D), and Post Hearing Procedures (Subchapter F). The commission proposes to repeal the current Subchapter E, Freezing the Process.

The proposed amendments affect contested case hearing procedures for air, water, and waste programs. It is anticipated that all applicants for permits under Chapters 26, Water Quality Control; Chapter 27, Injection Wells, of the Texas Water Code; applicants for permits under Chapter 361, Solid Waste Disposal Act; and certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations may be affected by the proposed amendments to the rules. Persons involved in the permitting process including members of the general public may also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 80 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC, increased standardization in the application process, and more efficient contested case hearings.

The purpose of the proposed amendments is to establish procedures for contested case hearings associated with permit applications. The proposed amendments are intended to comply with HB 801 to enhance public participation in the permitting processes of the TNRCC. No significant additional costs are anticipated to any person associated with the proposed amendments because the amendments do not create new regulatory burdens but only modify or clarify procedures currently in existence or establish procedures required by state law.

SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 80 of the rules. The proposed amendments modify or clarify requirements currently in existence and new procedures established by HB 801 are not anticipated to add a significant economic burden to existing procedures. Specifically, the proposed changes will not impose any significant additional requirements not already required by state or federal law and 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.

REGULATORY IMPACT EVALUATION

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 the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

"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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with contested case hearings, the rulemaking does not meet the definition of a "major environmental rule."

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, Chapter 5, Subchapter M, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, Chapter 5, Subchapter M and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting contested case hearings as well as specific procedures for hearings. The rule would also consolidate already existing notice procedures for some of the air quality permitting programs, correct, clarify, and/or update the air quality permit amendment process, requirements relating to sign posting for concrete batch plants, and clarification of requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules rather than substantive requirements.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log Number 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801.

Subchapter A. General Rules

30 TAC §§80.1, 80.3, 80.4–80.6, 80.17

STATUTORY AUTHORITY

The amendments and new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates;

§13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §82.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments and new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

§80.1. Applicability and Purpose.

Except as provided in this chapter, this [~~This~~] chapter applies to and provides procedures for all contested case hearings and other hearings held by SOAH.

§80.3. Judges.

(a) Applicability and delegation.

(1) Any permit application that is declared administratively complete before September 1, 1999 is subject to this section.

(2) The commission delegates to SOAH the authority to conduct hearings designated by the commission.

(b)-(c) (No change.)

§80.4. Judges.

(a) Applicability and delegation.

(1) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(2) The commission delegates to SOAH the authority to conduct hearings designated by the commis- sion.

(b) The chief administrative law judge will assign judges to hearings. When more than one judge is assigned to a hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(c) Judges shall have authority to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the commission;

(4) rule on motions and on the admissibility of evidence and amendments to pleadings;

(5) designate and align parties and establish the order for presentation of evidence, except that the executive director and the public interest counsel shall not be aligned with any other party;

(6) examine and administer oaths to witnesses;

(7) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents;

(8) authorize the taking of depositions and compel other forms of discovery;

(9) set prehearing conferences and issue prehearing orders;

(10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(11) limit testimony to matters under the commission's jurisdiction;

(12) continue any hearing from time to time and from place to place;

(13) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(14) impose appropriate sanctions;

(15) issue interim rate orders under Texas Water Code, Chapter 13;

(16) consider additional issues beyond the list referred by the commission when:

(A) the issues are material;

(B) the issues are supported by evidence; and

(C) there are good reasons for the failure to supply available information regarding the issues during the public comment period;

(17) extend the proceeding beyond the expected completion date if:

(A) the judge determines that failure to grant an extension would deprive a party of due process or another constitutional right; and

(B) by agreement of the parties;

(18) exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

§80.5. Referral to SOAH.

(a) Any permit application that is declared administratively complete before September 1, 1999 is subject to this section. [~~When a case is referred to SOAH, the chief clerk shall:~~]

(1)-(4) (No change.)

(b) (No change.)

§80.6. Referral to SOAH.

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) When a case is referred to SOAH, the chief clerk shall:

(1) file with SOAH a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate;

(2) coordinate with SOAH to determine a time and place for hearing;

(3) issue public notice of the hearing as required by law and commission rules;

(4) send a copy of the chief clerk's case file; and

(5) send the commission's list of disputed issues and maximum expected duration of the hearing to SOAH.

(c) In an enforcement case, the executive director's petition or Executive Director Preliminary Report shall serve as the list of issues or areas that must be addressed.

§80.17. Burden of Proof.

(a) The burden of proof is on the moving party by a preponderance of the evidence, except [~~Except~~] as provided in subsections (b)-(d) of this section, or otherwise provided by the commission [~~the burden of proof is on the moving party by a preponderance of the evidence~~].

(b)-(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903968
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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30 TAC §80.7

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal

solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §5.102, 5.103, and 5.105, and §2001.004 of the TGC.

§80.7. Substitution of Judges.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter C. Hearing Procedures

30 TAC §§80.105, 80.109, 80.137

STATUTORY AUTHORITY

The amendments are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its respon-

sibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

§80.105. Preliminary Hearings.

(a) (No change.)

(b) If jurisdiction is established, the judge shall:

(1) [~~accept public commentary and~~] name the parties;

(2)-(3) (No change.)

(c)-(d) (No change.)

§80.109. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no other person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed. [~~At the discretion of the judge, persons who are not parties may be permitted to make or file statements.~~]

(b)-(d) (No change.)

§80.137. Summary Disposition.

(a)-(b) (No change.)

(c) Summary disposition. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response. The record of the commission's consideration and disposition of public comment, requests for reconsideration, and request for contested case hearing may be used to support summary disposition on uncontested matters.

(d)-(j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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30 TAC §80.111

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which

establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeal implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 5.102, 5.103, and 5.105, and §2001.004 of TGC.

§80.111. Persons Not Parties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239–1932

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Subchapter D. Discovery

30 TAC §80.152

STATUTORY AUTHORITY

The new section is proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed new section implements TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

§80.152. Scope and Level of Discovery.

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) The scope of permissible discovery in contested case hearings is limited to any matter reasonably calculated to lead to the discovery of admissible evidence regarding any issue referred to the administrative law judge by the commission or that the administrative law judge has agreed to consider; including, but not limited to, the production of documents:

(1) reviewed or relied on in preparing application materials or selecting the site of the proposed facility; or

(2) relating to the ownership of the applicant or the owner or operator of the facility or proposed facility.

(c) The level of discovery for all contested case hearings shall be Level 3 under Texas Rules of Civil Procedure (TRCP) 190.4, except that the administrative law judge shall limit oral depositions and interrogatories as set out in TRCP 190.3.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter E. Freezing the Process

30 TAC §§80.201, 80.203, 80.205, 80.207, 80.209, 80.213, 80.215

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which

establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed repeals implement TWC, §§5.102, 5.103, and 5.105, and §2001.004 of TGC.

§80.201. Applicability.

§80.203. Procedures for Executive Director and Public Interest Counsel.

§80.205. First Preliminary Hearing.

§80.207. Discovery.

§80.209. Freezing the Process.

§80.213. Limiting the Number of Witnesses.

§80.215. Additional Testimony.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter F. Post Hearing Procedures

30 TAC §§80.251, 80.252, 80.271, 80.272

STATUTORY AUTHORITY

The amendments and new sections are proposed under TWC, Chapter 5, Subchapter M, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, and HSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.013, which establishes the commission's authority over various statutory programs; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction, including calling and holding hearings and issuing orders; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases; §5.406, which establishes the commission's authority to adopt rules regarding consolidated permitting; §7.002, which establishes the commission's enforcement authority; §11.133, which authorizes the commission to hold hearings for water rights permits; §12.013, which establishes the commission's

authority to determine water rates; §13.401, which establishes the commission's general authority over water and sewer utilities; §26.011, which establishes the commission's authority over water quality in the state; §26.023, which establishes the commission's authority for water quality standards; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge, and §27.019, which establishes the commission's authority to adopt rules concerning underground injection control.

Additionally, relevant sections of the HSC include: §361.011, which establishes the commission's jurisdiction over municipal solid waste; §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste; §361.0641, which establishes the requirement for notice to state senator and representative regarding solid and hazardous waste permit applications; §361.0665, which establishes notice requirements for municipal solid waste permits; §361.067, which establishes requirements for notice to other governmental agencies; §361.079, which establishes the commission's authority to adopt rules regarding receipt of permit application and hearing procedures for hazardous industrial solid waste facilities and solid waste facilities; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establish the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §382.05191, which establishes the commission's authority to establish rules regarding notice for Voluntary Emissions Reduction Permits; §382.05192, which establishes the commission's authority to adopt rules relating to the review and renewal of Voluntary Emissions Reduction Permits; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants; §382.062, which establishes the commission's authority to adopt rules for certain air authorizations; §401.011, which establishes the commission's authority over radioactive substances; §401.051, which establishes the commission's authority to adopt rules for the control of radiation; §401.114, which establishes the requirement for the commission to provide notice and opportunity for hearings regarding permits for radioactive substances; and §401.412, which establishes the commission's authority concerning licenses for radioactive substance disposal.

Additional relevant sections are Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; §2001.42, which provides a time period for presumed notification by a state agency; and §2003.047, which provides the commission with the authority to determine the disputed issues and adopt rules for the level of discovery for contested case hearings; and §39.264 of the Texas Utilities Code.

The proposed amendments and new sections implement TWC, §§5.551, 5.552, 5.553, 5.554, 5.555, 5.556, 26.023, and 26.028, and §§361.088, 382.051, 382.05191, 382.05192, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the HSC, and §§2001.42 and 2003.0437 of the TGC.

§80.251. Judge's Proposal for Decision.

(a) Any application that is declared administratively complete before September 1, 1999 is subject to this section. Any application that is declared administratively complete on or after September 1, 1999 is subject to §80.252 of this title (relating to Judge's Proposal for Decision).

(b) [~~(a)~~] Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by certified mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension, the commission's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30 day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(c) [~~(b)~~] Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal and, in underground injection control, Texas Pollutant Discharge Elimination System, and Resource Conservation and Recovery Act permitting cases for which the commission's permitting authority is authorized by the federal government, proposed changes to the draft permit recommended by the judge in response to public comment, as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(d) [~~(c)~~] Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

§80.252. Judge's Proposal for Decision.

(a) Any permit application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) Judge's proposal for decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by certified

mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension, the commission's failure to grant the requested extension, nor the judge's failure to file the proposal within the 30-day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(c) Proposal for decision: adverse to a party. A proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon the judge's request, the judge shall include with the proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments.

(d) Proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

§80.271. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.

(b) [~~(a)~~] Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) [~~(b)~~] Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail.

(d) [~~(c)~~] Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) [~~(d)~~] Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the decision or order.

(f) [~~(e)~~] Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

§80.272. Motion for Rehearing.

(a) Any decision in an administrative hearing before the commission that occurs on or after September 1, 1999 is subject to this section.

(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:

(1) the name and representative capacity of the person filing the motion;

(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;

(3) the date of the decision or order; and

(4) a concise statement of each allegation of error.

(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order. A party or attorney of record is presumed to have been notified on the date that the decision or order is mailed by first-class mail.

(d) Ruling on motion for rehearing.

(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.

(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the decision or order.

(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1932

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Chapter 101. General Air Quality Rules

30 TAC §§101.1, 101.2, 101.10, 101.28, 101.30

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §101.1, concerning Definitions; §101.2, concerning Multiple Air Contaminant Sources or Properties; §101.10, concerning Emissions Inventory Requirements; and §101.30, concerning Conformity of General Federal and State Actions to State Implementation Plans. The commission also proposes a new §101.28, concerning Stringency Determination for Federal Operating Permits. The proposed amendments to §§101.1, 101.10, and 101.30, and the new 101.28 are amendments to the State Implementation Plan (SIP).

EXPLANATION OF PROPOSED RULE

This proposal would change the title of Chapter 101 from "General Rules" to "General Air Quality Rules." The proposed action removes the following definitions from §101.1, because they are either duplicated in other chapters of Title 30 of the Texas Administrative Code (TAC) or used in rules that have been previously repealed: "act," "alcohol substitutes (used in offset lithographic printing)," "alcohol (used in offset lithographic printing)," "architectural coating," "article" (as in provision of law), "automotive basecoat/clearcoat system (used in vehicle refinishing (body shops))" and the related equations, "automotive precoat (used in vehicle refinishing (body shops))," automotive pretreatment (used in vehicle refinishing (body shops))," "automotive primer or primer surfacers (used in vehicle refinishing (body shops))," "automotive sealers (used in vehicle refinishing (body shops))," "automotive specialty coatings (used in vehicle refinishing (body shops))," "automotive three stage system (used in vehicle refinishing (body shops))" and the related equations, "automotive wipe-down solutions (used in vehicle refinishing (body shops))," "bakery oven," "batch (used in offset lithographic printing)," "capture efficiency," "cleaning solution (used in offset lithographic printing)," "clear coat (used in wood parts and products coating)," "clear sealers (used in wood parts and products coating)," "coating application system," "coating line," "consumer-solvent products," "drum," "extreme performance coating," "final repair coat (used in wood parts and products coating)," "flexographic printing process," "forage," "fountain solution (used in offset lithographic printing)," "gasoline bulk plant," "gasoline terminal," "hand-held lawn and garden and utility equipment," "inorganic fluoride compounds," "lithography (used in offset lithographic printing)," "low-bake coatings," "natural gas/gasoline processing," "non-flat architectural coating," "non-heatset (used in offset lithographic printing)," "offset lithography," "opaque ground coats and enamels (used in wood parts and products coating)," "packaging rotogravure printing," "pail (metal)," "polymer and resin manufacturing process," "population equivalent," "pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)" and the related equation, "pounds of volatile organic compounds (VOC) per gallon of solids" and the related equation, "printing line," "publication rotogravure printing," "rotogravure printing," "semitransparent spray stains and toners (used in wood parts and products coating)," "semitransparent wiping and glazing stains (used in wood parts and products coating)," "shellacs (used in wood parts and products coating)," "surface coating processes," Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation," "Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process," "Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation," "Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit," "Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process," "synthetic organic chemical manufacturing process" and the related Table II, "tank-truck tank," "topcoat (used in wood parts and products coating)," "transport vessel," "vapor balance system," "vapor recovery system," "vapor-tight," "varnishes (used in wood parts and products coating)," "vehicle refinishing (body shops)," and "wash coat (used in wood parts and products coating)."

Because they are used in multiple Chapters of 30 TAC, the following definitions are being moved from the existing §101.30, concerning Conformity of General Federal Actions to State Implementation Plans, to §101.1: "criteria pollutant or standard," "maintenance plan," "metropolitan planning organization (MPO)," and "National Ambient Air Quality Standards (NAAQS)." The definitions of "maintenance area" and "NEPA" are proposed for deletion from §101.30 because they are duplicated in Chapter 101 and Chapter 3, respectively. Section 101.30 is also being amended to correct obsolete acronyms and update references to Chapter 114, concerning Control of Air Pollution from Motor Vehicles.

The proposal amends the definition of "incinerator" to exclude combustion devices burning clean scrap wood as an exclusive fuel for heat recovery. Because waste wood is considered a solid waste, this amendment will allow operators of wood-fired boilers to operate exclusively under regulations applicable to boilers. The commission has examined this practice through permitting applications and determined that it is safe and produces low levels of nonhazardous emissions. This change is based on analysis of comments received during quadrennial rules review as required by the General Appropriations Act, Article IX, §167 of the 75th Legislature, 1997.

The commission also proposes to amend the definition of "nonattainment" area to reflect the federal reclassification of the Dallas/Ft. Worth area (DFW) from a "moderate" to a "serious" nonattainment area for ozone.

This proposal would modify the definition of "new source" to state that a new source is one which commenced construction or was modified after March 5, 1972. This definition is consistent with the definition of "new source" in 30 TAC Chapter 116.

The proposed amendments to §101.1 would add certain compounds to the list of those excluded from the definition of

"volatile organic compound" in response to an identical action by the United States Environmental Protection Agency (EPA). The excluded compounds are weak photochemical reactors and are not significant contributors to the formation of ozone, and it is, therefore, appropriate to exclude them from regulations limiting emissions of VOCs. The compounds include: difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC- 236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3- hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane, 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3- heptafluoropropane, 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane, 2-(ethoxydifluoromethyl)- 1,1,1,2,3,3,3-heptafluoropropane, and methyl acetate.

To simplify and reduce the number of definitions, the definition of "net ground level concentration" would be amended to include the concepts of "upwind level" and "downwind level," which would be deleted from §101.1. The definition of "control system" would be amended to include devices and combinations of devices used to control air contaminants. Subsequently, the definitions of "control device" and "system or device" would be deleted.

The changes to §101.1, concerning Definitions, would also add new definitions of "flare" and "vapor combustor" because these terms are used in multiple chapters of 30 TAC. These definitions are intended to explain the nature of these devices so that operational requirements are clearly understood by source operators. The definitions in §101.1 would be numbered according to *Texas Register* requirements and corrected for obsolete or incorrect administrative references and use of acronyms.

The General Appropriations Act, Article IX, §167 of the 75th Legislature, 1997 requires that state agencies review their rules every four years to determine the continued need for the rules. During that review, agencies also receive comments on recommended amendments. In response to the quadrennial rule review of Chapter 101, the commission is proposing amendments to §101.2, Multiple Air Contaminant Sources or Properties. Subsection 101.2(b) allows two or more property owners or operators to petition the commission to have their properties designated as a single property for purposes of demonstrating compliance with commission regulations and the control of air emissions.

The proposed amendments to §101.2(b) would authorize the executive director to approve petitions for single property designation. However, consistent with commission policy regarding action which must be taken by the commission rather than the executive director, the proposed rule prohibits the executive director from acting on the petition if new issues that require interpretation of commission policy are raised. Action by the executive director would be subject to a motion for reconsideration under the commission's rules.

It has been the policy of the commission concerning single property designations to allow the combination of properties that are contiguous except for public right-of-ways provided all emission points are located within a single portion of the property that is not crossed by a public right-of-way. The proposed amendments to §101.2(b)(2)(A) clarify the rule language to allow the continued application of this policy. The commission specifically seeks comments on this policy. Additionally, the commission is soliciting comments on the benefits and detriments of single property designation as it is currently implemented.

The amendments would require that all persons with ownership interests in real property, including leaseholders, within the property must consent to the agreement. A single property designation allows more than one property to be considered as one for purposes of determining compliance with commission rules, including impacts from emissions. Therefore, the commission needs to be informed that all owners, including those who do not emit air contaminants, understand how the commission will evaluate emissions from the emission points within the single property boundary. This requirement is consistent with the commission's rules which allow an operator to act on behalf of owners in air permitting matters in 30 TAC Chapter 116. Petitioners would be required to provide air account numbers to facilitate processing the petition and to allow the maintenance of records by the commission. The amendments to §101.2(b) would also require that the written agreement of parties to a single property designation be a sworn document. Although this has not been a requirement in the existing rule, it has been the practice of the petitioners since the rule was revised in 1995. This is consistent with commission practice of applicants providing sworn applications for emergency orders, as well as affidavits required by law. Finally, §101.2(b) would be reorganized so that all requirements concerning contents of a petition are more easily read.

The proposal would add a new subsection (c) stating that all references to property or properties include all interests in real property, including leasehold interests, to clarify that this condition applies to subsection §101.2(a), as well as to subsection §101.2(b). This is consistent with the proposal to add language requiring that all property owners within the property must consent to the agreement.

The amendments to §101.10, concerning Emissions Inventory Requirements, would clarify and restructure the section. The commission also proposes specific changes to enhance the ability of the staff to compile and quality assure emission inventories. The amendments, which represent current practice of the commission, codify existing statutory authority to develop an emissions inventory (EI) under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.014 and §382.016, to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. Emission inventories are needed to develop control strategies.

The proposal includes language in §101.10(a) that would allow EI staff to request data related to EI numbers. The staff requires this information periodically so that they may do quality assurance to EI reports. Examples of this type of data are the dimensions of storage tanks, fuel consumption, or other basic source operational characteristics used to verify emission calculations. The commission is currently requesting and receiving this information on individual sources as required.

The proposed amendment to §101.10(a)(2) would include language that allows the commission to collect data to make a determination if a source would be classified as major under the federal definition. The proposed §101.10(a)(3) would allow the

commission to collect data on potential to emit any air contaminant. Emission inventory information is collected under Titles I and V of the FCAA for the purpose of collecting required data to submit to EPA to develop control strategies for SIP and rule development.

The commission requires emission information on all types of sources point, area, and mobile to plan effective control strategies for achieving national air quality standards. Considered collectively, small businesses such as gasoline stations, dry cleaners, and other solvent users are significant sources of air emissions and are classified as area sources. Under TCAA, §382.014, the commission may require emission information from persons whose activities cause emissions of air contaminants and, under TCAA, §382.016, may require persons to reasonably make and maintain records on the measuring and monitoring of emissions. The current wording in §101.10 does not specifically extend this data collection authority to area sources, and this proposal would add language to §101.10(a)(4) for this purpose. Many of these small businesses may not have the large technical staff that can devote time to compiling inventories. The commission currently samples these sources through postal surveys which the business operator completes and returns. These samples are used as a representation of similar businesses, and the commission expands the results using population data for an specified geographic area to compile an inventory for the particular business type. The questions on the survey concern material use, operating hours, and other normal business records. The commission estimates that completing the form could require two to four hours and offers technical aid to business owners in completing the form and will complete the form upon request.

The amendments to §101.10(b)(1) contain requirements for sources in regions that are in violation of a National Ambient Air Quality Standard (NAAQS) to report typical daily emissions of carbon monoxide and ozone precursor gases during the winter and summer months, respectively. This data is used to evaluate individual exceedances of the NAAQS in a limited geographic area and identify sources that may have a stronger influence on air monitoring data. The commission is currently collecting this data and is making this proposal primarily to codify statutory authority into the rules. Evaluation of this data will be used to develop a more effective and equitable control strategy. Section 101.10(b)(1) would also allow the commission to collect data on any other contaminant subject to a NAAQS, HAPs identified in Federal Clean Air Act (FCAA), §112(b), or other contaminants as requested. Finally, this paragraph would clarify that emissions shall be reported as they enter the atmosphere.

The requirement to report allowable emissions would be dropped from §101.10(b)(2), as the commission staff currently enters this data into the records of an account based on the permit. Section 101.10(b)(2)(A) would limit reports on changes of operating conditions of a source to those changes that cause an increase or reduction of five tons per year or 5.0% of total emissions, whichever is greater. The commission proposes this change to eliminate the need to report insignificant changes in emissions.

Section 101.10(c) states that actual measurement of emissions with a continuous emission monitoring system (CEMS) is the preferred method of submitting data. The commission proposes to modify this subsection to require submission of calculations representative of emission producing processes where CEMS data is not available. This data would be used to perform quality assurance and verify the accuracy of the reported emissions. The proposed rulemaking also omits obsolete language that refers to inventory requirements due in 1992 and 1993.

The commission is proposing a new §101.28 to allow compliance with a single set of requirements in federal operating permits where there are multiple, redundant, or contradicting applicable or state-only requirements under 30 TAC Chapter 122, concerning Federal Operating Permits. The commission believes that the authority required for streamlining multiple, duplicative, redundant, and/or contradictory applicable and state-only requirements already exists under §122.148(c)(1)(B) for federal operating permits. However, the new §101.28 would clarify the commission's current authority to streamline requirements for those cases when the SIP may appear to prohibit the use of alternative monitoring and testing requirements to assure compliance with an applicable or state-only requirement.

Federal operating permit sites subject to the multiple, duplicative, redundant, and/or contradictory applicable or state-only requirements (emission limitations, monitoring, recordkeeping, reporting, and/or testing) may request that the commission establish a single set of streamlined and enforceable conditions in the permit. If approved, these streamlined conditions would be covered by a permit shield as allowed by §122.148 of this title (concerning Permit Shield). The permit shield states that compliance with the streamlined requirements is deemed compliance with the subsumed applicable and state-only requirements.

For example, an applicant with an emission unit subject to two emission limitations for the same pollutant may be required to install separate monitoring instrumentation and submit separate monitoring reports for each, even though one monitor can effectively assure compliance with both emission limitations. Furthermore, the recordkeeping and reporting associated with the unnecessary instrumentation may create an administrative burden for both the facility and the commission without an associated gain in compliance assurance. In this example, the federal operating permit could be used to streamline these requirements into a single set of enforceable permit conditions that would assure compliance with both emission limitations. This action does not make the rules less stringent, but assures that the final requirement is as stringent as or equivalent to those subsumed requirements.

EPA published guidance for streamlining these multiple requirements in EPA White Paper Number 2 (WP2) for Improved Implementation of the Part 70 Operating Permits Program (March 5, 1996). In this paper, EPA encouraged the permitting authorities to allow the use of the federal operating permits to streamline these multiple requirements. EPA stated that the legal basis for establishing a more stringent or equivalent requirement is FCAA, §504(a).

EPA notes that §504(a) does not require a permit to contain repetitious terms and conditions of applicable requirements when another applicable requirement could be used to assure compliance with the streamlined requirement. EPA has recently revised 40 CFR Part 70.6(a)(3)(i)(A) (62 Federal Register 54900, 54946, October 22, 1997) to reflect this legal interpretation: "...If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing procedures provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the

monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining."

While the revised 40 CFR 70 and EPA's interpretation of §504(a) are helpful, EPA recognized that there may be SIP limitations that would prohibit streamlining of multiple requirements. In WP2, EPA notes that streamlining could be limited in instances where an applicable requirement requires specific monitoring or testing requirements to be used as a means of determining compliance. EPA believes that §504(a) overrides such limitations.

In addition, EPA recognized that streamlining cannot result in any requirement relying on a state- only test method or an alternative to an EPA-approved test method unless EPA, or the permitting authority acting as EPA's delegated agency, approves the alternative as an appropriate method for purposes of complying with the streamlined standard. The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if it is a term or condition of a federal operating permit and EPA has not objected to the permit as required by §122.350 of this title (concerning EPA Review). The executive director has been delegated authority to issue and reuse federal operating permits under 30 TAC Chapter 122 and stringency determinations will be part of this process.

The commission would include language in §101.28 to accommodate EPA's WP2 guidance and ensure that unnecessary or redundant regulations and processes are eliminated whenever possible.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed amendments to Chapter 101 are in effect, there will be no significant fiscal implications for state government or local governments as a result of administration or enforcement of the proposed amendments. Area EI data from small businesses is currently processed by existing EI staff. Data submitted in accordance with the proposed change to EI will not increase appreciably and are anticipated to be processed using current staff. The commission does not anticipate a need for additional staff to implement new §101.28 at this time. The other proposed changes to Chapter 101 will not require additional staff and are not anticipated to have a significant effect on the commission or units of local government.

PUBLIC BENEFIT

Mr. Orozco also determined that for each of the first five years the proposed changes to Chapter 101 are in effect, the anticipated public benefit as a result of administration of and compliance with the proposed amendments will be the improved organization of the chapter, clarification of definitions, deletion of duplicate definitions, and codification of the authority in the TCAA to collect EI data, to enforce federal air pollution standards, and to clarify to whom various rules apply. There are no new costs associated with this proposal. The amendments to the EI section are codifications of existing statutory authority and are the current practice of the commission.

SMALL BUSINESS ANALYSIS

The commission does not anticipate any negative effect to small business resulting from the change in the definition of "incinerator." It is anticipated that this change in definition will have a positive effect on small businesses by eliminating the possibility of dual regulation of a single device. The proposed change differentiates the primary intent and design differences of boilers and incinerators with the intent of applying either boiler or incinerator regulations to a particular device and eliminating application of both boiler and incinerator regulations to a single device.

The change to the definition of "nonattainment area" is an administrative change. Any city or area that is reclassified by federal rules as a "nonattainment area" will be addressed separately and specifically. The change in this rule is definitional only, and therefore has no anticipated fiscal impact on small business.

The exclusion of certain compounds from the definition of "volatile organic compound" removes those compounds from the potential for dual regulation. While some of these compounds may still be regulated as HAPs, their low photochemical reactivity does not justify their regulation as a VOC.

The proposed amendments to §101.2 concern actions that are voluntary by source or property owners. The combination of sources and properties is not initiated by the commission but by the owners. Therefore, the amendments will not have an undesired or negative effect on small business.

Small businesses are frequently classified as area sources of air pollution. "Area source" is a term for a group of similar activities that, taken collectively, produce a significant amount of air pollution. Although TCAA, §382.014 and §382.016 provide authority for data collection from area sources, current rules do not include this authority. The proposed EI section includes authority to collect certain data from area sources. To produce an inventory from area sources, the staff typically surveys a representative sample of businesses and then scales the results upward with population data or business employment data to evaluate specific areas. Currently, small business data is collected through a survey form that requests data regarding rates of use of raw materials, hours of operation, and other information that is readily available in typical business records. Small business data is currently collected from Dallas/Ft. Worth, Houston, El Paso, and Beaumont businesses because these four areas do not meet ozone emission standards. The proposed EI section would amend current rules to require that sources, particularly small businesses, submit data that would allow the EI staff to compile data related to measurement of emissions as required by TCAA. The commission currently requests this information from small businesses, chosen from selected source categories, once a year. Less than 1.0% of emission-related businesses are surveyed in a particular area. The proposed rules do not require small businesses to generate new EI data, analyze existing data, or impose new requirements. They do codify the existing broad statutory authority of the commission under TCAA, 382.014. The commission estimates that owners of businesses who are requested to complete a survey form require two to four hours to complete the task. The cost is thought to be minor because only a few small businesses are surveyed once a year and no additional data is required beyond that normally kept in the course of business. At the request of the businesses, the EI staff complete the survey form using information supplied by the business.

The new §101.28, Stringency Determination for Federal Operating Permits, will allow industries subject to multiple applicable

requirements and state-only requirements to comply with a single set of requirements. This amendment does not add new regulatory burdens and will allow affected industries to avoid these overlapping requirements.

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 this rulemaking is not subject to §2001.0225 because the proposed amendments to this rule do not meet the definition of a "major environmental rule" as defined in the act. Specifically, none of the proposed amendments is anticipated to affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The amendment of the definition of "incinerator" will allow operators of wood-fired boilers to operate exclusively under regulations concerning boilers. The intent of the amendment is to clarify under which set of regulations a specific device will fall and eliminate the possibility of dual regulation. No new regulatory requirements are proposed.

The exclusion of certain compounds from the definition of "volatile organic compound" removes those compounds from regulation as VOCs. The compounds removed from the definition are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. The deletion of duplicate definitions and the clarification of others such as "new source" or "control device" do not have any regulatory effect. The new definitions of "flare" and "vapor combustor" do not add any new regulatory requirements.

The proposed amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. The amendments would help clarify the legal responsibility of all parties to a request for single property designation. Because the request for such a designation is voluntary, there are no new expenses compelled by these amendments.

The proposed amendments to §101.10 codify the statutory authority of the commission to develop an EI found in the TCAA. An area source is a group of smaller, similar sources that, taken collectively, becomes a significant source of air emissions. This section is also promulgated under the authority of the TCAA, which authorizes the commission to prescribe reasonable requirements to make and maintain records on the measuring and monitoring of emissions. The section would require selected small businesses to submit the survey forms from which the commission prepares and quality assures an EI. This is current practice with the commission, and the amendments to language previously in this section are primarily an expression and clarification of existing statutory authority, particularly regarding area sources of pollution. Many small businesses would be categorized as an area source. The practice of the commission is to survey a small sample of representative businesses on material use, hours of operation, and other factors affecting emissions and then scale the results upward according to area business employment statistics. The survey should take from two to four hours to compile the information and complete the form. The EI staff will complete the form, on request, using information supplied by the business. The scale of the effect is small because only 1.0% or less of small businesses are sampled in any year. Therefore, these amendments which are codification of existing authority and practice do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health of the state or a sector of the state.

The new §101.28, concerning Stringency Determination for Federal Operating Permits, allows sources subject to multiple regulatory requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This simplification of regulatory requirements is not anticipated to impose a greater degree of stringency except at the permit holder's request.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of the deletion of terms defined elsewhere in the commission rules is to remove duplicate definitions. Additionally, certain definitions, such as "new source" and "control device," are clarified without adding new regulatory requirements. These actions do not burden private real property and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the change in the definition of "incinerator" is to clarify under which set of regulations a specific fuel burning device will fall. The change excludes wood-fired boilers from regulation as incinerators and removes the chance of dual regulation as both boiler and incinerator. No new regulatory requirements are proposed. This action does not burden private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of changing the definition of "nonattainment area" in this amendment is to comply with the current federal definition and classifications of serious nonattainment areas. In this amendment, the definition change of "nonattainment" is an administrative change that has no effect on private real property. Reclassifications of areas as "nonattainment areas" will be addressed by rules and amendments which specifically address those areas. This definition change does not burden private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of excluding certain compounds from the definition of "volatile organic compound" is to remove those compounds from redundant regulation as VOCs. The compounds removed from the definitions in this amendment are still regulated as air contaminants in other rules and are evaluated during the review of operating permits. This action does not burden private real property, does not restrict the owner's right to the property and does not constitute a taking under Texas Government Code, Chapter 2007.

The proposed amendments to §101.2 concern actions that are voluntary by property owners. The combination of sources and properties is not initiated by the commission but by the owners. Therefore, the amendments do not burden private real property, do not restrict the owner's right to the property and do not constitute a taking under Texas Government Code, Chapter 2007.

The purpose of the proposed amendments to §101.10 is to codify the existing statutory authority in the TCAA to develop an EI. The new section is also promulgated under the authority

of the TCAA, which authorizes the commission to prescribe requirements to make and maintain records on the measuring and monitoring of emissions. The commission uses EIs primarily in areas of the state that fail to meet the NAAQS and is a required element of a SIP. SIPs are regulatory tools used by the states at the direction of the federal government to control air emissions in areas that fail to meet the NAAQS. EI data is also collected under the mandate of 40 CFR §51.114, which states that each SIP must "contain a detailed inventory of emissions from point and area sources," and "identify the sources of the data used in the projection of emissions." The inventory is used to identify sources of emissions and their relative contribution to total emissions in the area. From this information, the commission develops a control strategy for the most effective application of controls. Because the NAAQS is a standard meant to protect public health, the commission views activities related to attaining or protecting the NAAQS as a public health issue. The EI amendments are codification of the commission's existing statutory authority under TCAA, §382.014. The actions specified in the amendments are the current practice of the commission, and the amendments do not add any new regulatory requirements. This action does not restrict a right to private, real property and does not meet the definition of a "taking" under Texas Government Code, §2007.002(5).

The purpose of the new §101.28 is to allow sources subject to multiple requirements in their operating permits to request from the executive director a single set of equivalent or more stringent requirements that meet the conditions of the subsumed requirements. This is a simplification of regulatory requirements and will not impose a greater degree of stringency except at the permit holder's request. Because a possible greater degree of stringency may be taken only at the initiative of the permit holder, this action does not restrict a right to private real property and does not constitute a taking under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission has determined that this rulemaking relates to an action or actions subject to the 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 at 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. For the actions in the proposed amendments to 30 TAC Chapter 101, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q) which requires the commission to protect air quality in coastal areas. The commission has determined that the specific actions detailed in previous explanations under the headings "Explanation of Proposed Rules," "Public Benefit," "Small Business Analysis," "Draft Regulatory Impact Analysis," and "Takings Impact Analysis" will not allow any new emissions to the atmosphere.

PUBLIC HEARING

A public hearing on this proposal will be held August 12, 1999, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99017- 101-AI. Comments must be received by 5:00 p.m., August 16, 1999. For further information, please contact Beecher Cameron, of the Regulation Development Section, at (512) 239-1495, or Alan Henderson, of the Regulation Development Section, at (512) 239-1510.

STATUTORY AUTHORITY

The new section and amendments are proposed under the Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the state's air; §382.014, which authorizes the commission to require persons whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of air contaminants; §382.016, which authorizes the commission to prescribe reasonable monitoring requirements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.054, concerning Federal Operating Permits; §382.0541, concerning Administration and Enforcement of Federal Operating Permit, which authorizes the commission to administer and enforce federal operating permits; §382.0542, concerning Issuance of Federal Operating Permit; Appeal of Delay, which requires the commission to grant a federal operating permit within 18 months of application; §382.061, which authorizes the commission to delegate powers to the executive director; and Texas Water Code, §5.122, which authorizes the commission to delegate uncontested matters to the executive director.

§101.1. Definitions.

Unless specifically defined in the TCAA [~~Texas Clean Air Act (TCAA)~~] or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(2) (No change.)

[~~(3) Act - The Texas Clean Air Act, the Texas Health and Safety Code, Chapter 382.~~]

[~~(4) Alcohol substitutes (used in offset lithographic printing) Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution. Some additives are used to reduce the surface tension of water; others (especially in the newspaper industry) are added to prevent piling (ink buildup).~~]

[(5) Alcohol (used in offset lithographic printing)-For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449 of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12 (which includes methanol, ethanol, propanol, and butanol).]

(3)[(6)] Ambient air-That portion of the atmosphere, external to buildings, to which the general public has access.

[(7) Architectural coating-Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes. Excluded from this definition are paints sold in containers of one quart or less; paints used on roadways, pavement, swimming pools, and similar surfaces; aerosol spray products; and concentrated color additives.]

[(8) Article-When followed by a number, "Article" refers to provisions of the law as codified in Texas Civil Statutes, 1925, as amended.]

[(9) Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops))-A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The volatile organic compound (VOC) content of a basecoat (bc)/clearcoat (cc) system shall be calculated according to the following formula:
Figure: 30 TAC §101.1(9)]

[(10) Automotive precoat (used in vehicle refinishing (body shops))-Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.]

[(11) Automotive pretreatment (used in vehicle refinishing (body shops))-Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion.]

[(12) Automotive primer or primer surfacers (used in vehicle refinishing (body shops))-Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.]

[(13) Automotive sealers (used in vehicle refinishing (body shops))-Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.]

[(14) Automotive specialty coatings (used in vehicle refinishing (body shops))-Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti- glare/safety coatings.]

[(15) Automotive three-stage system (used in vehicle refinishing (body shops))-A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The volatile organic compound (VOC) content of a three-stage system shall be calculated according to the following formula:
Figure: 30 TAC §101.1(15)]

[(16) Automotive wipe-down solutions (used in vehicle refinishing (body shops))-Any solution used for cleaning and surface preparation.]

(4)[(17)] Background-Background concentration, the level of air contaminants that cannot be reduced by controlling emissions from man-made sources. It is determined by measuring levels in non-urban areas.

[(18) Bakery oven-An oven for baking bread or any other yeast-leavened products.]

[(19) Batch (used in offset lithographic printing)-A supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.]

[(20) Capture efficiency-The amount of volatile organic compounds (VOC) collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC.]

(5)[(21)] Capture system-All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

(6)[(22)] Captured facility-A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(7)[(23)] Carbon adsorber-An add-on control device which uses activated carbon to adsorb volatile organic compounds (VOC) from a gas stream.

(8)[(24)] Carbon adsorption system-A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

[(25) Cleaning solution (used in offset lithographic printing)-Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.]

[(26) Clear coat (used in wood parts and products coating)-A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.]

[(27) Clear sealers (used in wood parts and products coating)-Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.]

(9)[(28)] Coating-A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

[(29) Coating application system-Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters].

[(30) Coating line-An operation consisting of a series of one or more coating application systems and including associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.]

(10)[(31)] Cold solvent cleaning-A batch process that uses liquid solvent to remove soils from the surfaces of metal parts or to

dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(11) [~~(32)~~] Combustion unit-Any boiler plant, furnace, incinerator, flare, engine, or other device or system used to oxidize solid, liquid, or gaseous fuels, but excluding motors and engines used in propelling land, water, and air vehicles.

(12)[~~(33)~~] Commercial hazardous waste management facility-Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility which disposes only waste generated on-site or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(13)[~~(34)~~] Commercial incinerator-An incinerator used to dispose of waste material from retail and wholesale trade establishments. (See incinerator.)

(14)[~~(35)~~] Commercial medical waste incinerator-A facility that accepts for incineration medical waste generated outside the property boundaries of the facility.

(15)[~~(36)~~] Component-A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves, which has the potential to leak VOCs [~~volatile organic compounds~~].

(16)[~~(37)~~] Condensate-Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

(17)[~~(38)~~] Construction-demolition waste-Waste resulting from construction or demolition projects.

[~~(39) Consumer-solvent products-Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.~~]

[~~(40) Control device-Equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.~~]

[~~(41) Control system-A combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of air pollutants to the ambient air.~~]

(18) Control system or control device-Any part, chemical, machine, equipment, contrivance, or combination of same, used to destroy, eliminate, reduce, or control the emission of air contaminants to the atmosphere.

(19)[~~(42)~~] Conveyorized degreasing-A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of metal parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(20) Criteria Pollutant or Standard - Any pollutant for which there is a National Ambient Air Quality Standard established under 40 Code of Federal Regulations (CFR) Part 50.

(21)[~~(43)~~] Custody transfer-The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

(22)[~~(44)~~] De minimis impact-A change in ground level concentration of an air contaminant as a result of the operation of any new major stationary source or of the operation of any existing source which has undergone a major modification, which does not exceed the following specified amounts.
Figure: 30 TAC §101.1(22)

(23)[~~(45)~~] Domestic wastes-The garbage and rubbish normally resulting from the functions of life within a residence.

[~~(46) Downwind level-The concentration of air contaminants from a source or sources on a property as measured at or beyond the property boundary.~~]

[~~(47) Drum (metal)-Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).~~]

(24)[~~(48)~~] Emissions banking-A system for recording emissions reduction credits so they may be used or transferred for future use.

(25)[~~(49)~~] Emissions reduction credit (ERC)-Any stationary source emissions reduction which has been banked in accordance with §101.29 of this title (relating to Emission Credit [~~Emissions~~] Banking and Trading).

(26)[~~(50)~~] Emissions reduction credit certificate-The certificate issued by the executive director which indicates the amount of qualified reduction available for use as offsets and the length of time the reduction is eligible for use.

(27)[~~(51)~~] Emissions unit-Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA [~~Federal Clean Air Act~~].

(28)[~~(52)~~] Exempt solvent-Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compound.

(29)[~~(53)~~] External floating roof-A cover or roof in an open top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

[~~(54) Extreme performance coating-A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.~~]

(30)[~~(55)~~] Federal motor vehicle regulation-Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines, 40 CFR [~~The Motor Vehicle Air Pollution Standards, 45 Code of Federal Regulations, Subtitle A,~~] Part 85.

(31)[~~(56)~~] Federally enforceable-All limitations and conditions which are enforceable by the EPA administrator, including those requirements developed under [~~pursuant to~~] 40 CFR [~~Code of Federal Regulations~~] Parts 60 and 61, requirements within any applicable state implementation plan (SIP), any permit requirements established under [~~pursuant to~~] 40 CFR [~~Code of Federal Regulations~~] §52.21 or under regulations approved pursuant to 40 CFR [~~Code of~~

~~Federal Regulations~~] Part 51, Subpart I, including operating permits issued under the approved [~~United States Environmental Protection Agency-approved~~] program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

(32) Flare-An open combustor without enclosure or shroud which is used as a control device.

~~[(57) Final repair coat (used in wood parts and products coating) Liquids applied to correct imperfections or damage to the topcoat.]~~

~~[(58) Flexographic printing process-A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.]~~

~~[(59) Forage-Any vegetation which may be consumed by animals.]~~

~~[(60) Fountain solution (used in offset lithographic printing)-A mixture of water, nonvolatile printing chemicals, and an additive (liquid) that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the nonimage areas so that the ink is maintained within the image areas. Isopropyl alcohol, a volatile organic compound, is the most common additive used to reduce the surface tension of the fountain solution.]~~

(33)[~~(61)~~] Fuel oil-Any oil meeting The American Society for Testing and Materials (ASTM) specifications for fuel oil in ASTM D 396-86, Standard Specifications for Fuel Oils. This includes fuel oil grades 1, 2, 4 (Light), 4, 5 (Light), 5 (Heavy), and 6.

(34)[~~(62)~~] Fugitive emission-Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(35)[~~(63)~~] Garbage-Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, and handling and sale of produce and other food products.

(36)[~~(64)~~] Gasoline-Any petroleum distillate having a Reid Vapor Pressure (RVP) of four pounds per square inch (27.6 kPa) or greater which is produced for use as a motor fuel and is commonly called gasoline.

~~[(65) Gasoline bulk plant-A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.]~~

~~[(66) Gasoline terminal-A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.]~~

~~[(67) Hand-held lawn and garden and utility equipment-Equipment that requires its full weight to be supported by the operator to perform its function and requires multi-positional operation.]~~

(37)[~~(68)~~] Hazardous waste management facility-All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(38)[~~(69)~~] Hazardous waste management unit-A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(39)[~~(70)~~] Hazardous wastes-Any solid waste identified or listed as a hazardous waste by the administrator of the EPA [~~United States Environmental Protection Agency (EPA)~~] under [~~pursuant to~~] the federal Solid Waste Disposal Act, as amended by RCRA [~~the Resource Conservation and Recovery Act~~], 42 United States Code (USC) 6901 et seq., as amended.

(40)[~~(71)~~] Heatset (used in offset lithographic printing)-Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(41)[~~(72)~~] High-bake coatings-Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(42)[~~(73)~~] High-volume low-pressure (HVLP) [~~HLVP~~] spray guns- Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure.

(43)[~~(74)~~] Incinerator-An enclosed combustion apparatus and appurtenances thereto which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and which is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device which burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually shall also be considered an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director. Devices burning clean, untreated wood scraps or waste wood as an exclusive fuel for heat recovery are not included under this definition.

(44)[~~(75)~~] Industrial boiler-A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(45)[~~(76)~~] Industrial furnace-Cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission [~~Texas Water Commission~~] may list.

(46)[~~(77)~~] Industrial solid waste-Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 [I] industrial solid waste or Class 1 [I] waste is any industrial solid waste designated as Class 1 [I] by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 of this title (relating to Definitions) and §335.505 of this title (relating to Class 1 [I] Waste Determination).

(B) Class 2 [II] industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 [I] or Class 3 [III], as defined in §335.506 of this title (relating to Class 2 [II] Waste Determination).

(C) Class 3 [III] industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 [III] Waste Determination).

[(78) Inorganic fluoride compounds-All inorganic chemicals having an atom or atoms of fluorine in their chemical structure.]

(47)[(79)] Internal floating cover-A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(48)[(80)] Leak-A VOC [volatile organic compound] concentration greater than 10,000 parts per million by volume (ppmv) or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(49)[(81)] Liquid fuel-A liquid combustible mixture, not derived from hazardous waste, with a [higher] heating value of at least 5,000 Btu per pound.

(50)[(82)] Liquid-mounted seal-A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

[(83) Lithography (used in offset lithographic printing)-A printing process where the image and nonimage areas are chemically differentiated; the image area is oil receptive, and the nonimage area is water receptive. This method differs from other printing methods, where the image is a raised or recessed surface.]

[(84) Low-bake coatings-Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.]

(51)[(85)] Maintenance area-A geographic region of the state previously designated nonattainment under [pursuant to] the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under [the] FCAA, §175A, as amended. The following are the maintenance areas within the state: Victoria Ozone Maintenance Area (60 FR 12453)-Victoria County.

(52) Maintenance Plan-a revision to the applicable SIP, meeting the requirements of FCAA, §175A.

(53)[(86)] Marine vessel- Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(54)[(87)] Mechanical shoe seal-A metal sheet which is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(55)[(88)] Medical waste-Waste materials identified by the Texas Department of Health as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care related facilities.

(56) Metropolitan Planning Organization (MPO)-That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC §134 and 49 USC §1607.

(57)[(89)] Mobile [source] emissions reduction credit (MERC)-The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state regulations) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter E [§114.29] of this title (relating to Low Emission Vehicle Fleet Requirements [Accelerated Vehicle Retirement Program]) or Chapter 114, Subchapter F [§114.11] of this title (relating to Vehicle Retirement and Mobile Emission Reduction Credits [Alternative Fuel Requirements for Motor Vehicle Fleets]), and which has been banked in accordance with §101.29 of this title.

(58)[(90)] Motor vehicle-A self propelled vehicle designed for transporting persons or property on a street or highway.

(59)[(91)] Motor vehicle fuel dispensing facility-Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(60)[(92)] Municipal solid waste-Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(61)[(93)] Municipal solid waste facility-All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(62)[(94)] Municipal solid waste landfill-A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR [Code of Federal Regulations, Part 257,] §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of RCRA [Resource Conservation and Recovery Act (RCRA)] Subtitle D wastes, such as commercial solid waste, non-hazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(63)[(95)] Municipal solid waste landfill emissions-Any gas derived from a natural process through the decomposition of organic waste deposited in a municipal solid waste disposal site or from the volatile organic compounds in the waste.

(64) National Ambient Air Quality Standard (NAAQS)-Those standards established under FCAA, §109, including standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), inhalable particulate matter (PM_{10} and $PM_{2.5}$), and sulfur dioxide (SO_2).

[(96) Natural gas/gasoline processing-A process that extracts condensate, as defined in this section, from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation defined previously: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.]

(65)[(97)] Net ground-level concentration-The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary. [The upwind level subtracted from the downwind level.]

(66)[(98)] New source-Any stationary source, the construction or modification of which was [is] commenced after March 5, 1972 [the date of adoption of these sections].

(67)[(99)] Nonattainment area-A defined region within the state which is designated by EPA as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of FCAA [the Federal Clean Air Act], §107(d). For the official list and boundaries of nonattainment areas, see 40 CFR Part 81 [the Code of Federal Regulations (40 CFR Part 81)] and pertinent *Federal Register* notices. The following areas comprise the nonattainment areas within the state:

(A) Carbon monoxide (CO). El Paso (ELP) CO nonattainment area (56 FR 56694)-Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the city of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas- Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso (ELP) PM_{10} nonattainment area (56 FR 56694)-Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. Collin County lead nonattainment area (56 FR 56694)-Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1,000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the GNB property line; Southside: Fence line approximately 1,000 feet south of the GNB property line.

(D) Nitrogen Dioxide (NO_2). No designated nonattainment areas.

(E) Ozone.

(i) Houston/Galveston (HGA) ozone nonattainment area (56 FR 56694)-Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso (ELP) ozone nonattainment area (56 FR 56694)-Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont/Port Arthur (BPA) ozone nonattainment area (61 FR 14496)-Classified as a Moderate ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth (DFW) ozone nonattainment area (63 FR 8128) [(56 FR 56694)] -Classified as a Serious [Moderate] ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur Dioxide (SO_2). No designated nonattainment areas.

[(100) Non-flat architectural coating-Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or five or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semi-gloss, or eggshell enamel coating.]

[(101) Non-heatset (used in offset lithographic printing)-Any operation where the printing inks are set without the use of heat. For the purposes of this rule, ultraviolet-cured and electron beam-cured inks are considered non-heatset.]

(68)[(102)] Non-reportable upset-Any upset that is not a reportable upset as defined in this section.

[(103) Offset lithography-A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.]

(69)[(104)] Opacity-The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

[(105) Opaque ground coats and enamels (used in wood parts and products coating)-Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.]

(70)[(106)] Open-top vapor degreasing-A batch solvent cleaning process that is open to the air and which uses boiling solvent to create solvent vapor used to clean or dry metal parts through condensation of the hot solvent vapors on the colder metal parts.

(71)[(107)] Outdoor burning-Any fire or smoke-producing process which is not conducted in a combustion unit.

[(108) Packaging rotogravure printing-Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.]

[(109) Pail (metal)-Any cylindrical metal shipping container with a nominal capacity equal to or greater than one gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.]

(72)[(110)] Particulate matter-Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(73)[(111)] Particulate matter emissions-All finely-divided solid or liquid material, other than uncombined water,

emitted to the ambient air as measured by EPA Reference Method 5, as specified at 40 CFR Part 60, Appendix A [~~of 40 Code of Federal Regulations~~], modified to include particulate caught by impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51 [~~of 40 Code of Federal Regulations~~]; or by a test method specified in an approved SIP [~~state implementation plan~~].

(74)[~~(112)~~] Petroleum refinery-Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(75)[~~(113)~~] PM_{10}-Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J [~~of Part 50 of 40 Code of Federal Regulations~~] and designated in accordance with 40 CFR Part 53 [~~of 40 Code of Federal Regulations~~], or by an equivalent method designated with that Part 53.

(76)[~~(114)~~] PM_{10} emissions-Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 CFR Part 51 [~~of 40 Code of Federal Regulations~~], or by a test method specified in an approved SIP [~~state implementation plan~~].

(77)[~~(115)~~] Polychlorinated biphenyl compound (PCB)-A compound subject to 40 CFR [~~Title 40, Code of Federal Regulations,~~] Part 761.

~~[(116) Polymer and resin manufacturing process-A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.]~~

~~[(117) Population equivalent-The hypothetical population which would generate an amount of solid waste equivalent to that actually being processed or disposed of based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals.]~~

~~[(118) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents)-Basis for emission limits for surface coating processes. Can be calculated by the following equation:~~
~~Figure: 30 TAC §101.1(118)]~~

~~[(119) Pounds of volatile organic compounds (VOC) per gallon of solids-Basis for emission limits for surface coating processes. Can be calculated by the following equation:~~
~~Figure: 30 TAC §101.1(119)]~~

~~[(120) Printing line-An operation consisting of a series of one or more printing processes and including associated drying areas.]~~

(78)[~~(121)~~] Process or processes-Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(79)[~~(122)~~] Process weight per hour-"Process weight" is the total weight of all materials introduced or recirculated into any specific process which may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(80)[~~(123)~~] Property-All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

~~[(124) Publication rotogravure printing-Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.]~~

(81)[~~(125)~~] Reasonable further progress (RFP)-Annual incremental reductions in emissions of the applicable air contaminant which are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the SIP [~~State Implementation Plan~~].

(82)[~~(126)~~] Remote reservoir cold solvent cleaning -Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(83)[~~(127)~~] Reportable quantity (RQ)-Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures, either:

(i) the lowest of the quantities:

(I) listed in 40 CFR [~~Code of Federal Regulations (CFR),~~] §302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR[~~,~~] §355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) butane-5,000 pounds;
(-b-) butenes (except 1,3-butadiene)-5,000 pounds;
(-c-) ethylene-5,000 pounds;
(-d-) carbon monoxide-5,000 pounds;
(-e-) isobutylene-5,000 pounds;
(-f-) pentane-5,000 pounds;
(-g-) propane-5,000 pounds;
(-h-) propylene-5,000 pounds;
(-i-) isobutane-5,000 pounds; or

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound which equals or exceeds the amount specified in subparagraph (A) of this definition;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this definition is not known, any amount of the mixture which equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this definition;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this definition are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this definition are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas and air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity, an opacity which is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only reportable quantity applicable to boilers or combustion turbines fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight;

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest facility property line:

(i) less than one half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(84)[~~(128)~~] Reportable upset-Any upset which, in any 24-hour period, results in an unauthorized emission of air contaminants equal to or in excess of the reportable quantity as defined in this section.

~~[(129) Rotogravure printing-The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.]~~

(85)[~~(130)~~] Rubbish-Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. [~~;~~] Combustible [~~combustible~~] rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. [~~;~~] Noncombustible [~~noncombustible~~] rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

~~[(131) Semitransparent spray stains and toners (used in wood parts and products coating)-Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to toners and nongrain-raising stains.]~~

~~[(132) Semitransparent wiping and glazing stains (used in wood parts and products coating)- Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.]~~

~~[(133) Shellacs (used in wood parts and products coating)-Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.]~~

(86)[~~(134)~~] Sludge-Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(87)[~~(135)~~] Smoke-Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(88)[~~(136)~~] Solid waste-Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the EPA [~~United States Environmental Protection Agency~~] under the federal Solid Waste Disposal Act, as amended by RCRA [~~the Resource Conservation and Recovery Act~~], as amended (42 USC [~~United States Code~~], 6901 et seq).

(89)[~~(137)~~] Sour crude-A crude oil which will emit a sour gas when in equilibrium at atmospheric pressure.

(90)[~~(138)~~] Sour gas-Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(91)[~~(139)~~] Source-A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(92)[~~(140)~~] Special waste from health care related facilities-A solid waste which if improperly treated or handled may serve to transmit infectious disease(s) and which is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(93)[~~(141)~~] Standard conditions-A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kPa). Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.

(94)[(142)] Standard metropolitan statistical area-An area consisting of a county or one or more contiguous counties which is officially so designated by the United States Bureau of the Budget.

(95)[(143)] Submerged fill pipe-A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(96)[(144)] Sulfur compounds-All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(97)[(145)] Sulfuric acid mist/sulfuric acid-Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and shall include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 CFR [Title 40 Code of Federal Regulations,] Part 60, Appendix A.

[(146) Surface coating processes-Operations which utilize a coating application system.]

[(A) Large appliance coating-The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.]

[(B) Metal furniture coating-The coating of metal furniture (tables, chairs, waste baskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.]

[(C) Coil coating-The coating of any flat metal sheet or strip supplied in rolls or coils.]

[(D) Paper coating-The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).]

[(E) Fabric coating-The application of coatings to fabrics, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).]

[(F) Vinyl coating-The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.]

[(G) Can coating-The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetable, and others), tennis balls, motor oil, paints, and other mass-produced cans.]

[(H) Automobile coating-The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.]

[(I) Light-duty truck coating-The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pick-ups, vans, and window vans.]

[(J) Miscellaneous metal parts and products coating-The coating of miscellaneous metal parts and products in the following categories:]

[(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);]

[(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);]

[(iii) small appliances (fans, mixers, blenders, crock pots, de-humidifiers, vacuum cleaners, etc.);]

[(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);]

[(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);]

[(vi) fabricated metal products (metal-covered doors, frames, etc.); and]

[(vii) any other category of coated metal products, except the specified list in subparagraphs (A)-(I) of this definition, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).]

[(K) Factory surface coating of flat wood paneling-Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tileboard.]

[(L) Mirror backing coating-The application of coatings to the silvered surface of a mirror.]

[(M) Wood parts and products coating-The coating of wood parts and products, excluding factory surface coating of flat wood paneling.]

(98)[(147)] Sweet crude oil and gas-Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

[(148) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation -A SOCMI noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.]

[(149) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process-Any SOCMI noncontinuous reactor process which is not characterized by steady-state conditions, and in which reactants are not added and products are not removed simultaneously.]

[(150) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation-A SOCMI operation separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.]

[(151) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit-A SOCMI device or vessel in which distillation operations occur, including all associated internals (including, but not limited to, trays and packing), accessories (including, but not limited to, reboilers, condensers, vacuum pumps, and steam jets), and recovery devices (such as absorbers, carbon adsorbers, and

condensers) which are capable of, and used for, recovering chemicals for use, reuse, or sale.]

[(152) Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process-A SOCMI unit operation in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way, that their molecular structures are altered and one or more new organic compounds are formed.]

[(153) Synthetic organic chemical manufacturing process-A process that produces, as intermediates or final products, one or more of the chemicals listed in Table II of this section.
Figure: 30 TAC §101.1(153)]

[(154) System or device-Any article, chemical, machine, equipment, or other contrivance, the use of which may eliminate, reduce, or control the emissions of air contaminants to the atmosphere.]

[(155) Tank-truck tank-Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.]

[(156) Topcoat (used in wood parts and products coating)-A clear liquid which provides the final protective and aesthetic properties to wood finishes.]

(99)[(157)] Total suspended particulate-Particulate matter as measured by the method described in 40 CFR Part 50, Appendix B [of Part 50 of 40 Code of Federal Regulations].

(100)[(158)] Transfer efficiency-The amount of coating solids deposited onto the surface or [of] a part of product divided by the total amount of coating solids delivered to the coating application system.

[(159) Transport vessel-Any land-based mode of transportation (truck or rail) that is equipped with a storage tank having a capacity greater than 1,000 gallons which is used primarily to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.]

(101)[(160)] True partial pressure-The absolute aggregate partial pressure (pounds per square inch absolute (psia)) [(psia)] of all VOCs [volatile organic compounds] in a gas stream.

(102)[(161)] True vapor pressure-The absolute aggregate partial vapor pressure (psia) of all VOCs [volatile organic compounds] at the temperature of storage, handling, or processing.

(103)[(162)] Unauthorized emission-An emission of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen which exceeds any air emission limitation in a permit, rule, or order of the commission or as authorized by TCAA [Texas Clean Air Act], §382.0518(g).

(104)[(163)] Upset-An unscheduled occurrence or excursion of a process or operation that results in an unauthorized emission of air contaminants.

[(164) Upwind level-The representative concentration of air contaminants flowing onto a property as measured at any point.]

(105)[(165)] Utility boiler-A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

[(166) Vapor balance system-A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.]

(106) Vapor combustor-A partially enclosed combustion device used to destroy VOCs by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(107)[(167)] Vapor-mounted seal-A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

[(168) Vapor recovery system-Any control system which utilizes vapor collection equipment to route volatile organic compound (VOC) to a control device that reduces VOC emissions.]

[(169) Vapor-tight-Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the regulations.]

[(170) Varnishes (used in wood parts and products coating)-Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.]

[(171) Vehicle refinishing (body shops)-The repair and recoating of vehicles, including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by a commercial operation other than the original manufacturer. The repair and recoating of trailers and construction equipment are not included.]

(108)[(172)] Vent-Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(109)[(173)] Visible emissions-Particulate or gaseous matter which can be detected by the human eye. The radiant energy from an open flame shall not be considered a visible emission under this definition.

(110)[(174)] Volatile organic compound-Any compound of carbon or mixture of carbon compounds excluding methane;[,] ethane;[,] 1,1,1-trichloroethane (methyl chloroform);[,] methylene chloride (dichloromethane);[,] perchloroethylene (tetrachloroethylene);[,] trichlorofluoromethane (CFC- 11);[,] dichlorodifluoromethane (CFC-12);[,] chlorodifluoromethane (HCFC-22);[,] trifluoromethane (HFC-23);[,] 1,1,2-trichloro-1,2,2- trifluoroethane (CFC-113);[,] 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);[,] chloropentafluoroethane (CFC-115);[,] 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);[,] 2-chloro-1,1,1,2-tetrafluoroethane (HCFC- 124);[,] pentafluoroethane (HFC-125);[,] 1,1,2,2-tetrafluoroethane (HFC- 134);[,] 1,1,1,2-tetrafluoroethane (HFC-134a);[,] 1,1-dichloro-1- fluoroethane (HCFC-141b);[,] 1-chloro-1,1-difluoroethane (HCFC-142b); [,] 1,1,1-trifluoroethane (HFC-143a); [,] 1,1-difluoroethane (HFC-152a); [,] parachlorobenzotrifluoride (PCBTF);[,] cyclic, branched, or linear completely methylated siloxanes;[,] acetone;[,] 3,3-dichloro-1,1,1,2,2- pentafluoropropane (HCFC-225ca);[,] 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);[,] 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43- 10mee);[,] difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3- pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3- pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3- pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane; 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane; 1-ethoxy-1,1,2,2,3,3,4,4,4- nonafluorobutane; 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane; methyl acetate; carbon monoxide;[,] carbon dioxide;[,] carbonic acid;[,] metallic carbides or carbonates;[,] ammonium carbonate;[,] and perfluorocarbon compounds which fall into these classes:

(A) cyclic, branched, or linear, completely fluorinated alkanes;

(B) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(111)[~~(175)~~] VOC [~~Volatile organic compound~~] water separator-Any tank, box, sump, or other container in which any VOC [~~volatile organic compound~~], floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

~~[(176) Wash coat (used in wood parts and products coating) A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.]~~

(112)[~~(177)~~] Waxy, high pour point crude oil-A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Centigrade) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

§101.2. Multiple Air Contaminant Sources or Properties.

(a) In an area where an additive effect occurs from the accumulation of air contaminants from two or more sources on a single property or from two or more properties, such that the level of air contaminants exceeds the ambient air quality standards established by the commission [~~Texas Air Control Board~~], and each source or each property is emitting no more than the allowed limit for an air contaminant for a single source or from a single property, further reduction of emissions from each source or property shall be made as determined by the commission [~~board~~].

(b) Two or more property owners, or operators acting on behalf of a property owner, [~~owners/operators~~] may petition the commission to have their properties designated a single property for purposes of demonstrating compliance with commission [~~TNRCC~~] regulations and the control of air emissions. [~~The petition shall be subject to the following criteria.~~]

(1) The use of this section is intended for:

(A) a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration; or

(B) properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.

(2) The petition shall be subject to the following criteria:

(A) The properties must be contiguous except for intervening roads, railroads, and/or rights- of-way, which are a part of the property. Emission points separated by a public right-of-way cannot be combined into a single property designation.

(B) All property owners, fee interest owners, including leaseholders, within the single property designation boundary must consent to the agreement.

(C) The petition shall include the following information:

(i) a general description of the manner in which the control of emissions and demonstration of compliance with commission regulations will be administered and controlled;

(ii) designation of the party or parties who accept responsibility for off-property impacts;

(iii) the existing account number(s) for each petitioner; and

(iv) a description of how the petitioners meet the requirements of this rule.

(D) The petition shall be accompanied by:

(i) a copy of a sworn written agreement between the property owners who consent to having their properties so designated which must detail the mechanisms of control exercised on both properties;

(ii) a United States Geological Survey map or equivalent indicating:

(I) geographical features such as roads, watercourses, and prominent landmarks;

(II) present land uses in the areas surrounding the area to be included;

(III) the boundaries of the petitioners' properties; and

(IV) the area to be included in the single property designation; and

(iii) any other information needed by the commission in its review of the petition.

(E) The executive director or commission may place such conditions on the approval of the petition as appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.

(F) The executive director may approve a petition for single property designation if:

(i) the petition meets all relevant statutory and administrative criteria;

(ii) the petition does not raise new issues that require the interpretation of commission policy; and

(iii) the public interest counsel does not raise objections.

~~[(1) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Properties separated by a public right-of-way will not be considered contiguous.]~~

~~[(2) The use of this section is intended for a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration or for properties operated or intended to be operated~~

as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.]

[(3) The petition shall describe generally the manner in which the control of emissions and demonstration of compliance with TNRCC regulations will be administered and controlled. The petition shall name the party or parties accepting responsibility for off-property impacts. The petition shall be accompanied by a copy of an executed written agreement between the property holders who consent to having their properties so designated and shall also be accompanied by a United States Geological Survey map or equivalent indicating geographical features such as roads, watercourses, and prominent landmarks, the boundaries of the petitioners' properties, the area to be included in the single property designation, and present land uses in the areas surrounding the area to be included. The written agreement must detail the mechanisms of control exercised on both properties. The commission may place such conditions on the approval of the petition as it may deem appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.]

(c) In this section, the terms "property" or "properties" includes leasehold and fee interests in real property.

§101.10. Emissions Inventory Requirements.

(a) Applicability. The owner or operator of an account or source [the following stationary sources] in the State of Texas or on waters that extend 25 miles from the shoreline meeting one or more of the following conditions shall submit emissions inventories and/or related data as required in subsection (b) of this section to the commission [Texas Natural Resource Conservation Commission (TNRCC)] on forms or other media approved by the commission [TNRCC]:

(1) an account which meets the definition of a major facility/stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or [and] any account [stationary source] in an ozone nonattainment area emitting a minimum of ten tons per year (tpy) [(TPY)] volatile organic compounds (VOC), 25 tpy [TPY] nitrogen oxides (NO_x), or 100 tpy [TPY] or more of any other contaminant subject to national ambient air quality standards (NAAQS) [carbon monoxide (CO)];

(2) any account [stationary source in an attainment area or unclassified area] that emits or has the potential to emit 100 tpy or more of any contaminant [(including VOC) for which a national ambient air quality standard has been issued];

(3) any account which emits or has the potential to emit 10 tons of any single or 25 tons of aggregate [major source of] hazardous air pollutants as defined in FCAA [the Federal Clean Air Act (FCAA)], §112(a)(1);[.]

(4) any minor industrial source, area source, non-road mobile source, or mobile source of emissions subject to special inventories under subsection (b)(3) of this section. For purposes of this section, the term "area source" means a group of similar activities that, taken collectively, produce a significant amount of air pollution.

(b) Types of inventories.

(1) Initial emissions inventory. Accounts, as identified in subsection (a)(1), (2), or (3) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant (HAP) that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2), lead (Pb), particulate matter of less than 10 microns in diameter (PM_{10}), any other contaminant subject to NAAQS, emissions of all HAPs identified in FCAA §112(b), or any other contaminant requested by the commission from individual emission units within an account. For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit as it enters the atmosphere. The reporting year will be the calendar year or seasonal period as designated by the commission. Reported emission activities must include annual routine emissions; excess emissions occurring during maintenance activities, including start-ups and shutdowns; and emissions resulting from upset conditions. For the ozone nonattainment areas, the inventory shall also include typical weekday emissions that occur during the summer months. For CO nonattainment areas, the inventory shall also include typical weekday emissions that occur during the winter months. Emission calculations must follow methodologies as identified in subsection (c) of this section. [Stationary sources, as identified in subsection (a) of this section, shall submit an initial emissions inventory (IEI) for any criteria pollutant or hazardous air pollutant that has not been identified in a previous inventory. The IEI shall consist of actual emissions of VOC, NO_x, CO, sulfur dioxide (SO_2), lead (Pb), and particulate matter of less than 10 microns in diameter (PM_{10}) from stationary sources and emissions of all hazardous air pollutants identified in the FCAA, §112(b). For purposes of this section, the term "actual emission" is the actual rate of emissions of a pollutant from an emissions unit for the calendar year or seasonal period. Actual emission estimates must also include excess emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime to parallel the documentation of these events in the emissions inventory and must follow emission calculations as identified in subsection (c) of this section. Where there is an enforceable document, such as a permit or agreed order establishing allowable levels, the IEI shall include the allowable emission level as identified in the permit maximum allowable emission rate table or board order.]

(2) Statewide annual emissions inventory update (AEIU). Accounts meeting the applicability requirements during an inventory reporting period [Sources] as identified in subsection (a)(1), (2), or (3) [(a)] of this section [that have submitted an IEI] shall submit an AEIU [annual emissions inventory update (AEIU)] which consists of actual [and allowable] emissions as identified in subsection (b)(1)[(a)(1)] of this section[,] if any of the following criteria are met. If none of the following criteria are met, a letter certifying such shall be submitted instead:

[(A) any source that achieves compliance with any regulation of the state implementation plan at any time within the inventory reporting period;]

(A)[(B)] any change in operating conditions, including start-ups, permanent shut-downs of individual units, or process changes at the source, that results in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO_x, CO, SO_2, Pb, or PM_{10} from the most recently submitted emissions data; or

(B)[(C)] a cessation of all production processes and termination of operations at the account [source].

[(3) Ozone nonattainment area inventory. Stationary sources emitting a minimum of 10 tpy of VOC, 25 tpy of NO_x, or 100 tpy of CO shall submit an annual inventory. The inventory shall consist of annual emissions and typical weekday emissions that occur during the summer months.]

[(4) CO nonattainment area inventory. Stationary sources emitting 100 tpy or more of CO shall submit an inventory every three

years. The inventory shall consist of annual emissions and typical weekday emissions that occur during the winter months. The first inventory is required for the 1989- 1990 winter season.]

(3)[(5)] Special inventories. Upon request by the executive director or a designated representative of the commission [TACB], any person owning or operating a source of air emissions which is or could be affected by any rule or regulation of the commission [TACB] shall file [additional] emissions-related [emissions] data with the commission [TACB] as necessary to develop an inventory of emissions.

(c) Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) is the preferred method of calculating emissions [emission] from a source. If CEMS data is not available, other [Other] means for determining actual emissions may be utilized [if CEMS data is not available] in accordance with detailed instructions of the commission [Emissions Inventory Division of TACB]. Sample calculations representative of the processes in the account must be submitted with the inventory.

(d) (No change.)

(e) Reporting requirements. [The IEI or initial AEIU and the 1992 ozone nonattainment area inventory shall be submitted to TACB no later than March 31, 1993.] The IEI or subsequent [Subsequent] AEIUs [and ozone nonattainment area inventories] shall contain emissions data from the previous calendar year and shall be due on March 31 of each year or as directed by the commission. Emissions-related data submitted under a special inventory request made under subsection (b)(3) of this section are due as detailed in the letter of request. [The 1992-1993 CO nonattainment area inventory shall be submitted no later than June 30, 1993, and every three years thereafter.]

(f) (No change.)

§101.28. Stringency Determination for Federal Operating Permits.

(a) Instead of the requirements imposed by an applicable requirement or a state only requirement as defined in §122.10 of this title (relating to General Definitions), a permit holder of a federal operating permit may comply with more stringent or equivalent requirements, provided the requirements:

(1) are established by §122.148(c)(1)(B) of this title (relating to Permit Shield) for streamlining multiple, duplicative, redundant, and/or contradicting applicable requirements or state only requirements; and

(2) are adequate to assure compliance to the same extent as the applicable requirements or state-only requirements being superseded by a more stringent or equivalent requirement.

(b) A determination under subsection (a) of this section may include a method change (i.e., either a change to a commission monitoring or testing procedure which was previously approved by EPA or an alternative to an EPA-approved monitoring or test method) if approved by EPA.

(c) The more stringent, equivalent, or alternative requirement established by the executive director under this section is approved for the emission unit by EPA if:

(1) it is a term or condition of a federal operating permit; and

(2) EPA has not objected to the permit as required by §122.350 of this title (relating to EPA Review).

§101.30. Conformity of General Federal Actions to State Implementation Plans.

(a) Purpose.

(1) The purpose of this rule is to implement FCAA, §176(c) [of the Federal Clean Air Act (FCAA)], as amended (42 United States Code (USC) §7401 et seq.) and regulations under 40 [the] Code of Federal Regulations (CFR)[, 40 CFR,] Part 51, Subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in; support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP. This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA, §176(c) and 40 CFR, Part 51, Subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a NEPA [National Environmental Policy Act (NEPA)] analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) (No change.)

(3) (No change.)

(b) Definitions. Unless specifically defined in the TCAA [Texas Clean Air Act (TCAA)] or in the rules of the commission [Texas Natural Resource Conservation Commission (TNRCC or Commission)], the terms used by the commission [Commission] have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affected federal land manager-The federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 USC [United States Code] §7472) that is located within 100 kilometers of the proposed federal action.

(2)-(5) (No change.)

[(6) Criteria pollutant or standard-Any pollutant for which there is established a NAAQS in 40 CFR, Part 50.]

(6)[(7)] Direct emissions-Those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(7)[(8)] Emergency-A situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(8)[(9)] Emissions budgets-Those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary

source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP.

(9)[~~(10)~~] Emissions offsets, for purposes of subsection (h) of this section-Emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations; surplus to reductions required by and credited to other applicable SIP provisions; enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's [~~the United States Environmental Protection Agency's (EPA)~~] new source review requirements.

(10)[~~(11)~~] Emissions that a federal agency has a continuing program responsibility for-Emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(11)[~~(12)~~] Federal action-Any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way; provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC [~~United States Code~~] or the Federal Transit Act (49 USC [~~United States Code~~] §1601 et seq.) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(12)[~~(13)~~] Federal agency-A federal department, agency, or instrumentality of the federal government.

(13)[~~(14)~~] Increase the frequency or severity of any existing violation of any standard in any area-To cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(14)[~~(15)~~] Indirect emissions-This term does not have the same meaning as given to an indirect source of emissions under FCAA, §110(a)(5) [~~of the FCAA~~], but for general conformity are those emissions of a criteria pollutant or its precursors that:

(A) are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality;

(iv) emissions related to the use of federal facilities under lease or temporary permit;

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States;

(15)[~~(16)~~] Local air quality modeling analysis-An assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

[~~(17) Maintenance area-Any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A.~~]

[~~(18) Maintenance plan-A revision to the applicable SIP, meeting the requirements of the FCAA, §175A.~~]

[~~(19) Metropolitan Planning Organization (MPO)-That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code §134 and 49 United States Code §1607.~~]

(16)[~~(20)~~] Milestone - Has [~~has~~] the meaning given in [~~the~~] FCAA, §182(g)(1) and §189(c)(1): [~~- A milestone consists of~~] an emissions level and the date on which it is required to be achieved.

[~~(21) National Ambient Air Quality Standards (NAAQS)-Those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10}), and sulfur dioxide (SO_2).~~]

[~~(22) NEPA-The National Environmental Policy Act of 1969, as amended (42 United States Code §4321 et seq.).~~]

[~~(23) Nonattainment area (NAA)-Any geographic area of the United States which has been designated as nonattainment under the FCAA, §107 and described in 40 CFR, Part 81.~~]

(17)[~~(24)~~] Presursors of a criteria pollutant are:

(A) for ozone, nitrogen oxides (NO_x) (unless an area is exempted from NO_x requirements under [~~the~~] FCAA, §182(f)) and volatile organic compounds (VOC); and

(B) for particulate matter (PM_{10}) [~~PM_{10}~~], those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels.

(18)[~~(25)~~] Reasonably foreseeable emissions-Projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known to the extent adequate to determine the impact of such emissions; and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(19)[~~(26)~~] Regionally significant action-A federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(20)[~~(27)~~] Regional water or wastewater projects-Projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(21)[~~(28)~~] Total of direct and indirect emissions-The sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsection (c)(3), (4), (5), or (6) of this section are not included in the "total of direct and indirect emissions," except as provided in subsection (c)(10) of this section. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants. The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability.

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC [~~United States Code~~] or the Federal Transit Act (49 USC [~~United States Code~~] §1601 et seq.) shall meet the procedures and criteria of §114.260 [~~§114.27~~] of this title (relating to Transportation Conformity), and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule.

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in subparagraphs (A) or (B) of this paragraph.

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas [~~(NAAs)~~]:
Figure: 30 TAC §101.30(c)(2)(A)

(B) (No change.)

(3)-(7) (No change.)

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraph (7)(A) or (B) of this subsection, the following procedures must also be complied with to presume that activities will conform:

(A) (No change.)

(B) the federal agency shall notify the appropriate EPA Regional Office, the commission [~~TNRCC~~], local air quality agencies and, where applicable, the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(C)-(D) (No change.)

(9)-(12) (No change.)

(d) (No change.)

(e) Reporting Requirements

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the commission [~~TNRCC~~], local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency shall notify the appropriate EPA Regional Office, the commission [~~TNRCC~~], local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section.

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the commission [~~TNRCC~~] information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section. As a matter of policy, the emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% (or other percentage as the state determines) in the case of any federal agency that does not provide to the commission [~~TNRCC~~] information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section.

(f)-(g) (No change.)

(h) Criteria for Conformity Determination of General Federal Actions.

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements:

(A)-(C) (No change.)

(D) for CO or PM_{10}:

(i) where the commission [~~TNRCC~~] determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis; or

(ii) where the commission [~~TNRCC~~] determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection;

(E) for ozone or nitrogen dioxide, and for purposes of paragraphs (1)(C)(ii) and (1)(D)(ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause. Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section.

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the commission [~~TNRCC~~] to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP.

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the commission [~~TNRCC~~] to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the commission [~~TNRCC~~] makes a written commitment to EPA which includes the following:

(-a-)-(-c-) (No change.)

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of commission [~~TNRCC~~] policy, a commitment will be made only if the commission [~~TNRCC~~] determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions; and

(-e-) (No change.)

(III) (No change.)

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.260 [~~§114.27~~] of this title (relating to Transportation Conformity), or the Transportation Conformity SIP, or 40 CFR[~~,~~] Part 93, Subpart A;

(iii)-(v) (No change.)

(2)-(4) (No change.)

(i)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9904010
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1932

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Chapter 106. Exemptions from Permitting

Subchapter A. General Requirements

30 TAC §106.5, §106.13

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §106.5, concerning Public Notice; and new §106.13, concerning Permits by Rule.

BACKGROUND The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and Senate Bill (SB) 766 76th Legislature (1999). Certain portions of the proposed amendments and new sections are proposed to clarify the applicability of existing notice provisions, to correct, clarify, and update certain public notice rules with regard to notices for air quality applications. Certain actions concerning a portion of the proposal will constitute a revision to the state implementation plan (SIP). The proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Notices relating to certain air quality permit and permit exemption public notification and public participation requirements currently under Chapters 116 and 106 are proposed to be incorporated into Chapter 39 as part of this consolidation.

OVERVIEW OF HB 801 AND IMPLEMENTATION HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; and made revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost- effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among

the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

OVERVIEW OF SB 766 AND IMPLEMENTATION SB 766, enacted by the 76th Legislature, also amends TCAA, §382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of new facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to permit applications under SB 766 are included in these chapters. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

EXPLANATION OF PROPOSED RULES The primary purpose of the proposed amendments and new section is to implement House Bill (HB) 801 and Senate Bill (SB) 766, 76th Legislature (1999).

Proposed §106.5 includes new subsection (a) which states that registrations which are declared administratively complete on or after September 1, 1999 are subject to the current version of this chapter. Registrations which are declared administratively complete before September 1, 1999 are subject to the preceding version of Chapter 106 (i.e., the December 24, 1998 version). This provision is required by HB 801, §7(b).

Proposed §106.5 (b) includes existing wording of §106.5. New language is proposed to reference the public notice requirements under Chapter 39. Correspondingly, §106.5(b)(1)-(2) have been deleted, because they are included in the commission's proposal to amend Chapter 39.

Proposed new §106.13, concerning permits by rule, states that exemptions from permitting in Chapter 106 are also permits by rule. This new section implements the statutory changes of SB 766, TCAA, §382.05196 and new requirements for authorization under Texas Clean Air Act (TCAA), §382.057 and §382.058. These changes include authorization mechanisms for the construction of facilities using permits by rule and changes to existing facilities using exemptions from permitting under the proposed revised Chapter 106.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 106, Exemptions From Permitting, would implement certain provisions contained in: HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC. SB 766, 76th Legislature, 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

The proposed amendments include new requirements from SB 801 for registration and public notification which are consistent with requirements in the proposed amendments to Chapter 39, Public Notice, Chapter 50, Actions On Applications, and Chapter 55, Request for Contested Case Hearings; Public Comment. Provisions that previously existed in Chapter 106 that have been incorporated in the proposed amendments to Chapters 39, 50, and 55. The proposed amendments also include a new section regarding permits by rule as required by SB 766.

The proposed amendments affect the existing exemption process and adds permits by rule. It is anticipated that some applicants for authorization under Chapter 106 will be affected by the proposed amendments to the rules. Persons involved in the permitting process, including members of the general public, will also be affected. It is anticipated that units of local government and other facilities choosing to provide storage and copying facilities for the proposed permits applications will charge and collect fees to offset the costs of storage and copy services. These fees are not considered to be a significant additional cost to individual applicants.

PUBLIC BENEFIT Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 106 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the permitting processes conducted by TNRCC and increased standardization in the application process.

The purpose of the proposed amendments is to establish procedures regarding exemptions from permitting and permits by rule. The amendments are proposed to comply with certain provisions of HB 801 and SB 766 which are intended to enhance public participation in the permitting processes of the TNRCC. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

SMALL BUSINESS ANALYSIS No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 106 of the rules because the amendments modify, clarify, or simplify requirements currently in existence. The additional of §106.13 will facilitate registration of authorizations to construct facilities with insignificant emissions. If a small business is an applicant for a concrete batch plant, the costs associated with providing a copy of the application for review and copying are not expected to be significant.

REGULATORY IMPACT EVALUATION 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." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

"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 rulemaking is not a major environmental rule because it is not

proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is procedural in nature and establishes procedures associated with exemptions from permitting and permits by rule. The proposal relates to procedures for providing public notice, in regard to exemptions from permitting. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public notice procedures to be followed for exemptions from permitting and permits by rule. The rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because there are no federal public notice rules in regard to exemptions from permitting of permits by rule. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; TCAA, §§382.057 and 382.058 and 382.05196, as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA §382.056). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public notice in regard to exemptions from permitting and permits by rule. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program. The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC, §§281.40, et seq.).

PUBLIC HEARING A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039- AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239- 6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512)239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

STATUTORY AUTHORITY The new and amended sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules, and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include; §382.011, which establishes the commission's authority to carry out its responsibilities to control the quality of the state's air; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.05196, which establishes the commission's authority to adopt rules relating to permits by rule; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants and §382.062, which establishes the commission's authority to adopt rules for certain air authorizations.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed new and amended sections implement §§382.051, 382.05196, 382.056, 382.057, 382.058 and 382.062 of the THSC.

§106.5. Public Notice.

(a) Any registration subject to this chapter that is declared administratively complete on or after September 1, 1999 is subject to the current version of this chapter. Any registration that is declared administratively complete before September 1, 1999 is subject to the December 24, 1998 version of this chapter, and that version of this chapter is continued in effect for this purpose.

(b) Facilities constructed under this chapter that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by TCAA, §382.058(b). In all cases, public notice shall comply with the requirements under Chapter 39 of this title (relating to Public Notice) [include the information specified in paragraph (1)(A) and (B) of this section].

[(1) Public notification procedures.]

[(A) Publication in public notices section of a newspaper. At the applicant's expense, notice of intent to construct shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:]

[(i) application number;]

[(ii) company name;]

[(iii) type of facility;]

[(iv) description of the location of facility or proposed location of the facility;]

[(v) contaminants to be emitted;]

[(vi) location and availability of copies of the completed application;]

[(vii) public comment period;]

[(viii) procedure for submission of public comments concerning the proposed construction;]

[(ix) notification that a person residing within 1/4 mile of the proposed plant is an affected person who is entitled to request a hearing in accordance with commission rules; and]

[(x) name, address, and phone number of the regional commission office to be contacted for further information.]

[(B) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in paragraph (1)(A)(I)-(iv) of this section and note that additional information is contained in the notice published under paragraph (1)(A) of this section in the public notice section of the same issue.]

[(2) Comment procedures.]

[(A) Comment period. Interested persons may submit written comments to the executive director, including requests for public hearings under TCAA, §382.056, on the executive director's preliminary decision to issue or not to issue the standard exemption. All such comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences.]

[(B) Consideration of comments. All written comments received by the executive director during the period specified in subparagraph (A) of this paragraph shall be considered in determining whether to issue or not to issue the standard exemption. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office].

§106.13. Permits By Rule.

Exemptions from permitting in this chapter are also permits by rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9903981
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter B. General Volatile Organic Compound Sources

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§115.140, 115.142-115.149, concerning Industrial Wastewater, and new §§115.160-115.167 and 115.169, concerning Batch Processes. The commission proposes these revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds, and to the state implementation plan (SIP) in order to conform with the United States Environmental Protection Agency's (EPA's) revised ozone transport policy and allow the Beaumont/Port Arthur (BPA) ozone nonattainment area's attainment date to be extended. The revisions to the existing Chapter 115 industrial wastewater (IWW) rules also incorporate a variety of corrections to ensure the implementation of reasonably available control technology (RACT) in the Houston/Galveston (HGA) ozone nonattainment area. Finally, in an effort to improve implementation of the existing Chapter 115 IWW rules which apply in the Dallas/Fort Worth, El Paso, and HGA ozone nonattainment areas, the commission proposes to clarify a variety of requirements and rule references.

BACKGROUND

Under §183 of the 1990 Amendments to the Federal Clean Air Act (FCAA), the EPA is required to issue Control Techniques Guideline (CTG) guidance documents for the purpose of assisting states in developing RACT controls for sources of volatile organic compound (VOC) emissions. In turn, each state is required to submit a revision to its SIP which implements RACT regulations for VOC sources in moderate or above ozone nonattainment areas. Specifically, §182(b)(2) of the FCAA requires states to submit RACT regulations for VOC sources that are covered by a CTG issued after November 15, 1990 (the enactment date of the 1990 FCAA), but prior to the time of attainment. Limits in state rules must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, the EPA recommends that states adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and the economic and technical circumstances of the individual source.

Source categories for which the EPA was to issue CTGs under §182(b)(2)(A) include IWW and batch processes. Instead of issuing CTGs for these source categories, the EPA issued guidance documents known as Alternative Control Techniques (ACT) documents. The ACTs do not establish the presumptive norm for RACT but merely contain information on emissions, controls, control options, and costs. The EPA itself has consistently noted in the ACTs that each ACT "presents options only, and does not contain a recommendation on RACT." Nevertheless, §182(b)(2)(C) of the 1990 FCAA Amendments still requires states to insure that RACT is in place for all major VOC sources in moderate and above ozone nonattainment areas.

The EPA's "5% rule" provides a mechanism for states to justify exemptions or cutpoints which are more lenient than the EPA's RACT baseline. It is applied by determining the total emissions allowed by the EPA's RACT baseline (including exemptions) and comparing this to the emissions allowed (including exemptions) by a state regulation. If the difference is less than 5.0%, the EPA considers that there is no substantive difference between the EPA and state requirements.

The commission's position has been that the existing general vent gas rule in Chapter 115, Subchapter B: Division 2 is adequate to ensure RACT for batch processes; however, this is difficult to demonstrate because the necessary information for such a demonstration is not in the emissions inventory (EI). Staff is continuing to work with BPA industries in an attempt to demonstrate equivalency between the existing general vent gas rule and the batch processes ACT using the EPA's 5.0% rule. If the BPA industries provide information which demonstrates to the EPA's satisfaction that existing rules represent RACT for batch processes in BPA in a timely fashion, then it will not be necessary to adopt and implement Chapter 115 rules for batch processes in BPA.

EPA's draft IWW CTG was modeled after the then-proposed 40 CFR 63, Subpart G (Hazardous Organic National Emission Standards for Hazardous Air Pollutants (NESHAPS) for synthetic organic chemical manufacturing industry (SOCMI) facilities (better known as "SOCMI Hazardous Organics NESHAPS (HON)"). All major sources of IWW emissions in BPA are at SOCMI facilities or petroleum refineries. Four refineries, which account for 90% of the IWW emissions in BPA, are subject to 40 CFR 61, Subpart FF (Benzene NESHAPS), and 40 CFR 63, Subpart CC (Petroleum Refinery maximum available control technology (MACT)). Two SOCMI facilities (both owned by the same company) must comply with the SOCMI HON. Initially, this company was expected to submit HON implementation plans because it planned to use emissions averaging for compliance. However, the company instead decided not to opt into averaging, and has not had to submit a Title V application yet. As a result, it is impossible to evaluate their status without more information.

Staff contacted the company directly to see what information they could supply. On March 8, 1999, staff received a letter dated March 2, 1999 from the company. Of the 160 VOC process wastewater streams, approximately 90 are controlled due to SOCMI HON or benzene NESHAPS, with the remaining 70 or so being uncontrolled. The EPA reviewed the company's letter and stated that it did not include sufficient detail to demonstrate that RACT is in place. The EPA asked for the VOC concentration and flow rate of all uncontrolled streams. Staff notified the company of the EPA's concerns and asked the company to provide the information and level of detail that the EPA requested. On April 19, 1999, staff received a follow-up letter dated April 16, 1999 from the company. Staff and the EPA are currently reviewing the information submitted in this follow-up letter. If the BPA industries provide information which demonstrates to the EPA's satisfaction that existing rules represent RACT for IWW in BPA in a timely fashion, then it will not be necessary to adopt and implement Chapter 115 rules for IWW in BPA.

The BPA ozone nonattainment area is currently designated moderate under the FCAA and, thus, was required to attain the one-hour ozone standard by November 15, 1996. BPA did not attain the standard by that date, and also will not attain the standard by November 15, 1999, the attainment date for serious areas. The EPA is authorized to redesignate an area to the next higher classification ("bump up") if it fails to attain by the required date.

However, in determining the appropriate attainment date for an area, EPA may consider the effect of transport of ozone or its precursors from an upwind area. The HGA ozone nonattainment area is upwind of BPA and influences BPA's air quality to such an extent that without reductions from HGA, BPA may not be able to attain the standard solely from its own local reductions. EPA's revised transport policy allows a downwind area such as BPA to have its attainment date extended to no later than the attainment date for the upwind area, without being bumped up.

On April 16, 1999, the EPA published notice in the *Federal Register* (64 FR 18864) that in order for BPA to take advantage of this policy, the commission must submit to the EPA an acceptable SIP revision by November 15, 1999 which includes implementation of VOC RACT in BPA for IWW and batch processes. As noted earlier, staff and a group of BPA industries have had numerous discussions regarding this required SIP element. These BPA industries have agreed to provide information necessary to determine whether current requirements for IWW and batch processes in BPA meet the EPA's RACT requirements. However, the commission believes that it is necessary

to propose the Chapter 115 rules to ensure that all required elements of the BPA Transport SIP can be submitted to the EPA by the November 15, 1999 deadline.

EXPLANATION OF PROPOSED RULES

The rule changes propose extension of the existing Chapter 115 IWW requirements (§§115.140 and 115.142-115.149) to the three-county BPA ozone nonattainment area. These counties are: Hardin, Jefferson, and Orange. Concurrently, the commission is proposing revisions to the existing IWW rules to ensure the implementation of RACT in the HGA ozone nonattainment area in order to satisfy FCAA requirements and enable these rules to be federally approvable. The commission is also proposing revisions which reorganize and clarify the IWW rules. These clarifying/reorganizing revisions include, where possible, consolidation or elimination of redundant language or requirements, the use of the active (rather than passive) voice, and relocation of rule language to more logical locations. In general, the commission's goal is to make the rules easier to read and more explicit concerning which requirements apply.

In addition, rule changes propose to add new Chapter 115 batch process requirements (§§115.160-115.167 and 115.169) to the three-county BPA ozone nonattainment area. The rule language is based upon EPA's *Control of Volatile Organic Compound Emissions from Batch Processes-Alternative Control Techniques Information Document* (EPA-453/R-93-017, February 1994).

The proposed changes to §115.140, concerning Definitions, revise the title of this section to "Industrial Wastewater Definitions" and revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998). For the convenience of the reader, the revisions to §115.140 also add a reference to other sections where definitions of the terms used in the Chapter 115 IWW rules may be found.

The proposed changes to §115.142, concerning Control Requirements, extend the IWW control requirements to BPA; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); clarify that automatic bleeder vents are also called vacuum breaker vents; clarify that emergency roof drains refer to drains that empty into the stored liquid; clarify that the secondary seal gap limitation applies to external floating roof tanks; update a reference to §115.140 due to a title change; and revise a reference to TNRCC and the executive director for consistency with the commission's style guidelines.

In separate rulemaking (24 TexReg 61, January 1, 1999), the commission proposed to add a definition of vapor control system to §115.10 which is identical to the existing definition of vapor recovery system. This will facilitate a transition in the Chapter 115 rules to this term from the misleading term "vapor recovery system," which is defined to include both recovery and combustion control devices. Consequently, the proposed changes to §115.142 change a reference from "vapor recovery system" to "vapor control system" for clarification.

The proposed revisions to §115.142 also implement several requirements in order to satisfy EPA's RACT requirements in BPA and HGA. First, the proposed revisions specify that in BPA and HGA, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to reduce the VOC content of the wastewater stream by 90% by weight and also reduce the VOC content of the same VOC wastewater stream to less than 1,000 parts per million by weight. Second, the proposed revisions require that a junction box with a pump be controlled with either a vapor control system which maintains a minimum control efficiency of 90%, or with a closed system which prevents the flow of VOC vapors from the vent during normal operation. Most junction boxes do not have pumps, and most of the ones which do are already controlled under the SOCMI HON rules. Control of junction boxes equipped with pumps, but not controlled under the SOCMI HON rules, would be achieved most economically by piping to an existing control device. Third, the proposed revisions require the VOC content of wastewater in biotreatment units and wet weather retention basins to be reduced by 90%.

In addition, the proposed changes to §115.142 revise the "once-in, always-in" (OIAI) rule (§115.142(3)(A)) to include a reference to Chapter 106, as well as Chapter 116, because exemptions from permitting were relocated from Chapter 116 to Chapter 106, effective March 14, 1997. The updating of this reference will provide continued flexibility to the regulated community. The revisions also correct the terms "subsection" and "section" to "division," and update the term "standard exemption" to "exemption from permitting."

The proposed changes to §115.143, concerning Alternate Control Requirements, revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and relocate the 90% overall control option in the existing §115.147(5) to the proposed §115.143(b), where this option more logically belongs.

The proposed changes to §115.144, concerning Inspection and Monitoring Requirements, extend the inspection and monitoring requirements to BPA; correct the term "subsection" to "section;" correct the term "metallic type shoe seal" to "mechanical shoe seal" for consistency with this definition in §101.1; add a requirement for monitoring and recording of appropriate operating parameters for types of vapor control systems not specifically listed in §115.144(3); and add specific monitoring requirements for flares and vapor combustors. Specifically, the proposed changes to §115.144 add a requirement that flares must meet the requirements of 40 Code of Federal Regulations (CFR) 60.18(b) and Chapter 111. The proposed new §115.144(3)(G) specifies exhaust gas temperature monitoring of vapor combustors, with an option that the owner/operator of an existing vapor combustor may consider it to be a flare and monitor the unit under the flare requirements specified in 40 CFR 60.18(b) and Chapter 111.

These revisions are necessary to ensure that control devices are functioning properly and to clarify how vapor combustors are to be monitored. Based upon information from the New Source Review Permits Division, most existing flares meet the design and operating criteria of 40 CFR 60.18(b). The commission solicits information regarding flares which are used to control emissions from IWW, but do not meet the requirements of 40 CFR 60.18(b).

The proposed changes to §115.145, concerning Approved Test Methods, extend the existing test methods to BPA; reorganize the section by grouping related test methods together; add test methods for determination of total suspended solids; add a procedure for determination of biotreatment unit efficiency; and add a new paragraph (10), which authorizes the use of

test methods other than those specifically listed in §115.145, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This revision is necessary because in some specific unique situations the listed test methods may be inappropriate. The new paragraph (10) increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

Because it is not reasonably possible to measure the mass emission rate from an elevated flare (an elevated flare's flame is open to the atmosphere, such that the emissions cannot be routed through a stack), the test methods for flow rate and VOC concentration in §115.145(1)-(2) do not apply to flares. In order to specify performance requirements for flares, the proposed §115.145(3) establishes the test requirements of 40 CFR 60.18(b). Because flares cannot be stack-tested, the proposed §115.145(3) also specifies that compliance with the requirements of 40 CFR 60.18(b) represents a 98% control efficiency.

The proposed changes to §115.146, concerning Recordkeeping Requirements, extend the recordkeeping requirements to BPA; and propose to delete the existing §115.146(4), which concerns records associated with control device maintenance activities, because maintenance activities are already addressed in §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements. The proposed changes to §115.146 also revise §115.146(1) to include a reference to §115.143 due to the relocation of the 90% overall control option described in the following paragraph.

The proposed changes to §115.147, concerning Exemptions, extend the availability of exemptions to BPA; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and relocate the 90% overall control option in the existing §115.147(5) to the proposed §115.143(b).

The proposed changes to §115.148, concerning Determination of Wastewater Characteristics, revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The proposed changes to §115.149, concerning Counties and Compliance Schedules, specify a December 31, 2001 compliance date for the newly affected counties (Jefferson, Hardin, and Orange); specify a December 31, 2000 compliance date for biotreatment units and wet weather retention basins and for control of junction boxes equipped with pumps in the HGA ozone nonattainment area; and delete language which is obsolete due to the passing of a November 15, 1996 compliance date.

The proposed new §115.160, concerning Batch Process Definitions, adds definitions for aggregated, annual mass emissions total, average flow rate, batch, batch cycle, batch process, batch process train, emissions before control, primary fuel, process vent, RACT, semi-continuous, unit operations, and volatility (including low, moderate, and high volatility).

The proposed new §115.161, concerning Applicability, specifies that the batch process requirements of §§115.162-115.167 apply to vent gas streams at batch process operations in the BPA area under the Standard Industrial Classification (SIC) codes 2821 (plastic resins and materials), 2833 (medicinals and botanicals), 2834 (pharmaceutical preparations), 2861 (gum and wood chemicals), 2865 (cyclic crudes and intermediates), 2869 (industrial organic chemicals, not elsewhere classified), and 2879 (agricultural chemicals, not elsewhere classified). The proposed new §115.161 also specifies that the existing requirements of Subchapter B, Division 2, concerning Vent Gas Control, will continue to apply to batch process operations which are exempt from §§115.162-115.166 because they are located at an account which has total VOC emissions, when uncontrolled, of less than 100 tons per year.

The proposed new §115.162, concerning Control Requirements, establishes the applicable RACT equations for low, moderate, and high volatility materials; establish a successive ranking scheme which determines which sources must be controlled and which are exempt; and specify that EPA's OIAI requirement applies. OIAI is an EPA concept which means that once emissions from a source exceed the applicability cutoff for a particular VOC regulation in the SIP, that source is always subject to the control requirements of the regulation.

The proposed new §115.163, concerning Alternate Control Requirements, establishes the availability of alternate means of control.

The proposed new §115.164, concerning Determination of Emissions and Flow Rates, establishes the procedures for determining the uncontrolled annual emission total and the average flow rate for process vents.

The proposed new §115.165, concerning Approved Test Methods and Testing Requirements, establishes the approved test methods and testing requirements for determining compliance with the control requirements and allows minor modifications to the test methods if approved by the executive director.

Because it is not reasonably possible to measure the mass emission rate from an elevated flare (an elevated flare's flame is open to the atmosphere, such that the emissions cannot be routed through a stack), the test methods for flow rate and VOC concentration do not apply to flares. In order to specify performance requirements for flares, the proposed new §115.165 establishes the test requirements of 40 CFR 60.18(b). Because flares cannot be stack-tested, the proposed new §115.165 also specifies that compliance with the requirements of 40 CFR 60.18(b) represents a 98% control efficiency. Based upon information from the New Source Review Permits Division, most existing flares meet the design and operating criteria of 40 CFR 60.18(b). The commission solicits information regarding flares which are used to control emissions from batch process operations, but do not meet the requirements of 40 CFR 60.18(b).

The proposed new §115.165 also includes authorization for the use of test methods other than those specifically listed in §115.165, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This revision is necessary because in some specific unique situations the listed test methods may be inappropriate. The new rule increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The proposed new §115.166, concerning Recordkeeping Requirements, establishes requirements for continuous monitoring and recording of control device operating parameters; estab-

lishes recordkeeping requirements for the annual mass emission total, average flow rate, and associated documentation for each process vent; and specifies the control device operating parameters to be measured and recorded during performance testing.

The proposed new §115.167, concerning Exemptions, establishes exemptions for batch process operations which are located at an account which has total VOC emissions, when uncontrolled, of less than 100 tons per year; single unit operations that have a mass annual emission (AE) of 500 pounds per year or less; and combined vents from a batch process train which have a mass AE total below specified levels which vary depending on the volatility of the VOCs. The proposed new §115.167 also specifies that the existing requirements of Subchapter B, Division 2, concerning Vent Gas Control, will continue to apply to batch process operations which qualify for exemption because they are located at an account which has total VOC emissions, when uncontrolled, of less than 100 tons per year.

The proposed new §115.169, concerning Counties and Compliance Schedules, specifies the affected counties (Jefferson, Hardin, and Orange) and a December 31, 2001 compliance date for the new requirements. The proposed new §115.169 also specifies that batch process operations which are subject to the new requirements of §§115.162-115.166 must continue to comply with the existing requirements of Subchapter B, Division 2, concerning Vent Gas Control, until these batch process operations are in compliance with the new requirements.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed amendments and new sections are in effect there will be no significant fiscal implications for state and local governments as a result of administration or enforcement of the proposed amendments. The BPA ozone nonattainment area is currently designated moderate under the FCAA. BPA will not attain the required one-hour ozone standard by the November 15, 1999 attainment date. The EPA is then authorized to redesignate the area as a "serious" nonattainment area. The purpose of the proposed amendments and new sections is to implement VOC RACT rules in BPA in conformance with the EPA's revised ozone transport policy in order to allow BPA's attainment date to be extended to as late as November 15, 2007; and to incorporate corrections to ensure the implementation of VOC RACT in the HGA ozone nonattainment area. In order for BPA to have its attainment date extended in accordance with EPA's transport ozone policy, the commission must submit to EPA an acceptable SIP revision which includes implementation of VOC RACT in BPA for IWW and batch processes. Most or all of the IWW and batch process sources which will have to comply with the proposed rules are currently subject to air permits and/or to similar requirements under 40 CFR 61, Subpart FF (Benzene NESHAPS); 40 CFR 63, Subparts F and G (SOCMI HON); and 40 CFR 63, Subpart CC (Petroleum Refinery MACT) and, therefore, are already being inspected for compliance. Consequently, only a limited number of facilities will need to be inspected for compliance with the proposed Chapter 115 rules. The commission anticipates that the Field Operations Division inspectors will inspect for compliance with the proposed requirements when conducting their routine inspections. The commission also anticipates that enforcement of these rules will not significantly increase the number of facilities currently inspected by the state and local governments. However, these rules will cause a minor increase in workload when inspecting the affected facilities.

For batch processes, the commission estimates the cost-effectiveness (the cost per ton of VOC emissions reduced), annualized total cost of control, annual operating costs, and total capital cost for flow rates of 500 and 5,000 standard cubic feet per minute (scfm) as follows, based on the cost- effectiveness data of Appendix F of EPA's *Control of Volatile Organic Compound Emissions from Batch Processes-Alternative Control Techniques Information Document* (EPA-453/R-93- 017, February 1994):

Figure 1: 30 TAC Chapter 115-preamble

For IWW, the commission estimates the cost-effectiveness (the cost per ton of VOC emissions reduced), annualized total cost of control, annual operating costs, and total capital cost for organic chemicals, plastics, and synthetic fibers (OCPSF) manufacturing, pesticides manufacturing, pharmaceutical manufacturing, and treatment, storage, and disposal facilities (TSDF) as follows, based on the cost-effectiveness data of EPA's *Revisions to Impacts of the Draft Industrial Wastewater Control Techniques Guideline* (November 1994):

Figure 2: 30 TAC Chapter 115-preamble

The commission estimates the cost-effectiveness, annualized total cost of control, annual operating costs, and total capital cost for petroleum refineries to be similar to that for OCPSF manufacturing.

For sources which route IWW emissions to flares that do not already meet the requirements of 40 CFR 60.18(b), the commission estimates the cost of testing to determine the exit velocity and the net heating value of the vapors being combusted to be approximately $6,000, based upon vendor estimates. For IWW sources in BPA, the commission estimates that installing a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame would cost approximately $19,300 to $22,300, based upon vendor estimates. The commission estimates the cost of controling junction boxes equipped with pumps, but not controlled under the SOCMI HON rules, to be minimal since compliance would be achieved most economically by piping to an existing control device.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated from the enforcement of and compliance with these sections will be satisfaction of requirements of the FCAA, and reductions of ground-level ozone in the BPA ozone nonattainment area. In addition, EPA's extension of the BPA attainment date will allow the commission to closely coordinate the HGA and BPA attainment schedules, thus making more efficient use of modeling and planning resources. On a broader scale, the economy of the entire BPA area should benefit from an extended attainment date without the threat of bump-up. In addition, the proposed revisions will ensure that the existing Chapter 115 IWW rules represent RACT in HGA, which will satisfy FCAA requirements and enable these rules to be federally approvable.

SMALL BUSINESS ANALYSIS

For batch processes, the commission has reviewed the 1996 emissions inventory and did not identify any small businesses among the sources potentially subject to the proposed rules. Likewise, for IWW the commission has reviewed the 1996 emissions inventory and did not identify any small businesses among the sources potentially subject to the proposed rules. Consequently, no adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to the rules because there are no known small businesses which will be subject to the proposed amendments.

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, although it meets the definition of a "major environmental rule" as defined in the Texas Government Code, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, under §182(b)(2)(C) of the 1990 FCAA Amendments, states are required to ensure that RACT is in place for all major VOC sources in moderate and above ozone nonattainment areas. The purpose of the rulemaking is to ensure that RACT is in place for all major VOC sources in the BPA and HGA ozone nonattainment areas. This proposal is not an express requirement of state law, but was developed specifically in order to meet the RACT requirements established under federal law. This will also conform with the EPA's revised ozone transport policy and allow BPA's attainment date to be extended, and will also enable the IWW rules for HGA to be federally approvable. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, this proposal does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and was not developed solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to ensure that RACT is in place for all major VOC sources in the BPA and HGA ozone nonattainment areas. The purpose of the rulemaking is to conform with the EPA's revised ozone transport policy and allow the BPA ozone nonattainment area's attainment date to be extended, and to enable the IWW rules for HGA to be federally approvable. This rulemaking action may require the installation of control systems at industrial wastewater and batch process operations in BPA and possibly also in HGA in some cases. The commission has determined that the proposed rules may possibly burden private property because in some cases the permanent installation of control systems and associated piping is necessary in order to comply with the rules. Although the rule revisions do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the rule revisions fulfill a federal mandate under §182(b)(2) of the 1990 Amendments to the FCAA. Specifically, §182(b)(2)(C) of the 1990 FCAA Amendments requires states to ensure that RACT is in place for all major VOC sources in moderate and above ozone nonattainment areas. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), 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, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule revisions, and the revisions may result in a reduction in VOC emissions due to the new control requirements on IWW and batch process vent gas streams. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that the proposed rulemaking is consistent with CMP goals and policies. 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 this proposal will be held in Beaumont on August 9, 1999, at 5:30 p.m. in the John Gray Institute, located at 855 Florida Avenue. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes before the hearing and will 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 mailed 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 Number 99019-115-AI. Comments must be received by 5:00 p.m., August 16, 1999. For further information, please contact Eddie Mack, Strategic Environmental Analysis and Assessment Division, at (512) 239-1488.

Division 4. Industrial Wastewater

30 TAC §§115.140, 115.142-115.149

STATUTORY AUTHORITY

The amendments are proposed under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.012, which re-

quires the commission to develop plans for protection of the state's air.

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

§115.140. Industrial Wastewater Definitions.

The following terms, when used in this division [~~undesignated head~~], shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

(1)-(6) (No change.)

§115.142. Control Requirements.

The [~~For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the~~] owner or operator of an affected source category within a plant in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall comply with the following control requirements. Any component of a wastewater storage, handling, transfer, or treatment facility, if the component contains an affected volatile organic compounds (VOC) wastewater stream, shall be controlled in accordance with either paragraph (1), [~~or~~] (2), or (3) of this section, except for a properly operated biotreatment unit and a wet weather retention basin. In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the [~~The~~] control requirements [~~shall~~] apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit or is treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream. In the Beaumont/Port Arthur area, and after December 31, 2001 in the Houston/Galveston area, the control requirements apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, or is treated to reduce the VOC content of the wastewater stream by 90% by weight and also reduce the VOC content of the same VOC wastewater stream to less than 1,000 parts per million by weight. For wastewater streams which are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least the total amount of VOC that would be removed to treat each individual affected VOC wastewater stream so that they no longer meet the definition of affected VOC wastewater stream. For this division [~~undesignated head~~], a component of a wastewater storage, handling, transfer, or treatment facility shall include, but is not limited to, wastewater storage tanks, surface impoundments, wastewater drains, junctions boxes, lift stations, weirs, and oil-water separators.

(1) The wastewater component shall meet the following requirements.

(A)-(C) (No change.)

(D) For junction boxes and vented covers, the following requirements apply.

(i) In the Dallas/Fort Worth and El Paso areas, and until December 31, 2000 in the Houston/Galveston area, if [~~If~~] any cover, other than a junction box cover, is equipped with a vent, the vent shall be equipped with either a vapor control [~~recovery~~] system which maintains a minimum control efficiency of 90% or a closed system which prevents the flow of VOC vapors from the vent during normal operation. Any junction box vent shall be equipped with a vent pipe at least 90 centimeters (cm) (36 inches (in.)) in length and no more than 10.2 cm (4.0 in.) in diameter.

(ii) In the Beaumont/Port Arthur area, and after December 31, 2000 in the Houston/Galveston area, the following requirements apply.

(I) If any cover or junction box cover, except for junction boxes described in subclause (II) of this clause, is equipped with a vent, the vent shall be equipped with either a vapor control system which maintains a minimum control efficiency of 90% or a closed system which prevents the flow of VOC vapors from the vent during normal operation.

(II) Any junction box that is filled and emptied by gravity flow (i.e., there is no pump) or is operated with no more than slight fluctuations in the liquid level may be vented to the atmosphere, provided it is equipped with a vent pipe at least 90 cm (36 in.) in length and no more than 10.2 cm (4.0 in.) in diameter.

(E)-(F) (No change.)

(G) All seals and cover connections shall be maintained in proper condition. For purposes of this paragraph [~~rule~~], "proper condition" means that covers shall have a tight seal around the edge and shall be kept in place except as allowed by this division [~~undesignated head~~], that seals shall not be broken or have gaps, and that sewer lines shall have no visible gaps or cracks in joints, seals, or other emission interfaces.

(H) (No change.)

(2) The wastewater component shall be equipped with a floating roof or internal floating cover which meets the following requirements.

(A) All openings in an internal or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents shall provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid shall be in a closed (i.e., no visible gap) position at all times except when the opening is in actual use for its intended purpose.

(B) Automatic bleeder vents (vacuum breaker vents) shall be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) (No change.)

(D) Any [~~emergency~~] roof drain that empties into the stored liquid shall be provided with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) (No change.)

(F) Secondary seals shall be the rim-mounted type (i.e., the seal shall be continuous from the floating roof to the tank wall). For external floating roof tanks, the [~~The~~] accumulated area of gaps that exceed 1/8 in. (0.32 cm) in width between the secondary seal and tank wall shall be no greater than 1.0 $in.^2$ per foot (21 cm^2/meter) of tank diameter.

(3) In the Beaumont/Port Arthur area, and after December 31, 2000 in the Houston/Galveston area, a properly operated biotreatment unit and wet weather retention basins shall meet the following requirements.

(A) The VOC content of the wastewater shall be reduced by 90% by weight; and

(B) The average concentration of suspended biomass maintained in the aeration basin of the biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m^3), measured as total suspended solids.

(4) [~~(3)~~] Any wastewater component that becomes subject to this division [~~section~~] by exceeding the provisions of §115.147 of this title (relating to Exemptions) or an affected VOC wastewater stream as defined in §115.140 of this title (relating to Industrial Wastewater Definitions) will remain subject to the requirements of this division [~~section~~], even if the component later falls below those provisions unless and until emissions are reduced to no more than [~~at or below~~] the controlled emissions level existing prior to the implementation of the project by which throughput or emission rate was reduced to [~~and~~] less than the applicable exemption levels in §115.147 of this title; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or [~~standard~~] exemption from permitting required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Exemptions from Permitting). If an [~~a standard~~] exemption from permitting is available for the project, compliance with this division [~~subsection~~] must be maintained for 30 days after the filing of documentation of compliance with that [~~standard~~] exemption from permitting; or

(B) if authorization by permit, permit amendment, standard permit, or [~~standard~~] exemption from permitting is not required for the project, the owner or operator has given the executive director [~~Texas Natural Resource Conservation Commission~~] 30 days' notice of the project in writing.

§115.143. Alternate Control Requirements.

(a) Alternate means of control. Alternate [~~For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, alternate~~] methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division [~~undesignated head~~] (relating to Industrial Wastewater) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(b) 90% overall control option. As an alternative to the control requirements of §115.142 of this title (relating to Control Requirements), the owner or operator of a wastewater storage, handling, transfer, or treatment facility may elect to ensure that the overall control of volatile organic compounds (VOC) emissions at the account from wastewater from affected source categories is at least 90% less than the 1990 baseline emissions inventory, provided that the following requirements are met.

(1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a wastewater component for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of VOC emissions at the account from wastewater from affected source categories will be at least 90% less than the 1990 baseline emissions inventory. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. At a minimum, the control plan shall include the applicable emission point number (EPN); the facility identification number (FIN); the calendar year 1990 emission rates of wastewater from affected source categories (consistent with the 1990 emissions inventory); a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility; the VOC emission rates for the preceding calendar year; and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance. The VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(2) The owner or operator shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction, which demonstrates that the overall control of VOC emissions at the account from wastewater from affected source categories during the preceding calendar year is at least 90% less than the 1990 baseline emissions inventory. At a minimum, the report shall include the EPN; FIN; the throughput of wastewater from affected source categories; a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility; and the VOC emission rates for the preceding calendar year. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 emissions inventory.

(3) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions at the account from wastewater from affected source categories continues to be at least 90% less than the 1990 baseline emissions inventory. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

§115.144. Inspection and Monitoring Requirements.

The [~~For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the~~] owner or operator of an affected source category within a plant in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas [~~a facility subject to the control requirements of §115.142 of this title (relating to Control Requirements)~~] shall comply with the following inspection and monitoring requirements.

(1) All seals and covers used to comply with §115.142(1) of this title (relating to Control Requirements) shall be inspected according to the following schedules to ensure compliance with §115.142(1)(G) and (H) of this title:

(A)-(B) (No change.)

(2) Floating roofs and internal floating covers used to comply with §115.142(2) of this title shall be subject to the following requirements. All secondary seals shall be inspected according to the following schedules to ensure compliance with §115.142(2)(E) and (F) of this title.

(A) (No change.)

(B) If the tank is equipped with a mechanical [~~metallic type~~] shoe or liquid-mounted primary seal, compliance with §115.142(2)(F) of this title may be determined by visual inspection.

(C) (No change.)

(3) Monitors shall be installed and maintained as required by this section [~~subsection~~] to measure operational parameters of any emission control device or other device installed to comply with §115.142 of this title. Such monitoring and parameters shall be sufficient to demonstrate proper functioning of those devices to design

specifications, and include the monitoring and parameters listed in subparagraphs (A)-(H) [(F)] of this paragraph, as applicable. In lieu of the monitoring and parameters listed in subparagraphs (A)-(H) [(F)] of this paragraph, other monitoring and parameters may be approved or required by the executive director:

(A) for an enclosed non-catalytic combustion device (including, but not limited to, a thermal incinerator, boiler, or process heater), continuously monitor and record the temperature of the gas stream either in the combustion chamber or immediately downstream before any substantial heat exchange;

(B)-(D) (No change.)

(E) for a flare, meet the requirements specified in 40 Code of Federal Regulations 60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter); [continuously monitor for the presence of a flare pilot light using a thermocouple or any other equivalent device to detect the presence of a flame; and]

(F) for a steam stripper, continuously monitor and record the steam flow rate, the wastewater feed mass flow rate, the wastewater feed temperature, and condenser vapor outlet temperature; [.]

(G) for a vapor combustor, continuously monitor and record the exhaust gas temperature either in the combustion chamber or immediately downstream before any substantial heat exchange. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (E) of this paragraph; and

(H) for vapor control systems other than those specified in subparagraphs (A)-(G) of this paragraph, continuously monitor and record the appropriate operating parameters.

(4) In the Beaumont/Port Arthur and Houston/Galveston areas, units used to comply with §115.142(3) of this title shall:

(A) initially demonstrate a 90% reduction in VOCs by using the methods in §115.145 of this title (relating to Approved Test Methods); and

(B) measure on a weekly basis the total suspended solids in the aeration basin of the biotreatment unit.

§115.145. Approved Test Methods.

[For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this undesignated head] Compliance with the emission specifications, vapor control system efficiency, and certain control requirements, inspection requirements, and exemption criteria of §§115.142-115.144 and 115.147 of this title (relating to Control Requirements; Alternate Control Requirements; Inspection and Monitoring Requirements; and Exemptions) shall be determined by applying one or more of the following test methods and procedures, as appropriate:

(1) Gas flow rate. [for determination of gas flow rate-] Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) are used for determining gas flow rates, as necessary. [;]

(2) Concentration of Volatile Organic Compounds (VOC).

(A) [for determination of gaseous organic compound emissions by gas chromatography-] Test Method 18 (40 CFR Part 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography. [;]

(B) Test Method 25 (40 CFR 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.

(C) Test Methods 25A or 25B (40 CFR 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

(3) Performance requirements for flares and vapor combustors.

(A) For flares, the performance test requirements of 40 CFR 60.18(b) shall apply.

(B) For vapor combustors, the owner or operator may consider the unit to be a flare and meet the performance test requirements of 40 CFR 60.18(b) rather than the procedures of paragraphs (1) and (2) of this section.

(C) Compliance with the requirements of 40 CFR 60.18(b) will be considered to represent 98% control of the VOC in the flare inlet.

(4) Vapor pressure. Use standard reference texts or American Society for Testing and Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989.

(5) [(3)] Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining VOC [for determination of volatile organic compound (VOC)] leaks and for monitoring a carbon canister in accordance with §115.144(3)(D) of this title (relating to Inspection and Monitoring Requirements). [- Test Method 21 (40 CFR Part 60, Appendix A);]

[(4) for determination of total gaseous nonmethane organic emissions as carbon - Test Method 25 (40 CFR Part 60, Appendix A);]

[(5) for determination of total gaseous organic concentration using a flame ionization or a non dispersive infrared analyzer - Test Methods 25A or 25B (40 CFR Part 60, Appendix A);]

(6) Determination [for determination] of VOC concentration of wastewater samples. Use [-] Test Method 5030 (purge and trap) followed by Test Method 8015 with a DB-5 boiling point (or equivalent column), and flame ionization detector, with the detector calibrated with benzene (SW-846 and 40 CFR Part 261); Test Methods 3810, 5030 (followed by 8020), 8240, 8260, and 9060 (SW-846 and 40 CFR Part 261); Test Methods 602 and 624 (40 CFR Part 136); Test Method 5310(B) (Standard Methods 17th Edition); or Test Method 25D (40 CFR Part 60, Appendix A). [;]

[(7) for determination of true vapor pressure - American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989; and]

(7) Determination of total suspended solids. Use Method 160.2 (Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020) or Method 2540D (Standard Methods for the Examination of Water and Wastewater, 18th Edition, American Public Health Association).

(8) Determination of biotreatment unit efficiency. Use the methods found in 40 CFR 63 Appendix C or 40 CFR 63.145.

A stream-specific list of VOCs shall be used and is determined as follows:

(A) compounds with concentrations below one part per million by weight (ppmw) or below the lower detection limit may be excluded;

(B) for the owner or operator that can identify at least 90% by weight of the VOCs in the wastewater stream, the individual VOCs that are 5.0% by weight or greater are required to be included on the list. If less than half of the total VOCs in the wastewater are represented by the compounds that are 5.0% by weight or greater, the owner or operator shall include those individual VOCs with the greatest mass on the stream-specific list of VOCs until 75 compounds or every compound, whichever is fewer, is included on the list, except as provided by subparagraph (A) of this paragraph. The owner or operator shall document that the site-specific list of VOCs is representative of the process wastewater stream; and

(C) for the owner or operator that can identify at least 50% by weight of the VOCs in the wastewater stream, the individual VOCs with the greatest mass on the stream-specific list of VOCs up to 75 compounds or every compound, whichever is fewer, shall be included on the list, except as provided by subparagraph (A) of this paragraph. The owner or operator shall document that the site- specific list of VOCs is representative of the process wastewater stream.

(9) [~~(8)~~] Minor modifications. Minor [~~minor~~] modifications to these test methods may be used, if approved by the executive director.

(10) Alternate test methods. Test methods other than those specified in paragraphs (1)-(8) of this section (concerning to Approved Test Methods) may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.146. Recordkeeping Requirements.

The [~~For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the~~] owner or operator of an affected source category within a plant in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall comply with the following recordkeeping requirements.

(1) Complete and up-to-date records shall be maintained as needed to demonstrate compliance with §115.142 and §115.143 of this title (relating to Control Requirements; and Alternate Control Requirements) which are sufficient to demonstrate the characteristics of wastewater streams and the qualification for any exemptions claimed under §115.147 of this title (relating to Exemptions).

(2) Records shall be maintained of the results of any inspection or monitoring conducted in accordance with [~~the provisions specified in~~] §115.144 of this title (relating to Inspection and Monitoring Requirements). Records shall be sufficient to demonstrate proper functioning of applicable control equipment to design specifications to ensure compliance with §115.142 and §115.143 of this title.

(3) Records shall be maintained of the results of any testing conducted in accordance with [~~the provisions specified in~~] §115.145 of this title (relating to Approved Test Methods).

[~~(4) Records shall be maintained of the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.~~]

(4) [~~(5)~~] All records shall be maintained at the plant for at least two years and be made available upon request to representatives of the executive director, EPA [~~United States Environmental Protection Agency~~], or any local air pollution control agency having jurisdiction in the area.

§115.147. Exemptions.

[~~For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the~~] The following exemptions [~~shall~~] apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

(1) Any plant with an annual volatile organic compounds (VOC) loading in wastewater, as determined in accordance with §115.148 of this title (relating to Determination of Wastewater Characteristics), less than or equal to 10 megagrams (Mg) (11.03 tons) is [~~shall be~~] exempt from the control requirements of §115.142 of this title (relating to Control Requirements).

(2) (No change.)

(3) Unless specifically required by this division (relating to Industrial Wastewater) [~~undesignated head~~], any component of a wastewater storage, handling, transfer, or treatment facility to which the requirements of this division [~~undesignated head~~] apply is [~~shall be~~] exempt from the requirements of any other portion of this chapter.

(4) (No change.)

[~~(5) Wastewater components are exempt from the control requirements of §115.142 of this title if the overall control of VOC emissions at the account from wastewater from affected source categories is at least 90% less than the 1990 baseline emissions inventory, and the following requirements are met.~~]

[~~(A) To qualify for the exemption available under this paragraph after December 31, 1996, the owner or operator of a wastewater component for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of VOC emissions at the account from wastewater from affected source categories will be at least 90% less than the 1990 baseline emissions inventory. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the exemption available under this paragraph for compliance. At a minimum, the control plan shall include the applicable emission point number (EPN); the facility identification number (FIN); the calendar year 1990 emission rates of wastewater from affected source categories (consistent with the 1990 emissions inventory); a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility; the VOC emission rates for the preceding calendar year; and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance. The VOC emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.~~]

[~~(B) In order to maintain exemption status under this paragraph, the owner or operator shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction, which demonstrates that the overall control of VOC emissions at the account from wastewater from affected source categories during the preceding calendar year is at least 90% less than the 1990 baseline emissions inventory. At a minimum, the report shall include the EPN; FIN; the throughput of wastewater from affected source categories; a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment~~

facility; and the VOC emission rates for the preceding calendar year. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 emissions inventory.]

[(C) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the wastewater component submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions at the account from wastewater from affected source categories continues to be at least 90% less than the 1990 baseline emissions inventory. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.]

§115.148. Determination of Wastewater Characteristics.

The determination of the characteristics of a wastewater stream for purposes of this division (relating to Industrial Wastewater) [undesignated head] shall be made as follows.

(1)-(5) (No change.)

§115.149. Counties and Compliance Schedules.

(a) The owner or operator of each affected source category within a plant in [For] Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties [, any person who is the owner or operator of an affected source category within a plant] shall continue to comply [be in compliance] with this division [undesignated head] (relating to Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates) [soon as practicable, but no later than November 15, 1996].

(b) The owner or operator of each affected source category within a plant in Hardin, Jefferson, and Orange Counties shall be in compliance with this division as soon as practicable, but no later than December 31, 2001.

[(b) For Hardin, Jefferson, and Orange Counties, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this undesignated head (relating to Industrial Wastewater) as soon as practicable, but no later than three years, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the National Ambient Air Quality Standards for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).]

(c) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall control all junction boxes equipped with pumps in accordance with §115.142(1)(D)(ii)(II) of this title (relating to Control Requirements) as soon as practicable, but no later than December 31, 2000.

(d) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall control all biotreatment units and wet weather retention basins in accordance with §115.142(3) and §115.144(4)(A) of this title (relating to Control Requirements; and Inspection and Monitoring Requirements) as soon as practicable, but no later than December 31, 2000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 1999.

TRD-9903944
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: November 10, 1999
For further information, please call: (512) 239-0348

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Division 6. Batch Processes

30 TAC §§115.160-115.167, 115.169

STATUTORY AUTHORITY

The new sections are proposed under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA, §382.012, which requires the commission to develop plans for protection of the state's air.

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

§115.160. Batch Process Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §115.10 of this title (relating to Definitions), §101.1 of this title (relating to Definitions), and §3.2 of this title (relating to Definitions).

(1) Aggregated-The summation of all process vents containing volatile organic compounds (VOC) within a process.

(2) Annual mass emissions total-The sum of all VOC emissions (pounds per year), evaluated before control, from a vent. Annual mass emissions shall be calculated from an individual process vent or groups of process vents by using emission estimation equations contained in Chapter 3 of EPA's *Control of Volatile Organic Compound Emissions from Batch Processes-Alternative Control Techniques Information Document* (EPA-453/R-93-017, February 1994) and then multiplying by the historical duration and frequency of the emission or groups of emissions over the course of a year. For process vents that are included in a new source review air permit, the annual mass emissions total shall be based on the maximum allowable emission rate (MAER) levels in the permit (adjusted to represent the level before control), whether they correspond to the maximum design production potential or to the actual annual production estimate.

(3) Average flow rate-The flow rate in standard cubic feet per minute (scfm) averaged over the amount of time that VOCs are emitted during an emission event. For the evaluation of average flow rate from an aggregate of sources, the average flow rate is the weighted average of the average flow rates of the emission events and their annual venting time, or:
Figure: 30 TAC §115.160(3)

(4) Batch-A noncontinuous process involving the bulk movement of material through sequential manufacturing steps. Mass, temperature, concentration, and other properties of a system vary with time. Batch processes are not characterized by steady-state

conditions. Reactants are not added and products are not removed simultaneously.

(5) Batch cycle-A manufacturing event of an intermediate or product from start to finish in a batch process.

(6) Batch process (for the purpose of determining RACT applicability)-The batch equipment assembled and connected by pipes, or otherwise operated in a sequence of steps, to manufacture a product in a batch fashion.

(7) Batch process train-An equipment train that is used to produce a product or intermediates in batch fashion. A typical equipment train consists of equipment used for the synthesis, mixing, and purification of a material.

(8) Emissions before control-The emissions total prior to the application of a control device, or the emissions total if no control device is used. The emissions total may not be reduced to account for discharge of VOC into wastewater if the wastewater is further handled or processed with the potential for VOC emissions to the atmosphere.

(9) Primary fuel-The fuel that provides the principal heat input to a device. To be considered a primary fuel, the fuel must be able to sustain operation without the addition of other fuels.

(10) Process vent-A vent gas stream containing greater than 500 parts per million by volume (ppmv) total VOC that is discharged from a batch process. Process vents include gas streams that are discharged directly to the atmosphere or are discharged to the atmosphere after diversion through a recovery device. Process vents exclude relief valve discharges, leaks from equipment, vents from storage tanks, vents from transfer/loading operations, and vents from wastewater. Process gaseous streams that are used as primary fuels are also excluded. The lines that transfer such fuels to a plant fuel gas system are not considered to be vents.

(11) RACT-Reasonably available control technology.

(12) Semi-continuous-Conduction of operations on a steady-state mode but only for finite durations (in excess of eight hours minimum) during the course of a year. For example, a steady-state distillation operation that functions for one month would be considered semi-continuous.

(13) Unit operations-Those discrete processing steps that occur within distinct equipment that are used to prepare reactants, facilitate reactions, separate and purify products, and recycle materials.

(14) Volatility-As follows.

(A) Low volatility VOCs are those which have a vapor pressure less than or equal to 75 millimeters of mercury (mmHg) at 20 degrees Celsius.

(B) Moderate volatility VOCs are those which have a vapor pressure greater than 75 and less than or equal to 150 mmHg at 20 degrees Celsius.

(C) High volatility VOCs are those which have a vapor pressure greater than 150 mmHg at 20 degrees Celsius.

(D) To evaluate VOC volatility for single unit operations that service numerous VOCs or for processes handling multiple VOCs, the weighted average volatility can be calculated from the total amount of each VOC emitted in a year and the individual component vapor pressure, as follows:

Figure: 30 TAC §115.160(14)(D)

§115.161. Applicability.

(a) The provisions of §§115.162-115.167 of this title (relating to Control Requirements; Alternate Control Requirements; Determination of Emissions and Flow Rates; Approved Test Methods and Testing Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) apply to vent gas streams at batch process operations in the Beaumont/Port Arthur area, as defined in §115.10 of this title (relating to Definitions), under the following Standard Industrial Classification (SIC) codes:

(1) 2821 (plastic resins and materials);

(2) 2833 (medicinals and botanicals);

(3) 2834 (pharmaceutical preparations);

(4) 2861 (gum and wood chemicals);

(5) 2865 (cyclic crudes and intermediates);

(6) 2869 (industrial organic chemicals, not elsewhere classified); and

(7) 2879 (agricultural chemicals, not elsewhere classified).

(b) Any batch process operation that is exempt under §115.167(1) of this title (relating to Exemptions) is subject to the requirements of Division 2 of this subchapter (relating to Vent Gas Control).

§115.162. Control Requirements.

The owner or operator of each batch process operation in the Beaumont/Port Arthur area shall comply with the following control requirements.

(1) Reasonable available control technology (RACT) equations. The volatile organic compounds (VOC) mass emission rate from individual process vents or for process vent streams in aggregate within a batch process shall be reduced by 90% if the actual average flow rate value (in standard cubic feet per minute (scfm)) is below the flow rate (FR) value calculated using the applicable RACT equation for the volatility range (low, moderate, or high) of the material being emitted when the annual mass emission total (in pounds per year) are input. The RACT equations, specific to volatility, are as follows:

(A) Low volatility: FR = 0.07(AE) - 1821;

(B) Moderate volatility: FR = 0.031(AE) - 494;

(C) High volatility: FR = 0.013(AE) - 301.

(2) Successive ranking scheme. For aggregate streams within a process, the control requirements must be evaluated with the following successive ranking scheme until control of a segment of unit operations is required or until all unit operations have been eliminated from the process pool.

(A) If, for the process vent streams in aggregate, the value of FR calculated using the applicable RACT equation in paragraph (1) of this section is negative (i.e., less than zero), then the process is exempt from the 90% control requirements, and the successive ranking scheme of subparagraph (F) of this paragraph does not apply. This would occur if the mass annual emission rates are below the lower limits specified in §115.167(2)(A) of this title (relating to Exemptions).

(B) If, for the process vent streams in aggregate, the actual average flow rate value (in scfm) is below the value of FR calculated using the applicable RACT equation in paragraph (1) of this section, then the overall emissions from the batch process must be reduced by 90%, and the successive ranking scheme of subparagraph (F) of this paragraph does not apply. The owner or operator has the

option of selecting which unit operations are to be controlled and to what levels, provided that the overall control meets the specified level of 90%. Single units that qualify for exemption under §115.167(2)(B) of this title do not have to be controlled even if all units should qualify for this exemption.

(C) If, for the process vent streams in aggregate, the actual average flow rate value (in scfm) is greater than the value of FR calculated using the applicable RACT equation in paragraph (1) of this section (and the calculated value of FR is a positive number), then the control requirements must be evaluated with the successive ranking scheme of subparagraph (F) of this paragraph until control of a segment of unit operations is required or until all unit operations have been eliminated from the process pool. Single units that qualify for exemption under §115.167(2)(B) of this title do not have to be included in the rankings and do not have to be controlled even if all units should qualify for this exemption.

(D) Sources that are required to be controlled to the level specified by RACT (i.e., 90%) will have an average FR that is below the flow rate specified by the applicable RACT equation in paragraph (1) of this section (when the source's annual emission total is input). The applicability criterion is implemented on a two-tier basis. First, single pieces of batch equipment corresponding to distinct unit operations shall be evaluated over the course of an entire year, regardless of what materials are handled or what products are manufactured in them. Second, equipment shall be evaluated as an aggregate if it can be linked together based on the definition of a process.

(E) To determine applicability of a RACT option in the aggregation scenario, all the VOC emissions from a single process shall be summed to obtain the annual mass emission total, and the weighted average FRs from each process vent in the aggregation shall be used as the average FR.

(F) All unit operations in the batch process, as defined for the purpose of determining RACT applicability, shall be ranked in ascending order according to their ratio of annual emissions (pounds per year) divided by average FR (in scfm). Sources with the smallest ratios shall be listed first. This list of sources constitutes the "pool" of sources within a batch process. The annual emission total and average FR of the pool of sources shall then be compared against the RACT equations in paragraph (1) of this section to determine whether control of the pool is required.

(i) If control is not required after the initial ranking, unit operations having the lowest annual emissions/average FRs ratio shall then be eliminated one by one, and the characteristics of annual emission and average FR for the remaining pool of equipment must be evaluated with each successive elimination of a source from the pool.

(ii) Control of the unit operations remaining in the pool to the specified level (i.e., 90%) shall be required once the aggregated characteristics of annual emissions and average FRs have met the specified RACT. The owner or operator has the option of selecting which unit operations are to be controlled and to what levels, provided that the overall control meets the specified level of 90%.

(3) Once-in, always-in. Any batch process operation that becomes subject to the provisions of this division by exceeding provisions of §115.167 of this title will remain subject to the provision of this division, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.167 of this title; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or exemption from permitting required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Exemptions from Permitting). If an exemption from permitting is available for the project, compliance with this division must be maintained for 30 days after the filing of documentation of compliance with that exemption from permitting; or

(B) if authorization by permit, permit amendment, standard permit, or exemption from permitting is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

§115.163. Alternate Control Requirements.

Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Batch Processes) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.164. Determination of Emissions and Flow Rates.

The owner or operator of each batch process operation in the Beaumont/Port Arthur area shall determine the mass emissions and flow rates as follows.

(1) Determination of Uncontrolled Annual Emission Total. The owner or operator shall determine the annual mass emissions total by using engineering estimates of the uncontrolled emissions from a process vent or group of process vents within a batch process train and multiplying by the potential or permitted number of batch cycles per year. Engineering estimates must follow the guidance contained in EPA's *Control of Volatile Organic Compound Emissions from Batch Processes-Alternative Control Techniques Information Document* (EPA-453/R-93-017, February 1994). Alternatively, if an emissions measurement is used to measure vent emissions, the measurement must conform with the requirements of measuring incoming mass flow rate of volatile organic compounds as specified in §115.165 of this title (relating to Approved Test Methods and Testing Requirements).

(2) Determination of Average Flow Rate. To obtain a value for average flow rate, the owner or operator may choose to measure the flow rates or to estimate the flow rates using the estimation methods contained in EPA's *Control of Volatile Organic Compound Emissions from Batch Processes-Alternative Control Techniques Information Document* (EPA-453/R-93-017, February 1994). For existing manifolds, the average flow rate may be the flow rate that was assumed in the design.

§115.165. Approved Test Methods and Testing Requirements.

The owner or operator of each batch process operation in the Beaumont/Port Arthur area shall comply with the following.

(1) Performance testing conditions. For the purpose of determining compliance with the control requirements of this division (relating to Batch Processes), the process unit shall be run at full operating conditions and flow rates during any performance test.

(2) Test methods. The owner or operator of each batch process operation shall use the following methods to determine compliance with the percent reduction efficiency requirement of §115.162 of this title (relating to Control Requirements).

(A) Flow rate.

(i) Test Methods 1 or 1A (40 Code of Federal Regulations (CFR) 60, Appendix A) as appropriate, shall be used for selection of the sampling sites if the flow rate measuring device is a rotameter. No traverse is necessary when the flow measuring device is an ultrasonic probe. The control device inlet sampling sites for determination of vent stream volatile organic compounds (VOC) composition reduction efficiency shall be before the control device and after the control device.

(ii) Test Methods 2, 2A, 2C, or 2D (40 CFR 60, Appendix A) as appropriate, shall be used for determination of gas stream volumetric flow rate. Flow rate measurements shall be made continuously.

(B) Concentration of VOC. Test Method 18 (40 CFR 60, Appendix A) (gas chromatography) or Test Method 25A (40 CFR 60, Appendix A) (flame ionization) shall be used to determine the concentration of VOC in the control device inlet and outlet.

(i) The sampling time for each run shall be the entire length of the batch cycle, during which readings shall be taken:

(I) continuously if Method 25A is used; or

(II) as often as is possible using Method 18, with a maximum of one-minute intervals between measurements throughout the batch cycle.

(ii) The emission rate of the process vent or inlet to the control device shall be determined by combining continuous concentration and flow rate measurements at simultaneous points throughout the batch cycle.

(iii) The mass flow rate of the control device outlet shall be determined by combining continuous concentration and flow rate measurements at simultaneous points throughout the batch cycle.

(iv) The efficiency of the control device shall be determined by integrating the mass flow rates obtained in clauses (ii) and (iii) of this subparagraph over the time of the batch cycle, and dividing the difference in inlet and outlet mass flow totals by the inlet mass flow total.

(C) Performance requirements for flares and vapor combustors.

(i) For flares, the performance test requirements of 40 CFR 60.18(b) shall apply.

(ii) For vapor combustors, the owner or operator may consider the unit to be a flare and meet the performance test requirements of 40 CFR 60.18(b).

(iii) Compliance with the requirements of 40 CFR 60.18(b) will be considered to represent 98% control of the VOC in the flare inlet.

(D) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

(E) Alternate test methods. Test methods other than those specified in subparagraphs (B) and (C) of this paragraph may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.166. Monitoring and Recordkeeping Requirements.

The owner or operator of each batch process operation in the Beaumont/Port Arthur area shall maintain the following information for at least two years at the plant, as defined by its air quality account number. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area:

(1) Vapor control systems. For vapor control systems used to control emissions from volatile organic compounds (VOC) transfer operations, records of appropriate parameters to demonstrate compliance, including:

(A) continuous monitoring and recording of:

(i) for a direct-flame incinerator, the exhaust gas temperature in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange. The temperature monitoring device shall have an accuracy of ±0.5 degrees Celsius, or alternatively, ±1.0%;

(ii) for a catalytic incinerator, the exhaust gas temperature immediately before and after the catalyst bed. The temperature monitoring device shall have an accuracy of ±0.5 degrees Celsius, or alternatively, ±1.0%;

(iii) for an absorber, either:

(I) the scrubbing liquid temperature. The temperature monitoring device shall have an accuracy of ±1.0% of the temperature being monitored in degrees Celsius, or alternatively, ±0.02 specific gravity unit; or

(II) the concentration level of VOC exiting the recovery device based on a detection principle such as infrared photoionization or thermal conductivity;

(iv) for a condenser or refrigeration system, either:

(I) the condenser exit temperature. The temperature monitoring device shall have an accuracy of ±1.0% of the temperature being monitored in degrees Celsius, or alternatively, ±0.5 degrees Celsius; or

(II) the concentration level of VOC exiting the recovery device based on a detection principle such as infrared photoionization or thermal conductivity;

(v) for a carbon adsorption system, as defined in §101.1 of this title (relating to Definitions), either:

(I) steam flow (using an integrating steam flow monitoring device) and the carbon bed temperature. The steam flow monitor shall have an accuracy of ±10%. The temperature monitor shall have an accuracy of ±1.0% of the temperature being monitored in degrees Celsius, or ±0.5 degrees Celsius, whichever is greater; or

(II) the concentration level of VOC exiting the recovery device based on a detection principle such as infrared photoionization or thermal conductivity;

(vi) for a pressure swing adsorption unit that is the final recovery device, the temperature of the bed near the inlet and near the outlet. The temperature monitoring device shall have an accuracy of ±1.0% of the temperature being monitored in degrees Celsius, or ±0.5 degrees Celsius. Proper operation shall be evidenced by a uniform pattern of temperature increases and decreases near the inlet and a fairly constant temperature near the outlet; and

(vii) for a vapor combustor, the exhaust gas temperature in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange. The temperature monitoring device shall have an accuracy of ±0.5 degrees Celsius, or alternatively, ±1.0%. Alternatively, the owner or operator of a vapor

combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph.

(B) for flares, the requirements specified in 40 Code of Federal Regulations 60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter); and

(C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.

(2) Process vents. A record of the following emission stream parameters for each process vent contained in the batch process:

(A) the annual mass emission total and documentation verifying these values. If emission estimate equations are used, the documentation shall be the calculations coupled with the expected or permitted (if available) number of emission events per year; and

(B) the average flow rate in standard cubic feet per minute and documentation verifying these values.

(3) Performance test monitoring parameters. Records of the following parameters required to be measured during a performance test required under §115.165 of this title (relating to Approved Test Methods and Testing Requirements) and required to be monitored under paragraph (1) of this section:

(A) where an owner or operator seeks to demonstrate compliance with §115.162 of this title (relating to Control Requirements) through use of either a direct-flame or catalytic incinerator, the average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed for a catalytic incinerator), measured continuously and averaged over the same time period as the performance test;

(B) where an owner or operator seeks to demonstrate compliance with §115.162 of this title through use of a smokeless flare, the flare design (i.e., steam-assisted, air-assisted, or nonassisted), all visible emissions readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the performance test; continuous flare pilot flame monitoring; and all periods of operations during which the pilot flame is absent; and

(C) where an owner or operator seeks to demonstrate compliance with §115.162 of this title:

(i) with an absorber as the final control device, the exit specific gravity (or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the executive director) and average exit temperature of the absorbing liquid measured continuously and averaged over the same time period as the performance test (both measured while the vent stream is routed normally);

(ii) with a condenser as the control device, the average exit (product side) temperature measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally;

(iii) with a carbon adsorption system as the control device, the total steam mass flow measured continuously and averaged over the same time period as the performance test (full carbon bed cycle), temperature of the carbon bed after regeneration (and within 15 minutes of completion of any cooling cycle(s)), and duration of the carbon bed steaming cycle (all measured while the vent stream is routed normally);

(iv) the concentration level or reading indicated by an organic monitoring device at the outlet of the absorber, condenser, or carbon adsorption system, measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally;

(v) with a pressure swing adsorption unit as the final recovery device, the temperature of the bed near the inlet and near the outlet. The temperature monitoring device shall have an accuracy of ±1.0% of the temperature being monitored in degrees Celsius, or ±0.5 degrees Celsius. Proper operation shall be evidenced by a uniform pattern of temperature increases and decreases near the inlet and a fairly constant temperature near the outlet.

§115.167. Exemptions.
The following exemptions apply in the Beaumont/Port Arthur area.

(1) Batch process operations at an account which has total volatile organic compound (VOC) emissions, when uncontrolled, of less than 100 tons per year from all stationary emission sources included in the account are exempt from the requirements of this division (relating to Batch Processes), except for §115.161(b) of this title (relating to Applicability).

(2) The following are exempt from the requirements of this division, except for §115.166(2) and

(3) of this title (relating to Monitoring and Recordkeeping Requirements):

(A) Combined vents from a batch process train which have an annual mass emissions total as follows:
Figure: 30 TAC §115.167(2)(A)

(B) Single unit operations that have an annual mass emissions total of 500 lb/yr or less.

§115.169. Counties and Compliance Schedules.
The owner or operator of each batch process operation in Hardin, Jefferson, and Orange Counties shall be in compliance with this division (relating to Batch Processes) as soon as practicable, but no later than December 31, 2001. All batch process operations subject to this division in Hardin, Jefferson, and Orange Counties shall continue to comply with the requirements of Division 2 of this subchapter (relating to Vent Gas Control) until these batch process operations are in compliance with the requirements of this division.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: November 10, 1999
For further information, please call: (512) 239-0348

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§116.111, 116.114, 116.116, 116.183, 116.312, and 116.740; and the repeal of §§116.124, 116.130, 116.131, 116.132, 116.133, 116.134, 116.136, and 116.137.

BACKGROUND The primary purpose of the proposed amendments and new sections is to implement House Bill (HB) 801, and portions of Senate Bill (SB) 7 and SB 766 76th Legislature (1999). The proposed amendments and new sections are intended to establish and clarify the applicability of notice provision and provide avenues for public participation in the permitting process for water, waste, and air applications. These changes also update notice rules for air quality permit amendments. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs. Certain rules will constitute a revision to the state implementation plan (SIP). Specifically, §§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP. Specific rules from Chapters 39 and 55 are also being proposed as SIP revisions.

OVERVIEW OF HB 801 AND IMPLEMENTATION HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to TCAA, THSC §382.056; and revisions to Texas Government Code, §2003.047. The new and amended statutory provisions apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost- effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55 and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305 and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

OVERVIEW OF SB 7 AND IMPLEMENTATION Senate Bill (SB 7), enacted by the 76th Legislature, restructures electric utility service in Texas. Also, owners grandfathered utilities that generate electric energy for compensation are required to apply for electric generating facility permits from the commission by September 1, 2000. These permits are subject to notice under §382.056 of the THSC. SB 7 provides that initial issuance of these permits requires notice and comment proceedings. However, amendment and renewal of these permits requires notice, comment and opportunity for contested case hearing. The notice provisions for electric generating facility permits are implemented through changes to Chapter 39. Chapters 50, 55 and 80 as amended also apply to these permits. Additional implementation of the requirements of SB 7 is expected to occur in future rulemaking proposals by the commission.

OVERVIEW OF SB 766 AND IMPLEMENTATION SB 766, enacted by the 76th Legislature, also amends TCAA, §382 by, among other things: (1) requiring the commission to establish procedures to authorize standard permits and permits by rule; (2) dividing the current category of exemptions from permitting into two categories: permits by rule for construction of new facilities with insignificant air emissions, and exemptions from permitting for changes to existing facilities with insignificant air emissions; and (3) creating a voluntary emission reduction permit for grandfathered facilities that must be applied for by September 1, 2001. Notice requirements for these changes are implemented in the changes to Chapter 39 because of the critical nature of the timing of the permit program. Public participation requirements applicable to permit applications under SB 766 are included in these chapters. Additional implementation of the requirements of SB 766 is expected to occur in future rulemaking proposals by the commission.

COMMENTS REQUESTED The commission solicits comments regarding the requirements in §39.603(a)(2) (Air Quality Permit applications) on the size of newspaper notice. The commission recognizes that the measurements in the rules do not necessarily reflect the measurements that newspapers use for advertisements. Recommendations on more appropriate terminology would be appreciated.

EXPLANATION OF PROPOSED RULES The primary purpose of the proposed amendments and repeals is to implement House Bill (HB) 801, 76th Legislature (1999).

The proposed amendment to §116.111 includes the addition of subsection (b), containing a new requirement that applications for which notice is required comply with the provisions of Chapter 39, relating to public notice. In addition, the notice waiver for previously permitted facilities is proposed to be moved to §116.111(b) from §116.130(b), which is part of the proposed repeal discussed later in this preamble. No substantive changes have been made by the change in this section.

To accommodate the dual notification requirements of HB 801 and Texas Clean Air Act (TCAA), §382.056(f), §116.114(a)(2) is proposed to be modified. This section refers to the executive director's preliminary determination to approve or disapprove applications after completing the technical review. This requirement, under current rules, is exclusive only to applications subject to Federal Clean Air Act (FCAA), Title I, Part C or D (Nonattainment Permits) and 40 CFR Part 51.165(b) (relating to Prevention of Significant Deterioration permits) under §116.131(a),

which is proposed to be repealed. TCAA, §382.056(f) requires a preliminary determination for all applications subject to notification. The proposed revised section outlines the circumstances under which applicants must to publish notice of the executive director's preliminary decision and seek additional public comment. This section is proposed to be reformatted to account for the notification triggers but maintains the existing review deadlines for the executive director to complete the technical review and forward his preliminary determination to the company and the chief clerk.

The proposed amendment to §116.114(c)(1)-(3) incorporates the applicant notification requirements previously in §116.137. These provisions streamline the format and match the requirements listed under §116.114(2), §116.160(b)(3), and §116.314 to establish the time lines when the executive director should notify applicants of the final decision on an application. No substantive changes have been made by the creation of this subsection.

Section 116.116(b)(4) is proposed to be added in accordance with proposed §39.403(15) requirements for notice for certain permit amendments, including applications for construction of any new facility under TCAA §382.0518 and the clarification of the existing practice of requiring public notification for modifications to existing facilities with significant emission increases authorized under Chapter 116. Under these new requirements, any new facility construction will be required to comply with notice requirements in Chapter 39. The previous reference to public notification requirements for actions under Chapter 116, Subchapter C, has been incorporated in new §39.403(10), under this proposal.

Proposed modifications to §116.116(d), (d)(1), and (d)(2) include authorization mechanisms for the construction of facilities using a permit by rule, and changes to existing facilities using exemptions from permitting, both under the proposed revised Chapter 106. This change references the implementation of the statutory changes from SB 766 and new requirements for authorization of insignificant facilities under TCAA, §§382.05196, 382.057 and 382.058.

The public notification text requirement for availability of compliance history information is proposed to be moved to §39.411(15)(D) and §116.124 is being repealed. No substantive changes have been made to this rule.

Subchapter B, Division 3 (relating to Notification and Comment Procedures) §§116.130-116.137 are proposed to be repealed. As required by the Business Process Review, a new §116.111(3) requires applications with public notification to comply with the requirements of Chapter 39 (relating to Public Notice). Similar changes have been proposed under §116.114(b)(1) (relating to Voiding of Deficient Applications); Subchapter C, §116.183 (relating to Public Notification for Hazardous Air Pollutants) §116.312 (relating to public notification requirements for Permit Renewals); and Subchapter G, §116.740 (a) and (c) (relating to public notification requirements for Flexible Permits).

The requirements of §116.130(a) and (c) (relating to Applicability) are proposed to be moved to §39.403(9), (10), and (14). The requirements of §116.130(b) (relating to notification for change of location of previously permitted facilities) are proposed to be included in new §116.111(b). No substantive changes have been made to these rules.

The preliminary determination and notification requirements of §116.131(a) are proposed to be incorporated in the revisions to §116.114(2). The application availability requirements under §116.131(b) are proposed to be incorporated into §39.411(14) and revised to reflect the new requirements under TCAA §382.056(d) which requires the applicant to make a copy of the application available for review by the public in the county where the facility is or will be located.

The public notice format requirements previously under §116.132(a) (relating to Publication in public notice section of newspaper) are proposed to be moved to §39.603(a) (relating to Newspaper Notice) and §39.411 (relating to Text) and include requirements as specified in HB 801 and §382.056. Instead, due to the procedural changes required by HB 801 the previous requirement to publish notice in two consecutive issues of a newspaper are proposed to be reduced to one issue of a newspaper for each set of required notices. The requirements of §116.132(b) (relating to Publication Elsewhere in the Newspaper) are proposed to be moved to §39.603(a)(2) and have no substantive changes. The requirements under §116.132(c) and (d) (relating to Additional Alternate Language Public Notice) are proposed to be moved to §39.603(b). Changes are proposed to be made to streamline and reformat the existing requirements as well as clarifying that alternate language notice is required even if the applicable schools do not have students in resident programs at the time of public notice applicability under new §39.603(b)(1). In accordance with existing TNRCC practice, new §39.603(b)(7) requires applicants to complete a certification and submit this certification under §39.605(c) if they waive out of alternate language public notice.

The sign posting requirements previously under §116.133 and §116.312(b) are proposed to be moved to §39.604. There is one substantive change to these requirements under the new section. The posting of signs along property lines at the existing or proposed facility are limited to only those areas which parallel a public street, road, or highway. Previous references to "thoroughfare" are proposed to be deleted in accordance to Air Rule Interpretation Memo Number R6-133.001. The requirement under §116.312(b) which is proposed to be moved to §39.604 is the requirement for the sign heading to read "PROPOSED RENEWAL OF AIR QUALITY PERMIT."

Notification of Affected Agencies previously under §116.134 is proposed to be moved to §39.605(a) and (b). No substantive changes have been made to these rules. Section 39.605 refers to general notification requirements of §39.405(f) which requires all public notifications, regardless of commission program, to submit copies of notices and affidavits to the chief clerk of the agency.

Public comment procedures previously under §116.136 are proposed to be included in §39.409 (relating to Deadline for Public Comment and Requests for Reconsideration and Contested Case Hearing), §55.21 (relating to Requests for Contested Case Hearings, Public Comment), and §55.25 (relating to Public Comment Processing) in accordance with the new requirements under HB 801.

Notification of Final Action previously under §116.137 has been moved to §116.114(c)(1)-(3). No substantive changes are proposed to be made to these rules.

Finally, certain rules in Chapters 39, 55 and 116 will constitute a revision to the state implementation plan (SIP). Specifically,

§§116.111, 116.114, 116.116, 116.183, 116.312, 116.740 as revised are proposed to be added to the SIP. In addition, existing §§116.124 and 116.130-116.137 are proposed to be deleted from the SIP.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 116, Control Of Air Pollution By Permits For New Construction Or Modification, would implement or reference certain provisions contained in:

HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

SB 766, 76th Legislature, 1999, an act relating to the issuance of certain permits for the emission of air contaminants.

The proposed amendments include new requirements from HB 801 for registration and public notification which are consistent with requirements in the proposed amendments to Chapter 39, Public Notice; Chapter 50, Actions On Applications; and Chapter 55, Request for Contested Case Hearings; Public Comment. Provisions that previously existed in Chapter 116 and that have been incorporated in the proposed amendments to Chapters 39, 50, and 55 are proposed for repeal in the proposed amendments. The proposed amendments also reference the implementation of the statutory changes in SB 766 regarding exemptions and permits by rule.

It is anticipated that applicants for certain permits under Chapter 382, Clean Air Act, of the Texas Health and Safety Code; and all other similar authorizations will be affected by the proposed amendments to the rules. Persons involved in the air permitting process, including interested members of the general public, will also be affected.

PUBLIC BENEFIT Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 116 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the air permitting processes conducted by TNRCC and increased standardization in the air permit application process.

The purpose of the proposed amendments is to establish new notification and public comment procedures for new construction or modification permits. Specifically, the proposed modifications outline circumstances in which permit applicants for new construction or modifications of facilities must publish notice and seek public comment. The proposed amendments also establish authorization mechanisms for the construction of facilities using permits by rule and changes to existing facilities using exemptions from permitting under the Texas Clean Air Act.

The proposed amendments will require an applicant for an amendment to an existing permit due to construction of a new facility, or for modifications to existing facilities which have significant emissions increases, to publish notice and provide the opportunity for a hearing. It is anticipated that an additional 420 facilities will be required to publish notice. In accordance with proposed amendments to Chapter 39, Public Notice, air permit applicants will be required to publish notice in one issue of the newspaper of general circulation in the municipality in which the facility is located or proposed to be located. The public notice consists of a Legal Notice and a larger Display Notice regarding their intent to apply for an air quality permit. In addition, there is a requirement for applicants to publish notice once in each language for which bilingual education programs are required by the Texas Education Code in the elementary or middle school nearest to the facility or proposed facility.

The cost for public notice may vary significantly depending on the location of the permitted facility and its proximity to large metropolitan areas. Small town/city newspapers generally charge much less for publication of a public notice. A recent survey indicated that a large city newspaper would charge approximately $3,000 for the Display Notice and approximately $450 for the Legal Notice. A smaller city newspaper would charge approximately $210 for the Display Notice and $20 for the Legal Notice. The cost for alternative language publication is estimated to be approximately $150 for each notice. It is estimated that total current costs for public notice for each application are in the range of $380 to $3,600 for medium to large sized business requiring one Legal Notice, one Display Notice, and one alternative language notice. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

SMALL BUSINESS ANALYSIS The following cost analysis is included in this fiscal note for informational purposes. The requirement and the fiscal impact are contained in the proposed amendments to Chapter 39, Public Notice, which is proposed in a concurrent publication in the *Texas Register.* The inclusion of the costs here does not imply that the costs are related to the proposed amendments to Chapter 116 or in addition to the costs related to the proposed amendments to Chapter 39.

If small businesses require air permits for new construction or modification, some economic effects are anticipated as a result of implementing the provisions of the proposed amendments to Chapter 116 of the rules. The costs are anticipated to be within the same range as those estimated for medium to large businesses previously mentioned. It is also anticipated that some small businesses whose emissions do not have a significant effect on air quality will only be required to publish the Legal Notice and the alternate language notice when applicable. The costs are anticipated to be in the range of $170 to $600 for one Legal Notice and one alternative language notice. Although these are additional requirements, their effects have been mitigated by reducing the current requirement to publish notice of intent to obtain an air permit in two successive issues of a newspaper. If a small business is an applicant the costs associated with providing a copy of the application for review and copying are not expected to be significant.

REGULATORY IMPACT EVALUATION 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." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). "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 rulemaking is not a major environmental rule because it is procedural in nature and establishes procedures associated with air permits for new construction or modification, public notice, and public comment on permit applications, and it is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is to establish procedures for public participation in certain permitting proceedings. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for the air quality permitting program. In addition, the rule incorporates the reference to new permits by rule authorized by SB 766. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public participation procedures to be followed by the commission and applicants for certain commission authorizations. The rule does not prescribe control requirements or any other requirements that would normally be associated with a commission environmental rulemaking.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not impose any significant additional requirements not already required by federal law, because the main purpose of this proposal is to adopt state rules to provide for additional notice, opportunity for public comment, or opportunity for hearing which also satisfies federal program authorization requirements. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice, and Texas Clean Air Act (TCAA), §382.05196 and §382.056; as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not significantly exceed, federal requirements, and is in accordance with Texas Water Code, §5.551 and TCAA, §382.017, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA, §382.05196 and §382.056 and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would also consolidate already existing notice procedures for the air quality permitting program; correct, clarify, and update the air quality permit amendment process; clarify requirements relating to bilingual education notices; and consolidate commission procedural rules. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

PUBLIC HEARING A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030-039- AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239- 6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

Subchapter B. New Source Review Permits

Division 1. Permit Application

30 TAC §§116.111, 116.114, 116.116

STATUTORY AUTHORITY The amended sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the com-

mission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amended sections implement §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.111. General Application.

(a) In order to be granted a permit, amendment, or special permit amendment, the application must include:

(1) a completed Form PI-1 General Application signed by an authorized representative of the applicant. All additional support information specified on the form must be provided before the application is complete;

(2) information which demonstrates that all of the following are met.

(A) Protection of public health and welfare.

(i) The emissions from the proposed facility will comply with all rules and regulations of the commission and with the intent of the TCAA, including protection of the health and physical property of the people.

(ii) For issuance of a permit for construction or modification of any facility within 3,000 feet of an elementary, junior high/middle, or senior high school, the commission shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending the school(s).

(B) Measurement of emissions. The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director. This may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission (TNRCC) Sampling Procedures Manual."

(C) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(D) New Source Performance Standards (NSPS). The emissions from the proposed facility will meet the requirements of any applicable NSPS as listed under Title 40 Code of Federal Regulations (CFR) Part 60, promulgated by the EPA under FCAA, §111, as amended.

(E) National Emission Standards for Hazardous Air Pollutants (NESHAP). The emissions from the proposed facility will meet the requirements of any applicable NESHAP, as listed under 40 CFR Part 61, promulgated by EPA under FCAA, §112, as amended.

(F) NESHAP for source categories. The emissions from the proposed facility will meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by the EPA under FCAA, §112 or as listed under Chapter 113, Subchapter C of this title (relating to National Emissions Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)).

(G) Performance demonstration. The proposed facility will achieve the performance specified in the permit application. The applicant may be required to submit additional engineering data after a permit has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the permit application. In addition, dispersion modeling, monitoring, or stack testing may be required.

(H) Nonattainment review. If the proposed facility is located in a nonattainment area, it shall comply with all applicable requirements in this chapter concerning nonattainment review.

(I) Prevention of Significant Deterioration (PSD) review. If the proposed facility is located in an attainment area, it shall comply with all applicable requirements in this chapter concerning PSD review.

(J) Air dispersion modeling. Computerized air dispersion modeling may be required by the executive director to determine air quality impacts from a proposed new facility or source modification.

(K) Hazardous air pollutants. Affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) for hazardous air pollutants shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(b) and the owner or operator must comply with the provisions in Chapter 39 of this title (relating to Public Notice). Upon written request by the owner or operator of a facility which previously has received a permit or special permit from the commission, the executive director, or designated representative may exempt the relocation of such facility from the provisions in Chapter 39 of this title (relating to Public Notice) if there is no indication that operation of the facility at the proposed new location will significantly affect ambient air quality and no indication that operation of the facility at the proposed new location will cause a condition of air pollution.

§116.114. Application Review Schedule.

(a) Review schedule. The executive director shall review permit applications in accordance with the following.

(1) (No change.)

(2) Preliminary decision [~~Decision~~] to approve or disapprove the application. The executive director shall conduct a technical review and send [~~mail~~] written notice to the applicant of the preliminary [~~his~~] decision to approve or not approve the application within 180 days of receipt of a completed permit application or 150 days of receipt of a permit amendment. If the applicant has provided Notice of Receipt of Application and Intent to Obtain Permit public notification as required by the executive director as required under Chapter 39 of this title (relating to Public Notice), one of the following shall apply:

(A) [~~and~~] if no requests for public hearing or public meeting on the proposed facility have been received or the application is otherwise exempt under §39.19(d)(1) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall send a copy of the Preliminary Decision to the applicant; or

(B) if Notice of Application and Preliminary Decision is required under §39.419(d) of this title (relating to Notice of Application and Preliminary Decision), the executive director shall authorize this notice and send copies to the applicant and all other persons are required under §39.602 of this title (relating to Mailed Notice). [~~notice within:~~]

[~~(A) 180 days of receipt of a completed permit application; or~~]

[~~(B) 150 days of receipt of a permit amendment or special permit amendment.~~]

(3) (No change.)

(b) Voiding of deficient application.

(1) An applicant shall make a good faith effort to submit, in a timely manner, adequate information which demonstrates that the requirements for obtaining a permit or permit amendment are met in response to any deficiency notification issued by the executive director under the provisions of this section, or Chapter 39 [~~§116.131~~] of this title (relating to Public Notice [~~Notification Requirements~~]).

(2) If an applicant fails to make such good faith effort, the executive director shall void the application and notify the applicant. If the application is resubmitted within six months of the voidance, it shall be exempt from the requirements of §116.140 of this title (relating to Applicability).

(c) Notification of executive director's decision.

(1) Notification to Applicant. The executive director or the chief clerk shall send to the applicant the decision to approve or not approve the application if:

(A) no timely requests for reconsideration, contested case hearing, or public meeting on the proposed facility have been received; or

(B) if hearing requests have been received and withdrawn before the executive director's Preliminary Decision; or

(C) the application is for any amendment, modification, or renewal application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted; and

(D) the applicant has satisfied all public notification requirements of Chapter 39 of this title (relating to Public Notice).

(2) Notification to commenters. Persons submitting written comments under Chapter 39 of this title shall be sent the executive director's final action and given an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion for Reconsideration of Executive Director's Decision) at the same time that the applicant is notified. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using the method prescribed by §382.031(a) of the Texas Health and Safety Code.

(3) Time Limits. The executive director shall send notification of final action within:

(A) one year after receipt of a complete PSD or nonattainment permit application, or a complete permit application for an action under Subchapter C of this chapter;

(B) 180 days of receipt of a completed permit or permit renewal application; or

(C) 150 days of receipt of a permit amendment or special permit amendment application.

§116.116. Changes to Facilities.

(a) (No change.)

(b) Permit amendments.

(1)-(2) (No change.)

(3) Any person who applies for an amendment to a permit to construct or reconstruct an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) under Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 [~~§§116.130-116.134, 116.136, and 116.137~~] of this title (relating to Public Notice [~~Notification and Comment Procedures~~]).

(4) Any person who applies for an amendment to a permit to construct a new facility or modify an existing facility shall comply with the provisions in Chapter 39 of this title.

(c) (No change.)

(d) Permits by rule and exemptions from permitting [~~Exemption~~] under Chapter 106 of this title (relating to Exemptions from Permitting) in lieu of permit amendment or alteration.

(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption from permitting or permit by rule under Chapter 106 of this title unless prohibited by permit condition as provided in §116.115 of this title (relating to General and Special Conditions).

(2) All exempted changes to, and permits by rule associated with, a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.

(e)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9903982
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Division 2. Compliance History

30 TAC §116.124

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY The repealed section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed repealed section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.124. Public Notice of Compliance History.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1932

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Division 3. Public Notification and Comment Procedures

30 TAC §§116.130-116.134, 116.136, 116.137

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY The repealed sections are proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed repealed sections implement §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.130. Applicability.

§116.131. Public Notice Requirements.

§116.132. Public Notice Format.

§116.133. Sign Posting Requirements.

§116.134. Notification of Affected Agencies.

§116.136. Public Comment Procedures.

§116.137. Notification of Final Action by the Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9903984
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter C. Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)

30 TAC §116.183

STATUTORY AUTHORITY

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.183. Public Notice Requirements.

Proposed affected sources (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) shall comply with the public notice requirements contained in Chapter 39 of this title (relating to Public Notice) [~~§116.130 of this title (relating to Applicability)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903985
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter D. Permit Renewals

30 TAC §116.312

STATUTORY AUTHORITY

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.312. Public Notification and Comment Procedures.

[~~(a)~~] The executive director shall mail a written notice to the permit holder within 30 days after receipt of a complete application. The notice will confirm receipt of the application and shall require the applicant to provide public notice of the application for permit renewal in accordance with Chapter 39 of this title (relating to Public Notice) [~~Subchapter B of this chapter (relating to New Source Review Permits)~~].

[~~(b) The sign heading required under §116.133(a)(2) of this title (relating to Sign Posting Requirements) shall read "PROPOSED RENEWAL OF AIR QUALITY PERMIT."~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903986
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Subchapter G. Flexible Permits

30 TAC §116.740

STATUTORY AUTHORITY

The amended section is proposed under THSC, §382.056, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules and §5.105, which establishes the commission's authority to set policy by rule.

Additionally, relevant sections of the THSC include: §382.012, which establishes the commission's authority to prepare and develop a general plan for the control of the state's air; §382.023 and §382.024, which establishes the commission's authority to issue orders to carry out the purposes of the TCAA; §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0513, which establishes the commission's authority to adopt rules concerning permit conditions for air permits; §381.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.05196, which establishes the commission's authority to adopt rules relating to Permits by Rule; §382.055, which establishes the commission's authority to review and renew preconstruction permits; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; §382.057, which establishes the commission's authority to adopt rules to exempt changes within facilities which will not make a significant contribution of air contaminants; and §382.058, which establishes the requirements for notice and hearing requests regarding certain concrete plants.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amended section implements §§382.051, 382.056, 382.05196, 382.056, 382.057, 382.058, and 382.062 of the THSC.

§116.740. Public Notice and Comment.

(a) Any person who applies for a flexible permit or an amendment to a flexible permit shall comply with the provisions in Chapter 39 of this title (relating to Public Notice) [~~§§116.130-116.134, 116.136, 116.137 of this title (relating to Public Notification and Comment Procedures)~~].

(b) Any person who applies for an amendment to a flexible permit regarding an affected source (as defined in §116.15(1) of this title (relating to Section 112(g) Definitions)) subject to Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)) shall comply with the provisions in Chapter 39 of this title (relating to Public Notice) [~~§§116.130-116.134, 116.136, and 116.137 of this title~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Chapter 117. Control of Air Pollution from Nitrogen Compounds

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §117.10, concerning Definitions; §§117.205, 117.207, 117.208, 117.209, 117.211, 117.213, 117.219, and 117.223, concerning Commercial, Institutional and Industrial Sources; and §117.520 and §117.570, concerning Administrative Provisions. The commission proposes these revisions to Chapter 117, concerning Control of Air Pollution from Nitrogen Compounds, and to the State Implementation Plan (SIP) in order to conform with the U.S. Environmental Protection Agency's (EPA) revised ozone transport policy and allow the Beaumont/Port Arthur (BPA) ozone nonattainment area's attainment date to be extended. The changes would require certain lean-burn stationary engines in BPA to meet new emission specifications and other requirements in order to reduce nitrogen oxides (NO_x) emissions and ozone air pollution. Secondarily, in an effort to improve implementation of Chapter 117, applicable to existing major stationary sources of NO_x in the BPA, Dallas/Fort Worth (DFW), and Houston/ Galveston (HGA) ozone nonattainment areas, the commission proposes to: eliminate the requirement to operate wood-fired boilers with flue gas sensor-based trim,

add an option to monitor exhaust flow instead of fuel flow, and clarify several other requirements and rule references.

BACKGROUND

The BPA ozone nonattainment area, an area defined by Hardin, Jefferson, and Orange Counties, is currently designated moderate under the Federal Clean Air Act (FCAA) and, thus, was required to attain the one-hour ozone standard by November 15, 1996. BPA did not attain the standard by that date and also will not attain the standard by November 15, 1999, the attainment date for serious areas. EPA is authorized to redesignate an area to the next higher classification ("bump up") if it fails to attain by the required date.

However, as an alternative to bump-up, EPA policy allows consideration of the effect of transport of ozone or its precursors from an upwind area. The HGA ozone nonattainment area is upwind of BPA and influences BPA's air quality to such an extent that without reductions from HGA, BPA may not be able to attain the standard solely from its own local reductions. EPA's revised transport policy allows a downwind area such as BPA to have its attainment date extended to no later than the attainment date for the upwind area, without being bumped up.

On April 16, 1999, EPA published notice in the *Federal Register* (64 FR 18864) that in order for BPA to take advantage of this policy, the commission must submit to EPA an acceptable SIP revision (by November 15, 1999) which includes any local control measures needed for expeditious attainment and proof that all applicable local control measures required under the moderate classification have been adopted.

The commission's strategy is to meet the "expeditious attainment" requirement of EPA's policy by providing a 24% emission reduction, equal to 3% per year from 1999 to 2007. A proposed lean- burn engine NO_x rule for BPA would provide a substantial portion of these reductions, or 5.29 tons per day (tpd) of the total 20% Rate-of-Progress NO_x reductions of 16.79 tpd. In addition, FCAA, §182(f) requires that NO_x Reasonably Available Control Technology (RACT) be applied to all major sources of NO_x in moderate and above ozone nonattainment areas. The proposed revisions would also implement NO_x RACT requirements for lean-burn gas-fired engines in BPA.

The proposed lean-burn engine rulemaking represents "Phase I" of the state's NO_x rulemaking activities for the BPA attainment demonstration. Under this schedule, adopted rules for lean-burn engines will be submitted to EPA by November 15, 1999. These Phase I NO_x rules are part of the 24% Rate-of Progress reductions modeled for an ozone episode showing transport from HGA to BPA. The agency has conducted modeling for another ozone episode, in which BPA's local emission contributions predominate in the formation of ozone, showing the need for more NO_x reductions in BPA in order for the area to attain the 1-hour ozone standard. Beginning in Summer 1999, the state commits to develop additional NO_x rules as needed for attainment in BPA. These "Phase II" rules needed for attainment would be submitted to EPA by March 31, 2000.

EXPLANATION OF PROPOSED RULES

The proposed change to §117.10, concerning Definitions, adds a definition of "thirty-day rolling average" to the rule, in response to a request for clarification from a monitoring system vendor. The definition is taken from Title 40 Code of Federal Regulations (CFR) Part 60, Subpart Db, the definition of steam generating unit operating day in §60.41b, and the NO_x compliance procedure in §60.46b(e)(3). This clarification is consistent with the preamble discussion in the original NO_x RACT rule (18 TexReg 3427, May 28, 1993).

The proposed change to §117.205(b), concerning Emission Specifications, relocates the averaging time requirements from the beginning of the subsection to new paragraphs (7) and (8) and uses a listing format to make the text less dense and more readable. The proposed changes to §117.205(b)(5) and §117.207(d) and (e), concerning Alternative Plant-wide Emission Specifications, make rule terminology more consistent by substituting the term "sum" for "average" in reference to heat input weighting.

The proposed new §117.205(e) and the proposed revision to §117.205(g)(6), now renumbered (h)(6), add an emission specification for lean-burn gas-fired engines in BPA. The proposed limit of 3.0 grams NO_x per horsepower-hour (g/hp-hr) is consistent with previously established NO_x RACT rules in a number of other states. The proposed limit of 3.0 g carbon monoxide (CO)/hp-hr is consistent with the existing emission specification for rich-burn engines. The purpose of this requirement is to ensure that the NO_x control technique selected does not unnecessarily increase CO emissions.

The proposed changes to §117.205(g)(3), now relettered (h)(3), §117.207(f)(4), §117.209(b)(2), concerning Initial Control Plan Procedures, and §117.213(a)(1)(C), now relettered (a)(1)(A)(iii), concerning Continuous Demonstration of Compliance, would clarify the exemption from NO_x emission specifications for boilers and industrial furnaces (BIFs) regulated by EPA at 40 CFR 266, Subpart H. The exemption became effective on June 9, 1993, with the original NO_x RACT rules and has not been modified since. However, on June 19, 1998, EPA excluded from regulation under Subpart H some hazardous waste-derived fuels which are comparable to certain commercial liquid fuels ("comparable fuels"). The proposed revision would clarify that the exemption applies to BIFs regulated by the version of the EPA rules which were in effect on June 9, 1993. Although it may be appropriate to eventually bring some or all of the original BIFs into the Chapter 117 emission specifications, it would only be appropriate to do so through the rulemaking process, which allows for public notice and comment. The commission is not proposing to bring units which fire comparable fuels into the NO_x emission specifications at this time, since the development of any such measures appears to be more complex than a lean-burn engine NO_x rule. An evaluation of NO_x controls from BIFs in BPA will be made during the development of Phase II rules.

The proposed change to §117.207(f) updates a cross-reference. The proposed change to §117.208(d)(1), concerning Operating Requirements, would exempt wood-fired boilers from the requirement to operate with oxygen (O_2) or CO trim. Boiler trim uses feedback from exhaust gas O_2 or CO sensors to minimize the amount of combustion air fed to a boiler. With trim, gas-fired boilers are typically capable of operating around 2% exhaust O_2; in this range, a reduction of O_2 reduces NO_x formation. In contrast, wood-fired boilers typically need to operate in the range of 7% to 8% exhaust O_2 in order to burn the fuel completely and minimize CO. In this O_2 range, the NO_x production rate (pound per million British thermal units of heat input) increases with tighter O_2 control. Therefore, NO_x reductions caused by fuel efficiency improvement (reducing the total amount of fuel fired reduces emissions) due to combustion trim are likely to be negated by the increased NO_x production rate. Furthermore, the moisture content of wood fuel varies greatly. The moisture

variability may make the operation of trim control unworkable on wood-fired boilers. Since it is ineffective for NO_x control and the operation is challenging, the commission is proposing to eliminate the boiler trim requirement for wood-fired boilers.

The proposed change to §117.211(d), concerning Initial Demonstration of Compliance, would clarify the rule language by substituting "March 21, 1999" for "the effective date of this rule as revised." The specific effective date was not inserted here in the previous revision because the effective date is not known with certainty until after rule language is adopted.

In response to a suggestion from a representative of an affected source with six fuels fed to one unit, the proposed new §117.213(a)(2) adds the option of using a calibrated exhaust flow monitor instead of fuel flow meters for units which are monitored with a NO_x continuous emission monitoring system. Procedures for calibration of exhaust flow monitors are available in existing federal regulations in 40 CFR Part 75, Appendix A, and are referenced to assure the accuracy of the monitoring. Properly calibrated and quality assured exhaust flow meters should be at least as accurate in determining the NO_x mass emission rate as fuel flow meters. In some cases, exhaust flow monitoring may be more cost-effective than fuel flow monitoring.

The proposed new §117.213(b)(2) states that subsection (b) does not require units currently exempt from the Chapter 117 NO_x emission specifications to monitor exhaust O_2. It would not be logical for the monitoring to apply to a unit that is not currently subject to an emission specification. It would be more appropriate to establish the monitoring requirements for these exempt units concurrently with any new emission specifications necessary for future attainment demonstration rules.

The proposed new §117.213(b)(3) clarifies that the O_2 monitors required by subsection (b) are not subject to the location and calibration requirements of the O_2 monitors required by subsection (e). The O_2 monitors required by subsection (b) are for uses such as inputs for predictive monitoring, boiler trim control, and process control. Most units already operate with O_2 monitors for combustion process control. Therefore, because of the potential costs of imposing retroactive requirements on existing monitors, the O_2 monitors should only be required to meet the location specifications and quality assurance requirements referenced in subsection (e) if the monitors are used to monitor diluent under subsection (e). However, if new O_2 monitors are necessitated as a result of subsection (b), subsection (e) requirements should be considered the appropriate guidance for the location and calibration of the monitors. Flexibility in applying the O_2 monitoring requirement is consistent with the preamble discussion in the original NO_x RACT rule (18 TexReg 3436, May 28, 1993). Because subsection (b) currently does not specify compliance with the location and calibration requirements of subsection (e), the proposed changes clarify, but do not lessen, existing requirements.

Other proposed changes would update a cross-reference in §117.213(c)(2)(A) and reduce the number of words used in §117.213(c)(2)(B) without changing the intended meaning. In response to a request for clarification from the regulated community, §117.213(f)(5)(C)(ii) is proposed to be revised by substituting the words "Performance Specifications" for "appropriate procedures." This wording change clarifies that the reference to §117.213(f)(5)(A)(i)(I)-(III) does not include the three load testing specified in §117.213(f)(5)(A)(i). The proposed changes to §117.213(i) and (m) correct rule cross-references.

The proposed changes to §117.219(e)(2), concerning Notification, Recordkeeping, and Reporting Requirements, would revise the criteria for reporting excess emissions caused by catalytic converter or air-fuel ratio controller malfunction, to more generally include excess emissions caused by emission control system failures. This change is proposed to expand the reporting to include the proposed newly regulated category of lean-burn engine emissions. The proposed change to §117.219(f)(1) would add a recordkeeping requirement for exhaust flow monitoring, in case that option (as newly proposed) is used. The proposed revision to §117.219(f)(2) would require recordkeeping of maintenance of the engine emissions control system for components other than catalytic converters or air-fuel ratio controllers. This change is proposed to ensure that records of maintenance of lean-burn engine emissions control systems are kept and made available upon request. The proposed revision to §117.219(f)(5) updates a rule cross-reference.

The proposed changes to §117.223, concerning Source Cap, would establish new baseline dates for owners or operators who wish to use the source cap compliance option for compliance with the proposed new lean-burn engine NO_x emission specification in BPA. This change would prevent double counting of emission reductions identified for the BPA ozone attainment SIP being proposed concurrently with this rule proposal. The net real reduction in point source NO_x emissions (due to activity level changes, process changes, startups and shutdowns, and addition of control equipment) in BPA from January 1, 1990 to December 31, 1996, and the anticipated reductions resulting from the lean-burn engine NO_x specification are counted separately in the reduction calculations for the proposed SIP. If a pre-1997 emission baseline was used to establish a source cap to comply with the new lean-burn engine NO_x specification, the reductions would be counted in both items in the SIP, or twice.

The proposed changes to §117.520, concerning Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources, subdivide the sections into a BPA and HGA subsection to allow for separate compliance schedules for sources located in BPA and HGA and to correct a cross-reference error. The commission is proposing a compliance date for BPA lean-burn engine NO_x RACT of November 15, 2001. This time frame allows a two-year implementation of the necessary control measures and is consistent with the time period for compliance with the other NO_x RACT emission specifications in Chapter 117.

A proposed change to §117.570(b)(2), concerning Trading, corrects a drafting error in the definition of the heat input term "H_j" by adding "except that the term may not include one standard deviation of the average daily heat input for the period in either calculation" at the end of the definition. The definition of "H_j" cross-references the calculation procedure in §117.223 of this title. However, the cross-reference was not meant to include one standard deviation to be added to the actual historical average daily heat input, as is allowed for operational flexibility under the source cap. Adding one standard deviation to an emission credit would be inconsistent with the policy goal that traded credits be real. Section 117.570(b)(4) currently specifies that the standard deviation is not applicable to the generation of creditable reductions, but since that paragraph pertains only to trading under a source cap, the clarification needs to be added more generally in §117.570(b)(2). Also in §117.570(b)(2), a proposed change to the emission limit term "R_{Aj}," adds "H_j" and deletes "period in 117.223(g)(3) of this title" at the end of the definition. The proposed change simplifies the definition

without changing its meaning. In addition, the equations in §117.570(c)(1), (c)(2), and (d) are being republished to correct printing errors in the version of the rule filed with the Secretary of State on December 3, 1997. This version of the adopted rule inadvertently contains the bold and bracket markings of the proposal.

Other proposed changes to §117.570 would establish new baseline dates for owners or operators who wish to use the trading compliance option for compliance with the proposed new lean- burn engine NO_x emission specification in BPA. The point source NO_x reductions that have occurred in BPA between November 1, 1990, and December 31, 1996, and the reductions that would result from the proposed lean-burn engine NO_x specification are counted separately in the reduction calculations for the BPA ozone attainment SIP being proposed concurrently with this rule proposal. The proposed change would prevent double counting of emission reductions in this SIP.

FISCAL NOTE

Randy Hamilton, Technical Specialist with Strategic Environmental Analysis and Assessment, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state government or units of local government as a result of administration or enforcement of the amendments. The proposed lean-burn engine NO_x RACT rules in BPA will affect approximately eight major sources in the area. Enforcement of the proposed rules will require periodic inspection to verify compliance. It is anticipated that the Field Operations Division inspectors will inspect facilities for compliance with the proposed amended sections when conducting their routine inspections. It is also anticipated that enforcement of the proposed amended sections will not have a significant fiscal impact on the commission, other state agencies or units of local government. The other proposed changes, which clarify requirements or increase flexibility, will not appreciably change the inspection or compliance verification procedures of the commission, nor affect other state or local governments.

COST NOTE

Mr. Hamilton estimates the costs to persons required to comply with the proposed amended sections as follows. The proposal applies emission specifications to certain lean-burn gas-fired engines in BPA. An analysis of the 1994 initial control plans required by Chapter 117 and the 1993, 1996, and 1997 emissions inventory data submitted by sources in the area indicates that the proposed rule would require five major NO_x sources to reduce NO_x emissions from a total of 27 lean-burn engines. These sources consist of three natural gas transmission company pipeline compressor stations, one chemical plant, and one refinery. If there are any additional lean-burn engines required to reduce emissions, not identified by the emissions data analysis, it is anticipated that their compliance costs would be similar to the analysis which follows. The 27 natural gas-fired engines may be further characterized as large-bore and low-speed. The average NO_x emission reduction required to comply with the proposed NO_x limit is about 70%. This calculation is based on test results for these engines, submitted to the commission in 1994 with the Chapter 117 initial control plans. The types of modification that could be applied to meet the proposed limits include low-emission combustion retrofit (LEC), selective catalytic reduction, and replacement with electric motors. For purposes of this fiscal note, it will be assumed that LEC will be used, since it is the least expensive of these options. The cost estimation methodology used by EPA in their Alternative Control Techniques (ACT) document, "NO_x Emissions from Stationary Reciprocating Internal Combustion Engines," EPA-453/R-93-032, July 1993, is used with current capital equipment and maintenance costs estimates for LEC retrofit. The ACT applies a set of generic cost factors to a single manufacturer's 1992 retrofit hardware prices to develop estimates of total costs. Commission staff obtained updated LEC retrofit hardware and maintenance cost information from the engine original equipment manufacturers (OEM). The updated estimates include revised hardware and installation cost data from the single manufacturer who supplied data for the ACT. Local vendors also supplied some of the maintenance and emission test cost estimates. The current OEM costs are significantly lower than the 1992 ACT. The reduction in cost reflects the market's response to lean- burn engine retrofit requirements set by numerous states' NO_x RACT rules since 1992. Technical innovation and competition among vendors, including non-OEMs, have occurred since 1992.

Based on the OEM estimates, the total hardware costs for individual engines range from $150,000 for a 330 hp engine to $285,000 for one model of 2,000 hp engine. The total capital costs, reflecting tax, freight, direct installation cost, indirect installation cost, and contingency, are estimated using ACT factors, equal to 1.73 x hardware cost. Using this equation, the total capital costs for individual engines would range from $260,000 for the 330 hp engines to $493,000 for one model of 2,000 hp engine. The total annualized costs, reflecting annual operating and amortized capital costs, are also estimated using ACT factors, but with the following adjustments. The ACT identifies additional spark plug and precombustion chamber fuel check valve replacement as LEC retrofit items which result in increased maintenance cost, but applies a factored cost to estimate annual additional maintenance cost. Based on information provided by the OEMs and a local control equipment vendor, the specific cost for these items is estimated at $2,500 per year per engine, based on $22 per plug, $150 per check valve, and $50/hr labor cost. This cost is substituted for the ACT maintenance cost factor of 10% of total capital cost. According to the OEMs, LEC reduces engine misfire, which is beneficial to valve liner and piston ring life, and also reduces engine oil and jacket water operating temperatures. Maintenance cost reductions resulting from these improvements are not easily quantified, and are not specifically included in the maintenance cost estimate. The ACT operating cost factor for taxes, insurance, and administrative costs are adjusted by removing the property tax component, to account for Proposition 2, a state property tax exemption for capital investments made to comply with environmental law. The ACT's overhead cost factor, equal to 60% of maintenance cost, a fuel savings based on a 1% fuel efficiency credit, and a 15-year, 7% capital recovery factor of 0.1098 are used. The ACT's test costs are adjusted to more specifically reflect the proposed test requirements, which would extend the test requirements for rich-burn engines to the lean-burn engines. In order to ensure initial and continued emissions compliance, any owner or operator of engines subject to the emission limits would be required to perform a compliance test before the initial compliance date, and every two years following. The compliance test costs are estimated at $2,500 per engine for the first engine, and $750 for each additional engine at a site. The rule also requires emission checks at least quarterly with stain tubes or portable analyzers. The emission check cost

is estimated at $400 per engine. The total emission test costs are estimated at $2,650 annually per engine. The rule requires record keeping of maintenance performed on the emission control equipment. The additional record keeping costs are estimated as negligible, since the rule does not specify explicit contents, and maintenance records are already being kept for these engines. Based on the identified cost items, the total annualized cost for individual engines would range from $42,000 for the 330 hp engines to $71,000 for one model of the 2,000 hp engines. The table titled "Annual Cost Calculations" indicates calculations used to determine total annual costs. Using these figures, for each year of the first five years that the rule would be in effect, the probable economic cost to persons required to reduce emissions to comply with the rule would range between $112,000 for a source with two 2,000 hp engines and $632,000 for a source with thirteen engines.

Figure: 30 TAC Chapter 117-Preamble

The emissions data submitted by BPA sources also indicates that in addition to the 27 engines required to reduce emissions, there are eleven lean-burn engines which would be subject to the proposed emission limits, but appear to presently comply with those limits. For the three major sources with these engines, the cost of complying with the proposed rule would occur from the emission test requirements. The requirements and $2,650 per engine test costs would be the same as those identified for the engines required to reduce emissions. For each year of the first five years that the rule would be in effect, the probable economic cost to persons required to comply with these test requirements would range between $5,300 for a facility with two engines subject to the proposed emission limits, and $13,250, for a facility with five engines.

This proposed rulemaking also applies to other owners or operators of existing major sources of NO_x in BPA, DFW, and HGA. The changes would eliminate the requirement to operate wood-fired boilers with flue gas sensor trim of combustion air, a requirement which appears to apply to two large Texas companies. Another proposed amendment would add the option to monitor exhaust flow instead of fuel flow, an option which may be attractive to owners of units with multiple fuels fired in a single unit. Other proposed changes clarify certain commission rules applicable to existing major stationary sources of NO_x emissions. These changes do not require additional control equipment or measures. The eliminated requirement and added flexibility will result in cost savings; no additional costs are anticipated with the proposed clarification of requirements.

PUBLIC BENEFIT

Mr. Hamilton also has determined that for each year of the first five years the sections as proposed are in effect, the anticipated public benefit will be reductions of NO_x emissions and ambient ozone levels. BPA does not currently meet the federal health standard for ozone.

SMALL BUSINESS ANALYSIS

The proposed amendments generally do not apply to small businesses, since most major sources of NO_x are not small businesses. The commission has been unable to identify any major sources of NO_x in BPA with lean-burn engines which are small businesses.

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. "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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although one of the proposed amendments requires significant capital expenditures on certain lean-burn engines, the rule is not a "major environmental rule" as defined in the Texas Government Code. The BPA area contains more than 60 plants engaged in the natural gas, oil refining, or chemical manufacturing sectors of the economy. These plants contain more than 1000 discrete facilities, or emission units. The proposed new Chapter 117 requirements affect a small portion of these sectors, since they will require capital expenditures at only five of the plants and 27 of the emission units. In addition, the productivity of the engines, as measured by fuel efficiency, may be slightly improved by the modifications necessary to comply with the requirements. Further, the proposed amendment requiring the lean-burn engine emission specification does not meet any of the four applicability criteria of a "major environmental rule." Section 2001.0225 applies only to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program or; (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The amendments implement requirements of the FCAA. FCAA, §110 requires states to submit SIPs which contain enforceable measures to achieve the National Ambient Air Quality Standards (NAAQS). The proposed rules, which reduce ambient NO_x and ozone in BPA, will be submitted to EPA upon adoption as one of several measures of the required new attainment demonstration. These rules will also implement NO_x RACT for lean-burn engines in BPA and improve the implementation of NO_x RACT in BPA (moderate), DFW (serious), and HGA (severe). FCAA, §182(f) requires any moderate and above ozone nonattainment area to implement NO_x RACT. The proposed amendments to the rules do not exceed an express requirement of a state law, but were developed specifically in order to meet the RACT requirements established under federal law. The proposed amendments are also a necessary portion of an ozone attainment demonstration SIP for BPA, required by FCAA, §110. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, these 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 changes are not proposed solely under the general rulemaking authority of the commission but are proposed to comply with the requirements of federal regulations.

Other proposed modifications to Chapter 117 do not meet the definition of "major environmental rule" in the Texas Government Code. Specifically, the amendments which eliminate the requirement to operate wood-fired boilers with flue gas sensor-based trim of combustion air; the option to monitor exhaust

flow instead of fuel flow; and the amendments that clarify certain commission rules applicable to existing major stationary sources of NO_x emissions do not require additional control equipment or measures. The eliminated requirements and added flexibility contained in these sections of the proposed amendments may result in positive fiscal implications to the regulated community. Therefore, these proposed amendments do not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission invites public comment on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these sections under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purposes of these amendments are: to develop a new attainment demonstration SIP for the ozone NAAQS for BPA, to implement lean-burn engine NO_x RACT in BPA, and to improve the implementation of NO_x RACT in BPA, DFW, and HGA. If adopted, certain major sources located in BPA will be required to install new emission control equipment, and implement new operating, reporting, and recordkeeping requirements. Installation of the necessary control equipment could conceivably place a burden on private, real property. However, under Texas Government Code, §2007.003(b)(4) and (b)(13), Chapter 2007 does not apply to this action. Under §2007.003(b)(4), Chapter 2007 does not apply to an action that is reasonably taken to fulfill an obligation mandated by federal law. The proposed amendments will implement requirements of FCAA, §110 and §182(f). Also, §2007.003(b)(13) states that Chapter 2007 does not apply to an action that: (1) is taken in response to a real and substantial threat to public health and safety; (2) is designed to significantly advance the health and safety purpose; and (3) does not impose a greater burden than is necessary to achieve the health and safety purpose. This action is taken in response to the BPA area exceeding the federal ambient air quality standard for ground-level ozone, which adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by reducing ambient NO_x and ozone levels in BPA. Attainment of the ozone standard will eventually require substantial NO_x reductions. Any NO_x reductions resulting from the current rulemaking are no greater than what the best scientific research indicates is necessary to achieve the desired ozone levels. However, this rulemaking is only one step among many necessary for attaining the ozone standard. In addition, the requirements are expressed as performance specifications and the rules contain multiple compliance methods to minimize costs of compliance.

Other proposed changes would eliminate the requirement to operate wood-fired boilers with flue gas sensor trim of combustion air, add the option to monitor exhaust flow instead of fuel flow, and clarify certain commission rules applicable to existing major stationary sources of NO_x emissions. These changes do not require additional control equipment or measures, and do not materially affect private real property. The eliminated requirement and added flexibility will result in cost savings; any new costs associated with clarified requirements are not significant.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action relates to an action or actions 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 Texas Coastal Management Program. 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 rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR to protect and enhance air quality in the coastal area. The rules, which require additional reductions of air emissions in BPA and improve the implementation and enforceability of the rules in BPA, HGA, and DFW, will result in reductions of ambient NO_x and ozone concentrations. The proposed rules are consistent with the applicable CMP policy because they are consistent with Title 40. Title 40, Part 51, sets out requirements for states to prepare, adopt, and submit implementation plans for the attainment of the NAAQS. The adopted rules would be submitted to EPA under these requirements. 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 proposed BPA SIP and accompanying rule revisions will be held in Beaumont on August 9, 1999, at 5:30 p.m. at the John Gray Institute, located at 855 Florida Avenue. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99020-117-AI. Comments must be received by 5:00 p.m., August 16, 1999. For further information or questions concerning this proposal, please contact Randy Hamilton of the SIP Development Team at (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. Definitions

30 TAC §117.10

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which requires the commission to develop a general, comprehensive plan for the proper control of the state's air; §382.016, which authorizes the commission to prescribe requirements for owners

or operators of sources to make and maintain records of emissions measurements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.051(d), which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382.

The proposed amendments implement Texas Health and Safety Code, §382.012.

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 [~~the General Rules~~] of this title (relating to General Rules), the terms in this chapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

(1)-(36) (No change.)

(37) Thirty-day rolling average-An average, calculated for each day that fuel is combusted in a unit, as the average of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(38) [~~(37)~~] Unit-Any boiler, steam generator, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, which is either:

(A) placed into service prior to November 15, 1992; or

(B) placed into service after June 9, 1993 as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter. Any emission credits resulting from the operation of such units shall be limited to the cumulative maximum rated capacity of the units replaced.

(39) [~~(38)~~] Utility boiler or steam generator-Any combustion equipment owned or operated by a municipality or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity.

(40) [~~(39)~~] Wood-Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

TRD-9904011
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: October 27, 1999
For further information, please call: (512) 239-1932

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Subchapter B. Combustion at Existing Major Sources

Division 2. Commercial, Institutional, and Industrial Sources

30 TAC §§117.205, 117.207-117.209, 117.211, 117.213, 117.219, 117.223

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which requires the commission to develop a general, comprehensive plan for the proper control of the state's air; §382.016, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.051(d), which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382.

The proposed amendments implement Texas Health and Safety Code, §382.012.

§117.205. Emission Specifications.

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission limits of this section, except as provided in §117.207 of this title (relating to Alternative Plant- Wide Emission Specifications), or §117.223 of this title (relating to Source Cap).

(1) For purposes of this subchapter, the lower of any permit nitrogen oxides (NO_x) [~~NO_x~~] emission limit in effect on June 9, 1993, under a permit issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the emission limits of subsections (b)-(d) of this section shall apply, except that:

(A) gas-fired boilers and process heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million British thermal units (Btu) [~~Btu~~] heat input, shall be limited to that rate for the purposes of this subchapter; and

(B) (No change.)

(2) For purposes of calculating NO_x emission limitations under this section from existing permit limits, the following procedure shall be used:

(A) the limit explicitly stated in pound NO_x per million Btu (MMBtu) [~~MMBtu~~] of heat input by permit provision (converted from low heating value to high heating value, as necessary); or

(B) (No change.)

(3) (No change.)

(b) [~~For boilers and process heaters which operate with continuous emission monitors (CEMS) or predictive emissions monitors (PEMS) in accordance with §117.213 of this title (relating to Continuous Demonstration of Compliance), the emission limits shall apply as the mass of NO_x emitted per unit of energy input (pound NO_x per MMBtu), on a rolling 30-day average period, or as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average. For boilers and process heaters which do not operate with CEMS or PEMS, the emission limits shall apply as the mass of NO_x emitted per hour (pounds NO_x per hour), on a block one-hour average. The mass of NO_x emitted per hour shall be calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in pound NO_x per MMBtu.~~] For each boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, the applicable emission limit is as follows:

(1)-(4) (No change.)

(5) any unit operated with a combination of gaseous, liquid, or wood fuel, a variable emission limit calculated as the heat input weighted sum [~~average~~] of the applicable emission limits of this subsection;

(6) for any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% hydrogen by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, a multiplier of up to 1.25 times the appropriate emission limit in this subsection may be used for that eight-hour period. The total hydrogen volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen in the fuel supply. The multiplier may not be used to increase limits set by permit;[~~.~~]

(7) for units which operate with a NO_x continuous emission monitors (CEMS) or predictive emission monitors (PEMS) under §117.213 of this title (relating to Continuous Demonstration of Compliance), the emission limits shall apply as:

(A) the mass of NO_x emitted per unit of energy input (pound NO_x per MMBtu), on a rolling 30-day average period; or

(B) the mass of NO_x emitted per hour (pounds per hour), on a block one- hour average, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in pound NO_x per MMBtu; and

(8) for units which do not operate with a NO_x CEMS or PEMS under §117.213 of this title, the emission limits shall apply in pounds per hour, as specified in paragraph (7)(B) of this subsection.

(c)-(d) (No change.)

(e) No person shall allow the discharge into the atmosphere from any gas-fired, lean-burn, stationary, reciprocating internal combustion engine, emissions in excess of a block one-hour average of 3.0 g NO_x/hp-hr and 3.0 g CO/hp-hr for engines which are rated 300 hp or greater and located in the Beaumont/Port Arthur ozone nonattainment area.

(f) [~~(e)~~] No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) or (b) of this section, CO emissions in excess of the following limitations:

(1) for gas or liquid fuel-fired boilers or process heaters, 400 ppmv at 3.0% O_2, dry basis;

(2) for wood fuel-fired boilers or process heaters, 775 ppmv at 7.0% O_2, dry basis; and

(3) for units equipped with CEMS or PEMS for CO, the limits of paragraphs (1) and (2) of this subsection shall apply on a rolling 24-hour averaging period. For units not equipped with CEMS or PEMS for CO, the limits shall apply on a one-hour average.

(g) [~~(f)~~] No person shall allow the discharge into the atmosphere from any unit subject to a NO_x emission limit in this division (relating to Commercial, Institutional, and Industrial Sources), ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(h) [~~(g)~~] Units exempted from the emissions specifications of this section include the following:

(1) any commercial, institutional, or industrial boiler or process heater with a maximum rated capacity less than 100 MMBtu/hr;

(2) any low annual capacity factor boiler, process heater, stationary gas turbine, or stationary internal combustion engine as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces which were [~~are~~] regulated as existing facilities by the United States Environmental Protection Agency at 40 Code of Federal Regulations Part 266, Subpart H, as was in effect on June 9, 1993;

(4) fluid catalytic cracking units (including CO boilers);

(5) supplemental waste heat recovery units used in turbine exhaust ducts;

(6) any lean-burn, stationary, reciprocating internal combustion engine located in the Houston/Galveston or Dallas/Fort Worth ozone nonattainment area; and

(7) any stationary gas turbine with an MW rating less than 10.0 MW.

§117.207. Alternative Plant-wide Emission Specifications.

(a)-(c) (No change.)

(d) An owner or operator of any gaseous and liquid fuel-fired unit which derives more than 50% of its annual heat input from liquid fuel shall use a heat input weighted sum [~~average~~] of the appropriate gaseous and liquid fuel emission specifications of §117.205 of this title [(~~relating to Emission Specifications)~~] in calculating the plant-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(e) An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted sum [~~average~~] of the appropriate emission specifications of §117.205 of this title [(~~relating to Emission Specifications)~~] in calculating the plant-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(f) Units exempted from emission specifications in accordance with §117.205(h) [~~§117.205(g)~~] of this title are also exempt under this section and shall not be included in the plant- wide emission limit, except as follows. The owner or operator of exempted units as defined in §117.205(h) [~~§117.205(g)~~] of this title may opt to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications.

(1)-(3) (No change.)

(4) The equipment classes which may be included in the alternative plant-wide emission specifications and the NO_x emission rates that are to be used in calculating the alternative plant-wide emission specifications are listed in the following table, §117.207(f) OPT-IN UNITS:

Figure: 30 TAC §117.207(f)(4)

(g)-(h) (No change.)

§117.208. Operating Requirements.

(a)-(c) (No change.)

(d) All units subject to the emission limitations of §§117.205, 117.207, or 117.223 [~~§117.205, §117.207, or §117.223~~] of this title shall be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, shall be operated with oxygen (O_2) or carbon monoxide (CO) trim (or both).

(2)-(7) (No change.)

§117.209. Initial Control Plan Procedures.

(a) (No change.)

(b) The owner or operator shall provide results of emissions testing using portable or reference method analyzers or, as available, initial demonstration of compliance testing conducted in accordance with §117.211(e) or (f) of this title (relating to Initial Demonstration of Compliance) for NO_x, carbon monoxide (CO), and oxygen emissions while firing gaseous fuel (and as applicable, hydrogen (H_2) fuel for units which may fire more than 50% H_2 by volume) and liquid and/or solid fuel at the maximum rated capacity or as near thereto as practicable, for the units listed in this subsection. Previous testing documentation for any claimed test waiver as allowed by §117.211(d) of this title shall be submitted with the initial control plan. Any units which were not operated between June 9, 1993 and April 1, 1994 and do not have earlier representative emission test results available shall be tested and the results submitted to the executive director, with certification of the equipment's shutdown period, within 90 days after the date such equipment is returned to operation. Test results are required for the following units:

(1) boilers and process heaters with a maximum rated capacity greater than or equal to 40 million British thermal units [~~Btu~~] per hour (MMBtu/hr), except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

(2) boilers and industrial furnaces with a maximum rated capacity greater than or equal to 40 MMBtu/hr which were [~~are~~] regulated as existing facilities by EPA [~~the United States Environmental Protection Agency (EPA)~~] at 40 Code of Federal Regulations, Part 266, Subpart H, as was in effect on June 9, 1993, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title;

(3)-(6) (No change.)

(c) The initial control plan shall be submitted in accordance with the schedule specified in §117.520 of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources) and shall contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 million Btu per hour; all stationary, reciprocating internal combustion engines which are located in the Houston/Galveston ozone nonattainment area and rated 150 hp [~~horsepower (hp)~~] or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater; all stationary gas turbines with an MW [~~a megawatt (MW)~~] rating of greater than or equal to 1.0 MW; to include the maximum rated capacity, anticipated annual capacity factor, the facility identification numbers and emission point numbers as submitted to the Area and Mobile Emissions Assessment and Industrial Emissions Assessment Sections [~~Emissions Inventory Section~~] of the commission [~~Texas Natural Resource Conservation Commission (TNRCC)~~], and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable commission [~~TNRCC~~] permit for each unit;

(2)-(11) (No change.)

§117.211. Initial Demonstration of Compliance.

(a)-(c) (No change.)

(d) Early testing conducted before March 21, 1999 [~~the effective date of this rule as revised~~] may be used to demonstrate compliance with the standards specified in this division, if the owner or operator of an affected facility demonstrates to the executive director that the prior compliance testing at least meets the requirements of subsections (a), (b), (c), (e), and (f) of this section. For early testing, the compliance stack test report required by subsection (g) shall be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or CEMS or PEMS performance evaluation at any time.

(e) (No change.)

(f) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.213 of this title, shall be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a [~~an~~] NO_x emission limit in pound per million British thermal units (MMBtu) [~~MMBtu~~] on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2)-(3) (No change.)

(4) For units complying with §117.223 of this title [~~(relating to Source Cap)~~], a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.223(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(g) Compliance stack test reports must include the following minimum contents.

(1) (No change.)

(2) Summary information. Provide summary information, including:

(A) (No change.)

(B) the maximum rated capacity, normal maximum capacity, and actual operating level of the unit during the test (in MMBtu/hr, horsepower (hp) [~~hp~~], or megawatts (MW) [~~MW~~], as applicable), and description of the method used to determine such operating level;

(C)-(D) (No change.)

(3)-(8) (No change.)

§117.213. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter to individually and continuously measure the gas and liquid fuel usage. A computer which collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. [~~The units are:~~]

(1) The units are the following [~~units,~~]:

(A) if individually rated more than 40 million British thermal units (Btu) [~~Btu~~] per hour (MMBtu/hr):

(i) [~~(A)~~] boilers;

(ii) [~~(B)~~] process heaters;

(iii) [~~(C)~~] boilers and industrial furnaces which were regulated as existing facilities by [~~the~~] EPA at 40 Code of Federal Regulations (CFR) Part 266, Subpart H, as was in effect on June 9, 1993; and

(iv) [~~(D)~~] gas turbine supplemental-fired waste heat recovery units;

(B) [~~(2)~~] stationary, reciprocating internal combustion engines not exempt by §117.203(6) or (8) of this title (relating to Exemptions);

(C) [~~(3)~~] stationary gas turbines with a megawatt (MW) [~~MW~~] rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(D) [~~(4)~~] fluid catalytic cracking unit boilers using supplemental fuel.

(2) As an alternative to the fuel flow monitoring requirements of this subsection, units operating with a nitrogen oxides (NO_x) and diluent continuous emission monitoring system (CEMS) under subsection (e) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR 75, Appendix A.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 [~~oxygen (O_2)~~] monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ Btu per year (Btu/yr):

(A) [~~(1)~~] boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) [~~(2)~~] process heaters with a rated heat input:

(i) [~~(A)~~] greater than or equal to 100 MMBtu/hr and less than 200 MMBtu/hr; and

(ii) [~~(B)~~] greater than or equal to 200 MMBtu/hr, except as provided in subsection (f) of this section.

(2) Units listed in §117.205(h)(3)-(5) of this title (relating to Emission Specifications) are not subject to this subsection.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (e) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are necessitated as a result of this subsection, the criteria in subsection (e) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x [~~Nitrogen oxides (NO_x)~~] monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS [~~continuous emissions monitoring system (CEMS)~~] or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A)-(B) (No change.)

(C) stationary gas turbines with an MW [~~a megawatt (MW)~~] rating greater than or equal to 30 MW operated more than 850 hours per year;

(D)-(E) (No change.)

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) units listed in §117.205(h)(3)-(5) [~~§117.205(g)(3)-(5)~~] of this title (relating to Emission Specifications); and

(B) [~~gas turbines or other units which are affected~~] units [~~and are~~] subject to the NO_x CEMS [~~continuous emissions monitoring~~] requirements of [~~in accordance with~~] 40 CFR 75.

(d) (No change.)

(e) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section must comply with the following.

(1) (No change.)

(2) Monitor diluent, either O_2 or carbon dioxide (CO_2) [~~CO_2~~].

(3)-(4) (No change.)

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section must comply with the following.

(1) (No change.)

(2) Monitor diluent, either O_2 or CO_2:

(A) using a CEMS

(i) (No change.)

(ii) with a similar alternative method approved by the executive director and EPA [~~the United States Environmental Protection Agency (EPA)~~]; or

(B) (No change.)

(3)-(4) (No change.)

(5) The owner or operator may substitute the following as an alternative to the test procedure of Subpart E for any unit:

(A)-(B) (No change.)

(C) after the final compliance date, perform RATA for each unit:

(i) (No change.)

(ii) using the Performance Specifications [~~appropriate procedures~~] of paragraph (5)(A)(i)(I)-(III) of this subsection; and

(iii) (No change.)

(6)-(7) (No change.)

(g)-(h) (No change.)

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the 850 hours per year exemption of §117.203(6)(B) [~~§117.203(b)(6)(B)~~] of this title [~~(relating to Exemptions)~~] shall record the operating time with an elapsed run time meter.

(j)-(l) (No change.)

(m) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.205(h)(2) [~~§117.205(g)(2)~~] of this title (relating to Definitions), shall notify the

executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title, as appropriate, is exceeded.

(1)-(3) (No change.)

§117.219. Notification, Recordkeeping, and Reporting Requirements.

(a) Start-up and shutdown records. For units subject to the start-up and/or shutdown exemptions allowed under §101.11 of this title (relating to Exemptions from Rules and Regulations), hourly records shall be made of start-up and/or shutdown events and maintained for a period of at least two years. Records shall be available for inspection by the executive director, EPA [~~United States Environmental Protection Agency (EPA)~~], and any local air pollution control agency having jurisdiction upon request. These records shall include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b)-(c) (No change.)

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water- to-fuel or steam-to-fuel ratio monitoring system under §117.213 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations of this division (relating to Commercial, Institutional, and Industrial Sources) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports shall include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period.

(A) For gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.213(h)(2) of this title, excess emissions are computed as each one-hour period during which the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission limitations in §117.205 of this title (relating to Emission Specifications).

(B) For units complying with §117.223 of this title (relating to Source Cap), excess emissions are each daily period for which the total nitrogen oxides (NO_x) [~~NO_x~~] emissions exceed the rolling 30-day average or the maximum daily NO_x cap.

(2)-(5) (No change.)

(e) Reporting for engines. The owner or operator of any rich-burn engine subject to the emission limitations in §117.205 or §117.207 of this title (relating to Alternative Plant-wide Emission Specifications) shall report in writing to the executive director on a quarterly basis any excess emissions and the air-fuel ratio monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports shall include the following information:

(1) (No change.)

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the engine[~~,~~] or emission control system [~~catalytic converter, or air-fuel ratio controller~~], the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records shall be kept for a period of at least five years and shall be made available upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. The records shall include:

(1) For each unit using a CEMS or PEMS in accordance with §117.213 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average; and

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pound per million British thermal units (Btu) [~~Btu~~] heat input; and

(ii) (No change.)

(2) for each internal combustion engine subject to the emission specifications of this division, records of:

(A) (No change.)

(B) catalytic converter, [~~or~~] air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken.

(3)-(4) (No change.)

(5) for units claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.205(h)(2) [~~§117.205(g)(2)~~], either records of monthly:

(A)-(B) (No change.)

(6)-(8) (No change.)

§117.223. Source Cap.

(a)-(f) (No change.)

(g) A unit which has operated since November 15, 1990, and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993, may be included in the source cap emission limit under the following conditions.

(1)-(2) (No change.)

(3) The actual heat input shall be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1990, and June 9, 1993, the actual heat input shall be the average daily heat input for the continuous time period that the unit was in service, plus one standard deviation of the average daily heat input for that period. The maximum heat input shall be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.[~~;~~]

(4)-(5) (No change.)

(6) Shutdowns which occurred before January 1, 1997, may not be used for compliance with the lean-burn engine specification of §117.205(e) of this title.

(h) A unit which has been shut down and rendered inoperable after June 9, 1993, but not permanently retired, should be identified in the initial control plan and may be included in the source cap to comply with the NO_x emission specifications of this division:[~~,~~]

(1) applicable in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas, required by November 15, 1999; or

(2) applicable in the Dallas/Fort Worth ozone nonattainment area, required by March 31, 2001.

(i)-(j) (No change.)

(k) The modified requirements of this subsection are necessary for an owner or operator to use the source cap requirements of this section to achieve compliance with the lean-burn engine NO_x emission specification of §117.205(e) of this title.

(1) In subsection (b) of this section, the dates are modified in the definitions as follows:

(A) H_i, the actual historical average daily heat input, the time period between January 1, 1997, and December 31, 1999, replaces the time period between January 1, 1990, and June 9, 1993; and

(B) R_i, December 31, 1999, replaces June 9, 1993, throughout.

(2) In subsection (g) of this section, the dates are modified as follows:

(A) December 31, 1996, replaces November 15, 1990, throughout;

(B) December 31, 1999, replaces June 9, 1993, throughout; and

(C) January 1, 1997, replaces January 1, 1990.

(3) A source which used a source cap to comply with the NO_x emission specifications of this division required by November 15, 1999, must either:

(A) maintain a separate source cap for the lean-burn engines; or

(B) revise an existing source cap to include the lean-burn engines, recalculating the allowable mass emission rates for all units in the cap based on the dates in paragraphs (1) and (2) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 5, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239-1932

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Subchapter D. Administrative Provisions

30 TAC §117.520, §117.570

STATUTORY AUTHORITY

The amendments are proposed under Texas Health and Safety Code, TCAA, §382.011, which establishes the ability of the commission to control the quality of the state's air; §382.012, which requires the commission to develop a general, comprehensive plan for the proper control of the state's air; §382.016, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.051(d), which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382.

The proposed amendments implement Texas Health and Safety Code, §382.012.

§117.520. Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources.

(a) The owner or operator of each commercial, institutional, and industrial source in the Beaumont/Port Arthur [~~or Houston/Galveston~~] ozone nonattainment area shall comply with the requirements of Subchapter B, Division 2 of this chapter[~~,~~] (relating to Commercial, Institutional, and Industrial Sources) as soon as practicable, but no later than the dates specified in this subsection [~~November 15, 1999 (final compliance date)~~]. The owner or operator shall:

(1) for all units, except lean-burn engines subject to paragraph (2) of this subsection, comply with the requirements of Subchapter B, Division 2 of this chapter by November 15, 1999 (final compliance date) and [~~submit a plan for compliance in accordance with §117.209 of this title (relating to Initial Control Plan Procedures) according to the following schedule:~~]

[~~(A) for major sources of nitrogen oxides (NO_x) which have units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than April 1, 1994;~~]

[~~(B) for major sources of NO_x which have no units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than September 1, 1994; and~~]

[~~(C) for major sources of NO_x subject to either subparagraphs (A) or (B) of this paragraph, submit the information required by §117.209(c)(6), (7), and (9) of this title no later than September 1, 1994;~~]

[~~(2) install all NO_x abatement equipment and implement all NO_x control techniques no later than November 15, 1999;~~]

[~~(3)~~] submit to the executive director:

(A) for units operating without continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(B) for units operating with CEMS or PEMS in accordance with §117.213 of this title (relating to Continuous Demonstration of Compliance), [~~submit~~] the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A)-(B) and (f)(3)-(5)(A) of this title; and

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title;

(iii) no later than:

(I) November 15, 1999, for units complying with the nitrogen oxides (NO_x) [~~NO_x~~] emission limit on an hourly average; and

(II) January 15, 2000, for units complying with the NO_x emission limit on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.215 of this title (relating to Final Control Plan Procedures), no later than November 15, 1999; and

(D) the first semiannual report required by §117.219(d) or (e) [~~§117.217(c) or (d)~~] of this title (relating to Notification, Recordkeeping, and Reporting Requirements [~~Revision of Final Control Plan~~]), covering the period November 15, 1999 through December 31, 1999, no later than January 31, 2000; and [~~.~~]

(2) for each lean-burn, stationary, reciprocating internal combustion engine subject to §117.205(e) of this title (relating to Emission Specifications), comply with the requirements of Subchapter B, Division 2 of this chapter for those engines as soon as practicable, but no later than November 15, 2001 (final compliance date for lean-burn engines); and

(A) no later than November 15, 2001, submit a revised final control plan which contains:

(i) the information specified in §117.215 of this title as it applies to the lean-burn engines; and

(ii) any other revisions to the source's final control plan as a result of complying with the lean- burn engine emission specifications; and

(B) no later than January 31, 2002, submit the first semiannual report required by §117.219(e) of this title covering the period November 15, 2001 through December 31, 2001.

(b) The owner or operator of each commercial, institutional, and industrial source in the Dallas/Fort Worth ozone nonattainment area shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than March 31, 2001 (final compliance date). The owner or operator shall:

(1) (No change.)

(2) submit to the executive director:

(A)-(C) (No change.)

(D) the first semiannual report required by §117.219(d) or (e) [~~§117.217(c) or (d)~~] of this title, covering the period March 31, 2001 through June 30, 2001, no later than July 31, 2001.

(c) The owner or operator of each commercial, institutional, and industrial source in the Houston/Galveston ozone nonattainment area shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than November 15, 1999 (final compliance date). The owner or operator shall:

(1) submit a plan for compliance in accordance with §117.209 of this title (relating to Initial Control Plan Procedures) according to the following schedule:

(A) for major sources of NO_x which have units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than April 1, 1994;

(B) for major sources of NO_x which have no units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than September 1, 1994; and

(C) for major sources of NO_x subject to either subparagraphs (A) or (B) of this paragraph, submit the information required by §117.209(c)(6), (7), and (9) of this title no later than September 1, 1994;

(2) install all NO_x abatement equipment and implement all NO_x control techniques no later than November 15, 1999;

(3) submit to the executive director:

(A) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.211 of this title; by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(B) for units operating with CEMS or PEMS in accordance with §117.213 of this title, submit the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213(e)(1)(A) and (B) and (f)(3)-(5)(A) of this title; and

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title;

(iii) no later than:

(I) November 15, 1999, for units complying with the NO_x emission limit on an hourly average; and

(II) January 15, 2000, for units complying with the NO_x emission limit on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.215 of this title, no later than November 15, 1999; and

(D) the first semiannual report required by §117.219(d) or (e) of this title, covering the period November 15, 1999, through December 31, 1999, no later than January 31, 2000.

§117.570. Trading.

(a) (No change.)

(b) Reduction credits (RCs) shall be generated as follows.

(1) (No change.)

(2) For sources subject to the emission specifications of §117.105 or §117.205 of this title, creditable RCs shall be calculated using the following equations:
Figure: 30 TAC §117.570(b)(2)

(3)-(4) (No change.)

(c) Reduction credits shall be used as follows.

(1) An owner or operator complying with §117.223 of this title may reduce the amount of emission reductions otherwise required by complying with the following equations instead of the equations in §117.223(b)(1) and (2) of this title.
Figure: 30 TAC §117.570(c)(1)

(2) An owner or operator complying with §117.105, §117.107, §117.205, or §117.207 of this title may reduce the amount of emission reduction otherwise required by those sections for a unit or units at a major source by complying with individual unit emission limits calculated from the following equation:
Figure: 30 TAC §117.570(c)(2)

(3) (No change.)

(d) Any lower NO_x emission specification established by rule or permit for the unit or units generating an ERC shall require the user of the ERC to obtain an approved new reduction credit or otherwise reduce emissions prior to the effective date of such rule or permit change. For units using an ERC in accordance with this section which are subject to new, more stringent rule or permit limitations, the owner or operator using the ERC shall submit a revised final control plan to the executive director in accordance with §117.117

or §117.217 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the ERC shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule or permit limitations. In addition, the owner or operator of a unit generating the ERC shall submit a revised registration application to the executive director, in accordance with subsection (e)(1) of this section, within 90 days prior to the effective date of any new, more stringent rule or permit limitations affecting that unit. If a more stringent NO_x emission specification is established by rule or permit for the unit or units generating the ERC, the value of the ERC shall be recalculated as follows:
Figure: 30 TAC §117.570(d)

(e) (No change.)

(f) Stationary source emission reductions which occurred before January 1, 1997, may not be used for generating emission reduction credits to comply with the lean-burn engine NO_x specification of §117.205(e) of this title. The modified requirements of this subsection are necessary for an owner or operator to use the trading requirements of this section to achieve compliance with the NO_x specification of §117.205(e) of this title. The modifications to this section are as follows:

(1) in §117.570(b)(1)(A) of this title, 1997 replaces 1990;

(2) in §117.570(b)(2) of this title, in the definition of R_{AJ}, *December 31, 1999, replaces June 9, 1993;*

(3) in §117.570(c)(2) of this title, in the definition of R_{AJ}, December 31, 1999, replaces June 9, 1993; and

(4) in each instance, references to §§117.223(b)(1), 117.223(b)(2), and 117.223(g)(3) of this title are date-modified in accordance with §117.223(k) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 122. Federal Operating Permits

Subchapter D. Public Announcement, Public Notice, Affected State Review, Notice and Comment Hearing, Notice of Proposed Final Action, EPA Review and Public Petition

Division 2. Public Notice

30 TAC §122.320

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §122.320, concerning Public Notice.

BACKGROUND

The primary purpose of the proposed amendments is to implement House Bill (HB) 801. The proposed amendments are intended to update notice rules for federal operating permits. This proposal also represents a continuation of the commission's effort to consolidate agency procedural rules and make certain processes consistent among different agency programs.

OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), THSC, §382.056; and revisions to Texas Government Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to applications under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is also required to prepare responses to relevant and material public comment. It requires the commission to prescribe alternative cost- effective procedures for newspaper publication for small business stationary sources seeking air emissions authorization that will not have a significant effect on air quality. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing as necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULE

The primary purpose of the proposed amendments is to implement HB 801, 76th Legislature (1999).

HB 801 revised the federal operating permit requirements contained in THSC, §382.056. Therefore, the commission proposes revisions to §122.320, relating to public notice require-

ments for the federal operating permit program, to incorporate the revised statutory requirements.

The requirements in §122.320(b) are proposed to be revised by adding a new requirement specifying that the applicant shall make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located.

The requirements in §122.320(b)(2) are proposed to be revised by specifying that the newspaper notice shall include an applicant telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information.

The requirements in §122.320(b)(7) and (8) are proposed to be revised to specify that certain statements in the newspaper notice shall be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice.

The requirements in the original §122.320(b)(9) are proposed to be moved to §122.320(b)(11). Section 122.320(b)(9) is proposed to be amended to add a new requirement that the newspaper notice include a statement describing the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit.

Section 122.320(b)(10) contains new proposed language to add a newspaper notice statement for the time and location of any public meeting to be held, if applicable.

Section 122.320(m) contains new proposed language to specify that the applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. This new subsection also proposes that any such meeting shall be provided in the notice required by subsection (b) of this section.

Section 5 of HB 801 specifies that the executive director shall conduct a technical review of and issue a preliminary decision on the application. All applications under Chapter 122 of this title (relating to Federal Operating Permits) undergo a technical review. The requirements in §122.320(b) fulfill the requirement to issue a preliminary decision.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 122, Federal Operating Permits, would implement certain provisions contained in HB 801, 76th Legislature, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC. Like a similar provision in Chapter 39, Public Notice, a proposed amendment to Chapter 122 requires the applicant for a federal operating permit to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. It is anticipated that the number of permit applications received will vary greatly depending on the number of total permit applications generated by applicants in the county. The TNRCC anticipates reviewing over 9,600 permit applications state-wide in fiscal year 1999, of which approximately 400 will be federal air quality operating permits. It is anticipated that units of local government and other facilities choosing to provide storage and copying facilities for the proposed permits applications will charge and collect fees to offset the costs of storage and copy services. These fees are not considered to be a significant additional cost to individual applicants.

The proposed amendments to Chapter 122 revise federal operating permit requirements to incorporate public notice and public meeting requirements in HB 801. The proposed amendments to Chapter 39, Public Notice, of the rules exempt applications under Chapter 122, from the requirements of Chapter 39. Hearings for federal operating permits are notice and comment hearings, and are not contested case hearings subject to procedures specified in Chapter 55, Request for Contested Case Hearings; Public Comment.

The proposed amendments affect permitting processes for federal air programs. It is anticipated that federal operating permit applicants under TCAA of the THSC, Chapter 382, will be affected by the proposed amendments to the rules. Persons involved in the federal operating permitting process including interested members of the general public will also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 122 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased opportunity for public participation in the federal operating permitting processes conducted by TNRCC and enhanced conformance of state and federal public notice requirements.

The purpose of the proposed amendments is to revise procedures regarding federal operating permits. Specifically, the proposed amendments revise federal operating permit requirements to incorporate public notice and public meeting requirements for federal operating permits in HB 801.

The proposed amendments are not anticipated to have significant fiscal impacts on members of the regulated community. The proposed amendments make only minor changes to current public notice requirements. An additional requirement will require the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The additional cost of a copy of the permit application and possible storage fees from the public facility are not anticipated to be significant.

SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 122 because the proposed public notice requirements have only made minor changes to existing requirements. If a small business is an applicant for a federal operating permit, the costs associated with providing a copy of the application for review and copying are not anticipated to be significant.

DRAFT REGULATORY IMPACT EVALUATION

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." Furthermore, it does not meet any of the four applicability requirements listed in

§2001.0225(a). "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 rulemaking is not a major environmental rule because it is procedural in nature, establishes procedures associated with federal operating permits, public notice, public comment on permit applications, and is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. The specific primary intent of the rule is to establish procedures for public participation in certain permitting proceedings. The proposal relates to procedures for providing public notice and providing opportunity for public comment. The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes public participation procedures to be followed by the commission and applicants for certain commission authorizations.

In addition, this proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because the main purpose of this proposal is to adopt state rules equivalent to federal requirements for public participation, and to provide for additional notice, opportunity for public comment, or opportunity for hearing to the extent necessary to satisfy federal program authorization requirements. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, Section 2001.004, which requires state agencies to adopt rules of practice; and TCAA, §382.056, as well as the other authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with TWC, Section 5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., TCAA, §382.056). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments and new sections is to revise the TNRCC rules to establish procedures for public participation in certain permitting proceedings as required by HB 801, and other legislation. The proposal relates to procedures for providing public notice, providing opportunity for public comment, and providing opportunity for requesting public hearing. The rule would clarify, and update the federal operating permit public notice process to be consistent with statutory requirements. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matters. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas, 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log Number 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

STATUTORY AUTHORITY

The amendments are proposed under THSC §382.056 which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules, and §5.115, which establishes the commission's authority to set rules for notices and for determination of an affected person in contested cases.

Additionally, relevant sections of the THSC include: §382.0291, which establishes the commission's authority to hold hearings regarding actions under the TCAA; §382.031, which establishes

the commission's authority to require notice of hearings for actions under the TCAA; §382.017, which establishes the commission's rulemaking authority under the TCAA; §382.051, which establishes the commission's authority to adopt rules concerning air permits; §382.0516, which establishes the requirement for notice to state senator and representative regarding air permit applications; §382.056, which establishes the commission's authority to adopt rules regarding notice, public comment and hearings; and §382.0561, which establishes the commission's authority regarding notice and hearings for federal operating permits.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendments implement the THSC, §382.056, and the Texas Government Code, §2003.047 and §2003.04.

§122.320. Public Notice.

(a) (No change.)

(b) The executive director shall direct the applicant to publish a notice of a draft permit, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

(1) (No change.)

(2) the applicant's or permit holder's name, [~~and~~] address , and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;

(3)-(6) (No change.)

(7) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a statement [~~the notification~~] that a person who may be affected by the emission of air pollutants from the site is entitled to request a notice and comment hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice; and

(9) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(10) if applicable, the time and location of any public meeting; and

(11) the name, address, and phone number of the commission office to be contacted for further information.

(c)-(l) (No change.)

(m) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the site is located or proposed to be located. Notice of this public meeting shall be provided in the notice required by subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903994
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

30 TAC §305.63, §305.65

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §305.63 and new §305.65, concerning Renewal. The primary purpose of the proposed amendment and new section is to implement House Bill (HB) 801, 76th Legislature (1999).

OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health and Safety Code (HSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), HSC, §382.056; and revisions to Texas Government Code, §2003.047. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for hearing are provided.

HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. Rule changes are proposed to implement this legislation in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. The rule changes in Chapter 305 implement the provisions of HB 801 relevant to the permitting procedures or renewal of certain hazardous waste management facilities. These chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register.*

EXPLANATION OF PROPOSED RULES

SECTION BY SECTION ANALYSIS

The primary purpose of the proposed amendments and new section is to implement HB 801, 76th Legislature (1999).

Proposed amended §305.63 contains new language relating to applicability, stating that this section is applicable to any permit renewal application that is declared administratively complete before September 1, 1999. The proposed amended section also is reformatted to account for the addition of the applicability statement. This amendment leaves existing procedures in place for hazardous waste management facilities not affected by HB 801 changes.

Generally, proposed new §305.65, with some renumbering, mirrors existing §305.63 with certain significant exceptions. First, proposed new §305.65(a) includes a provision reflecting applicability of this section to applications filed on or after September 1, 1999. Second, proposed new §305.65(a)(8) would authorize the commission to renew permits without providing an opportunity for a contested case hearing if certain conditions are met, which are as follows: after complying with all applicable rules in Chapters 39, 50, and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for storage of hazardous waste in containers, tanks, or other closed vessels if the waste was generated on-site and does not include waste generated from other waste transported to the site. Similarly, the commission may act on an application, without providing an opportunity for a contested case hearing, to renew a permit for the processing of hazardous waste if the waste was generated on-site; the waste does not include waste generated from other waste transported to the site; and the processing does not include thermal processing. Third, under proposed new §305.65(a)(9), if the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing. These changes are consistent with and implement requirements in HB 801 relating to permit processing requirements for certain hazardous waste management facilities.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 305, Consolidated Permits would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed amendments to Chapter 305 of the rules would authorize the commission to renew certain hazardous waste permits without providing an opportunity for a contested case hearing in two types of situations. In the first situation, a contested case hearing would not be required for a renewal of a permit to store hazardous waste in containers, tanks, or other closed vessels if the waste was generated on-site and was not commingled with waste transported from off-site. In the second situation, the opportunity for a contested case hearing would not be required if the waste was generated on-site and had not been commingled with waste transported from off-site and thermal processing is not involved. However, the proposed amendments allow the commission to hold a contested case hearing based solely on concerns regarding the applicant's compliance history during the preceding five years.

The proposed amendments affect permitting processes for hazardous waste activities under the Health and Safety Code, Chapter 361, Texas Solid Waste Disposal Act. It is anticipated that permit applicants under the Texas Solid Waste Disposal Act will be affected by the proposed amendments to the rules. Persons involved in these permitting processes, including interested members of the general public, might also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 305 are in effect the public benefit anticipated from enforcement of and compliance with the proposed amendments will be more efficient permitting process for certain waste permits.

The purpose of the proposed amendments is to authorize the commission to renew certain hazardous waste permits without a contested case hearing in two situations. First, an opportunity for a contested case hearing would not be required for a renewal of a permit to store hazardous waste in containers, tanks, or other closed vessels when the waste will be generated solely on-site and will not be commingled with waste transported from off-site. In the second situation, a contested case hearing would not be required for a renewal of a permit to process hazardous waste generated on-site so long as that waste is not commingled with waste transported from off-site and thermal processing is not involved. The proposed amendments require that the commission provide an opportunity for a contested case hearing if the commission determines that an applicant's compliance record over the preceding five years presents an issue as to the applicant's ability to comply with a material condition of the permit.

The proposed amendments are not anticipated to have any adverse fiscal impacts on members of the regulated community because the amendments do not substantially alter existing procedures. While the proposed amendments allow the commission to renew hazardous waste storage and processing permits in two situations without opportunity for a contested case hearing, the amendments also require the commission to provide an opportunity for a contested case hearing if the applicant's compliance record over the preceding five years indicates concern about the applicant's ability to comply with a material condition of the permit. The proposed amendments may be viewed as having positive fiscal impacts to applicants in situations where contested case hearings are no longer available.

SMALL BUSINESS ANALYSIS

No adverse economic effects are anticipated to any small business as a result of implementing the provisions of the proposed amendments to Chapter 305 because the proposed amendments have eliminated the opportunity for requesting a contested case hearing in two types of hazardous waste permit renewal cases. If an application for a renewal of a hazardous waste permit meets the criteria in the proposed exemption, the applicant may benefit from the granting of the renewal without the possibility of a contested case hearing. If the commission uses its discretion to grant a contested case hearing, no additional costs are anticipated over those the applicant would be subject to under existing rules.

REGULATORY IMPACT EVALUATION

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." Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). "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 rulemaking is not a major environmental rule because it is not proposed with the specific intent of protecting the environment or reducing risks to human health or the environment. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures associated with certain hazardous waste permit applications and associated requests for contested case hearings, the rulemaking does not meet the definition of a "major environmental rule." The rule does not concern an existing or new regulatory program that would 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. Rather, it merely prescribes procedures for hearings on renewals of permits. The rule does not prescribe standards of operation for the management and control of solid waste activities.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Health and Safety Code, §361.024 and §361.088, and Texas Water Code, §5.103, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Health and Safety Code, §361.024 and §361.088, and Texas Water Code, §5.103). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed amendments is to establish procedures that implement legislation for hearings on renewals of permits. The proposed rules will substantially advance these stated purposes by providing specific provisions on the aforementioned matter. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of amendments and new sections relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and has determined that the proposed sections are not subject to the Texas Coastal Management Program (CMP). The proposed actions concern only the procedural rules of the commission and general agency operations, are not substantive in nature, do not govern or authorize any actions subject to the CMP, and are not themselves capable of adversely affecting a coastal natural resource area (Title 31 Natural Resources and Conservation Code, Chapter 505; 30 TAC §§281.40, et seq.).

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log Number 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis, and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801.

STATUTORY AUTHORITY

The amendment and new section are proposed under HSC, §361.024 and §361.088, which establishes the commission's authority concerning environmental permitting procedures.

Other relevant sections of the TWC under which the commission takes this action include: §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.013, which establishes the commission's authority over various statutory programs.

Additionally, relevant sections of the HSC include: §361.017, which establishes the commission's jurisdiction over industrial hazardous waste; §361.024, which establishes the commission's authority to establish rules for the control of solid waste.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules

or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendment and new section implement HB 801.

§305.63. Renewal.

(a) Any permit renewal application that is declared administratively complete before September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1)-(7) (No change.)

(b) (No change.)

§305.65. Renewal.

(a) Any permit renewal application that is declared administratively complete on or after September 1, 1999 is subject to this section. The permittee or the executive director may file an application for renewal of a permit. The application shall be filed with the executive director before the permit expiration date. Any permittee with an effective permit shall submit a new application at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(1) An application for renewal may be in the same form as that required for the original permit application.

(2) An application for renewal shall request continuation of the same requirements and conditions of the expiring permit.

(3) If an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment or modification shall also be filed before further action is taken. For applications filed under the Texas Water Code, Chapter 26, if an application for renewal in fact requests a modification of requirements and conditions of the existing permit, an application for amendment shall be filed in place of an application for renewal.

(4) If renewal procedures have been initiated before the permit expiration date, the existing permit will remain in full force and effect and will not expire until commission action on the application for renewal is final.

(5) The commission may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

(6) During the renewal process, the executive director may make any changes or additions to permits authorized by §50.145 of this title (relating to Corrections of Permits), or §305.62(d) of this title (relating to Amendment) provided the requirements of §305.62(f) of this title and §305.96 of this title (relating to Action on Application for Amendment) are satisfied.

(7) The executive director may grant permission for permittees of non-publicly owned treatment works to submit the information required by 40 Code of Federal Regulations §122.21(g)(10) after the permit expiration date.

(8) After complying with all applicable rules in Chapters 39, 50, and 55 of this title, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(A) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(i) was generated on-site; and

(ii) does not include waste generated from other waste transported to the site; or

(B) processing of hazardous waste if:

(i) the waste was generated on-site;

(ii) the waste does not include waste generated from other waste transported to the site; and

(iii) the processing does not include thermal processing.

(9) If the commission determines that an applicant's compliance history for the preceding five years raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(b) This section does not apply to applications for renewal of radioactive material licenses under Chapter 336 of this title (relating to Radioactive Substance Rules).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903975
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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Chapter 321. Control of Certain Activities by Rule

Subchapter B. Concentrated Animal Feeding Operations

30 TAC §321.48

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §321.48, concerning Additional Requirements for Certain Concentrated Animal Feeding Operations. The primary purpose of the proposed new section is to implement House Bill (HB) 801, 76th Legislature (1999).

OVERVIEW OF HB 801 AND IMPLEMENTATION

HB 801, enacted by the 76th Legislature, revises the public participation in environmental permitting procedures of the commission by adding new Texas Water Code (TWC), Chapter 5, Subchapter M; revised Texas Health & Safety Code (THSC), Solid Waste Disposal Act, §361.088; revisions to Texas Clean Air Act (TCAA), THSC §382.056; and revisions to Texas Government

Code, §2003.047. Except for the changes required under Texas Government Code, §2003.047, the new and amended statutory provisions expressly apply to the types of commission actions for which public notice, an opportunity for public comment, and an opportunity for public hearing are provided for under TWC, Chapters 26 and 27, and THSC, Chapters 361 and 382. The changes in law made by HB 801 only apply to permit applications declared administratively complete on or after September 1, 1999 and former law is continued in effect for applications declared administratively complete before September 1, 1999. Generally, the amendments made by this law are procedural in nature and are not intended to expand or restrict the types of commission actions for which public notice, an opportunity for public comment and an opportunity for hearing are provided.

More specifically, HB 801 encourages early public participation in the environmental permitting process and is intended to streamline the contested case hearing process. For example, it requires an applicant to publish newspaper notice of intent to obtain a permit and notice of the executive director's preliminary decision on the application. It also requires the applicant to place a copy of the application and the executive director's preliminary decision at a public place in the county and authorizes the executive director to hold public meetings. The executive director is required to prepare responses to relevant and material public comment. This legislation also allows the commission by rule to provide any additional notice, opportunity for public comment or opportunity for hearing necessary to satisfy federal program authorization requirements. Contested case hearing procedures are also revised. The scope of proceedings and discovery is limited by the new law. These changes are proposed to be implemented in Chapters 39, 50, 55, and 80. Additional changes to implement HB 801 are proposed to Chapters 106, 116, 122, 305, and 321. Most of these chapters also contain changes necessary for the consolidation of the procedural rules of the agency and to improve consistency among the permitting programs as well as changes to clarify and update agency rules and changes necessary to facilitate permit processing. Changes for all of these chapters are published in this edition of the *Texas Register*.

EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments and new sections is to implement HB 801, 76th Legislature (1999).

Proposed new §321.48, relating to Additional Requirements for certain Concentrated Animal Feeding Operations (CAFO), incorporates the requirements of new TWC, §26.0286, relating to Procedures Applicable to Permits for Certain Concentrated Animal Feeding Operations, as added by HB 801. This new proposed section would require an applicant for an authorization to construct or operate a CAFO to include information on whether the facility is located within the watershed of a sole-source surface drinking water supply and the distance to intakes of a public water supply system in the sole-source surface drinking water supply. If the facility is located in such watershed, the applicant is required to submit the distance to an intake of a public water supply system in the sole-source surface drinking water supply. Under this proposal, the executive director shall review the application to determine whether contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply based upon factors listed in the rule. If the executive director determines that contaminants discharged from the concentrated animal feeding operation could potentially affect the sole-source public drinking water supply, the application for the authorization to construct or operate the CAFO shall be processed as an application for an individual permit under §321.34, relating to Procedures for Making Application for an Individual Permit.

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 units of state and local government as a result of administration or enforcement of the proposed amendments. The proposed amendments to Chapter 321, Control of Certain Activities by Rule, would implement certain provisions contained in House Bill 801, 76th Legislature, Regular Session, 1999, an act relating to public participation in certain environmental permit proceedings of the TNRCC.

The proposed new section of Chapter 321 of the rules would require an applicant for an authorization to construct or operate a CAFO to include information on whether the facility is located within the watershed of a sole-source surface drinking water supply. If the facility is located within the watershed, the applicant is required to submit the distance from the facility to all intakes of a public water supply system in the sole-source surface drinking water supply. If the executive director determines that contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply, the applicant must prepare and submit an application for an individual permit.

The proposed new section of Chapter 321 affect CAFO permitting processes under the TWC, Chapter 26; THSC, Chapter 382, Air Quality, and Chapter 341, Minimum Standards of Sanitation and Health Protection Measures. It is anticipated that CAFO permit applicants will be affected by the proposed new section the rules. Persons involved in CAFO permitting processes, including interested members of the general public, will also be affected.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed new section of Chapter 321 are in effect the public benefit anticipated from enforcement of and compliance with the proposed new section will be increased protection of the public drinking water supply and increased opportunity for public participation in the CAFO permitting processes conducted by TNRCC.

The purpose of the proposed new section is to incorporate the requirements of HB 801 regarding CAFO's. Specifically, an applicant for an authorization to construct or operate a CAFO would be required to submit information on whether the facility is located within the watershed of a sole-source surface drinking water supply. If the facility is located within the watershed, the applicant is required to submit the distance from the facility to all intakes of a public water supply system in the sole-source surface drinking water supply. If the executive director determines that contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply, the applicant must prepare and submit an application for an individual permit. HB 801 and the proposed new section enhance the ability of the commission to prevent potential pollution of drinking water supplies through the review and approval of individual permits for CAFO facilities that are adjacent to or within a watershed of a sole-source surface

drinking water supply. An individual permit application would require the applicant to document compliance with agency rules and potentially subject the applicant to additional or different site-specific permit conditions, as well as a public meeting or a contested case hearing. The new requirements aid the commission in ensuring that water quality standards are maintained. The commission, under Chapter 321, Subchapter B, §321.33(b) currently allows the executive director to require an CAFO to seek an individual permit if the operation is located near surface water resources. This new section, however, enhances the executive director's authority to protect water in the state by requiring CAFOs to provide information that will enable the executive director to determine whether a particular CAFO is close enough to a sole-source surface drinking water supply that an individual permit should be required.

The proposed new section is not anticipated to have a significant fiscal impact on most applicants required to seek an individual permit. CAFOs located near surface water resources are already required to prevent the likelihood of inadvertent discharges, and to ensure that permitted discharges do not degrade water quality. In some instances, additional site-specific requirements in an individual permit could result in expense to the facility; however, these costs are not specifically a result of these amendments. As mentioned above, the executive director is already authorized to require CAFOs close to surface water resources to obtain individual permits. Further, it is anticipated that the cost of documenting existing data in the forms required for an individual permit will vary depending on the detail and data entry work required to document compliance with permit requirements. These costs are not anticipated to be significant compared to the existing costs required to comply with existing permit requirements. Likewise, the additional costs associated with HB 801 requirements to measure the distance from the CAFO facility to the intakes of a public water supply system are not anticipated to be significant. The likelihood of additional expense being incurred for public meetings and contested case hearings are not anticipated to be significant.

SMALL BUSINESS ANALYSIS

It is anticipated that small businesses engaged in CAFOs with facilities located in the watershed of a sole-source surface drinking water supply will have the same or similar economic effects, as a result of implementing the provisions of the proposed new section of Chapter 321, as medium to large businesses with similar operating and environmental characteristics. These costs are not anticipated to be significant compared to the engineering work required to comply with existing permit requirements. Likewise, the additional costs associated with HB 801 requirements to measure the distance from the CAFO facility to the intakes of a public water supply system are not anticipated to be significant.

REGULATORY IMPACT EVALUATION

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 the act. Furthermore, it does note meet any of the four applicability requirements listed in §2001.0225(a). "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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures for enhanced oversight over the potential pollution of sole-source surface drinking water supplies, the rulemaking does not meet the definition of a "major environmental rule."

The intent of this new section is to enhance the oversight of CAFO permitting procedures in a manner which enhances the protection of the environment or reduces risks to human health from environmental exposure and protects the watershed of a sole-source surface drinking water supply. This proposed rulemaking does not meet the applicability criteria of a "major environmental rule" because the proposed new section does 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 changes are not proposed solely under the general rulemaking authority of the commission but are proposed to comply with the requirements of HB 801 enacted by the 76th Legislature.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by the following state statutes: Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and TWC, §26.0286, as well as the other statutory authorities cited in the Statutory Authority section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with TWC, §5.551, which expressly requires the commission to adopt any rules necessary to satisfy any authorization for a federal permitting program. This proposal does not adopt a rule solely under the general powers of the agency, but rather under a specific state law (i.e., Texas Water Code, §26.0286 and Texas Government Code, §2001.004). Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific primary purpose of the proposed rule is to revise the procedure for applying for an authorization to construct or operate a CAFO. The proposed rule will substantially advance these stated purposes by providing specific provisions relating to requirements for such authorizations. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of a new section relating to the commission's procedural rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. This action concerns only the procedural rules of the commission and general agency operations. Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

PUBLIC HEARING

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Casey Vise, Office of Environmental Policy, Analysis, and Assessment, MC-205, P.O. Box 13087, Austin, Texas, 78711-3087; or by fax at (512) 239-4808. All comments must be received by August 16, 1999, and should reference Rule Log Number 99030-039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

To facilitate review of this proposal, the agency will make copies of the rule available, which will show the differences between old and new subchapters. Copies may be obtained by calling Casey Vise, in the Office of Environmental Policy, Analysis and Assessment, at (512) 239-1932 and on the TNRCC website at: http://www.tnrcc.state.tx.us/oprd/forum.html#hb801

STATUTORY AUTHORITY

The new section is proposed under TWC, §26.0286 which require the commission to use certain procedures for processing applications for certain concentrated animal feeding operations.

Other relevant sections of the TWC under which the commission takes this action include: §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; §5.013, which establishes the commission's authority over various statutory programs; §26.011, which establishes the commission's authority over water quality in the state; §26.028, which establishes the commission's authority to approve certain applications for waste water discharge; and §26.0286, which establishes the commission's authority to process certain permits for certain concentrated animal feeding operations.

An additional relevant section is Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed new section implements TWC, §26.0286.

§321.48. Additional Requirements for Certain Concentrated Feeding Animal Operations.

(a) An application that is declared administratively complete on or after September 1, 1999 is subject to this section.

(b) Each application for authorization to construct or operate a CAFO, including amendments and renewals, shall include information on whether the facility is located within the watershed of a sole- source surface drinking water supply listed in Appendix A of this section. The application shall contain an original or legible copy of a current United States Geological Survey 7.5 minute topographic quadrangle map showing the location of the facility; and

(c) If the facility is located in the watershed of a sole-source surface drinking water supply, the applicant shall submit the distance to all intakes of public water supply systems in the sole-source surface drinking water supply.

(d) The executive director shall review the application to determine whether contaminants discharged from the CAFO could potentially affect the sole-source public drinking water supply based upon all relevant factors, including, but not limited to the following:

(1) the amount of waste and wastewater expected to be managed;

(2) the stream flow characteristics of the receiving waters; and

(3) the distance from the facility to all intakes of public water supply systems in the sole-source surface drinking water supply.

(e) If, based upon the review in subsection (d) of this section, the executive director determines that contaminants discharged from the CAFO could potentially affect a sole-source public drinking water supply, the application for authorization to construct or operate a CAFO shall be processed as an application for an individual permit under §321.34 of this title (relating to Procedures for Making Application for an Individual Permit).

Figure: 30 TAC §321.48(e)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 5, 1999.

TRD-9903995
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 2, 1999
For further information, please call: (512) 239-1932

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 53. Finance

Subchapter A. License Fees and Boat and Motor Fees

31 TAC §53.1, §53.3

Texas Parks and Wildlife Department proposes amendments to §53.1 and §53.3 concerning fishing license fees and exemptions. Texas currently has reciprocal fishing agreements with Oklahoma, Louisiana, and Kansas. Texas residents that are becoming 65 years of age currently purchase a special resident fishing license for $6.00. Residents who were born before September 1, 1930 are exempt from the requirement of having a fishing license. Current regulations allow nonresidents from Oklahoma 64 years of age or older and nonresidents from Kansas and Louisiana 65 years of age and older to fish without a license in Texas. The Executive Director sent letters to the three states involved last October of our intention to eliminate the current exemption for their seniors. The amendments proposed to our fishing license exemption and fee rules would provide the same rules for nonresidents fishing in Texas that we require of our residents if the nonresidents state of residence is willing to enter into an agreement to provide the same privilege to our citizens.

The proposed rule change would also clarify the practice of selling a Special Resident Fishing license to persons otherwise exempt from purchasing a fishing license and persons who purchase a temporary fishing license in order for these individuals to obtain a red drum tag.

Jim Dickinson, Financial Program Director, has determined that for the first five year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Dickinson also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rules as proposed will be that nonresident seniors will be charged the same amount or more for the same fishing rights as Texas residents. Currently under the existing reciprocal agreements with three states non-resident seniors are being allowed to fish free while Texas residents of the same age are having to purchase a fishing license.

There will be no effect on small businesses. There will be a small cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Jim Dickinson, Chief Financial Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4417 or 1-800-792-1112.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 41, Reciprocal Hunting and Fishing Privileges and Chapter 46, Subchapter A, §46.002, General Fishing Licenses which provides the Commission with authority to waive or lower fishing license fees.

Parks and Wildlife Code §46.002 is affected by the proposed amendments.

§53.1. License Issuance Procedures, Fees, Possession and Exemption Rules.

(a)-(c) (No change.)

(d) The following categories of persons are exempt from fishing license requirements and fees for the license years beginning September 1, 1999 [~~1995~~], and thereafter:

(1)-(2) (No change.)

[~~(3) non-residents 65 years of age or older from Kansas and Louisiana;~~]

(3) [~~(4)~~] non-residents whose birthdate is before September 1, 1930 and whose state of residence enters into a reciprocal agreement with Texas [~~non-residents 64 years of age or older from Oklahoma~~];

(4) [~~(5)~~] residents whose birth date is before September 1, 1930;

(5) [~~(6)~~] persons who hold valid Louisiana non-resident fishing licenses while fishing on all waters inland that form a common boundary between Texas and Louisiana from a line across Sabine Pass between Texas Point and Louisiana Point if the State of Louisiana allows a reciprocal privilege to persons who hold valid Texas annual or temporary non-resident fishing licenses; and

(6) [~~(7)~~] residents of Louisiana who meet the licensing requirements of their state while fishing on all waters inland that form a common boundary between Texas and Louisiana from a line across Sabine Pass between Texas Point and Louisiana Point if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas fishing licenses.

(e) (No change.)

§53.3. Other Recreational Hunting and Fishing Licenses, Stamps, and Tags

(a)-(c) (No change.)

(d) Fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 1999 [~~1996~~], and thereafter:

(1)-(2) (No change.)

(3) special resident fishing (type 203)–$6.00.[~~;~~] Nonresidents who are 65 years of age or older and whose state of residence enters into a reciprocal agreement with Texas are designated as residents and may purchase a special resident fishing license;

(4)-(9) (No change).

(e)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on July 2, 1999.

TRD-9903947
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 389-4418

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 67. Hearings on Disputed Claims

34 TAC §67.43

The Employees Retirement System of Texas proposes amendments to §67.43, concerning the dismissal of disputed claims. The amendments are being proposed in order to clarify the authority of the executive director and board to dismiss disputed claims.

William S. Nail, Deputy Executive Director and General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the efficient disposition of disputed claims that are abandoned, withdrawn, or otherwise not appropriate for retention on the claims docket. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule amendments may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas, 78711-3207, or by e-mail to Mr. Nail at wnail@ers.state.tx.us.

The amendments are proposed under Texas Government Code §815.102, which provides authorization for the board to adopt rules for the administration of the funds of the retirement system, and under Texas Insurance Code Article 3.50-2, §4A, which provides authorization for the board to adopt rules for the administration of the group insurance program.

No other statutes are affected by this amendment.

§67.43. Dismissal without Hearing.

(a) (No change.)

(b) The examiner shall, and the board and executive director may, dismiss the appeal of any person who has filed written notice of the appeal but who defaulted by:

(1)-(3) (No change.)

(c) The board or executive director may dismiss an appeal for any of the reasons described in subsection (a) of this section. A dismissal of an appeal by the board or executive director constitutes final agency action on the appeal and no administrative appeal from the decision is available.

(d) [~~(c)~~] For good cause, the executive director may permit reinstatement of an appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 30, 1999.

TRD-9903913
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 867-7125

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 352. Data Collection and Reporting

The Texas Juvenile Probation Commission proposes new Chapter 352, Subchapter A, §§352.101-352.106 relating to data collection and reporting using the CASEWORKER system and Subchapter B, §§352.201-352.206 relating to data collection and reporting using non-CASEWORKER systems. The standards provide uniform procedures for meeting TJPC data collection and reporting requirements and for ensuring the accuracy and security of information.

Mr. Vonzo Tolbert, Director of Research and Planning, has determined that for the first five year period the new standards are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new standards.

Mr. Tolbert has also determined that for each year of the first five years the new standards are in effect, the public benefit anticipated as a result of enforcement will be the accurate and regular reporting of information to TJPC which will aid in evaluating the effectiveness of the juvenile probation system. There are no anticipated economic costs to persons who are required to comply with these standards as proposed. There will be no effect on small businesses.

Comments on the proposed standards may be submitted to Mr. Vonzo Tolbert at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

Subchapter A. CASEWORKER Systems

37 TAC §§352.101-352.106

The new standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for collecting and reporting data.

No other code or article is affected by these new standards.

§352.101. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) CASEWORKER - A personal computer-based tracking and case management system, developed and supported by the Texas Juvenile Probation Commission (TJPC), that provides juvenile probation officers a systematic method to track and manage juvenile offender caseloads.

(2) Data Coordinator - A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(3) TJPC Monthly Folder Extract - An automated process to extract and submit modified case records from the department's CASEWORKER system to TJPC.

(4) Comprehensive Folder Edit - A report generated in CASEWORKER that performs an extensive edit of the folder information. This report identifies incorrectly entered data, unrecoverable files, and questionable data that impact the accuracy of the reports and programs.

(5) Annual Resource Survey - A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures each department's staff size, salary range and caseload.

§352.102. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection, reporting and the CASEWORKER system. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall have a thorough understanding of TJPC reporting requirements and shall be trained on CASEWORKER by TJPC. Within 90 days from date of a new designation as data coordinator, the new data coordinator shall attend CASEWORKER training provided by TJPC.

(c) Duties. The data coordinator is responsible for ensuring that all data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§352.103. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract shall be sent to TJPC via the Internet. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§352.104. Other Reports.

(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§352.105. Accuracy of Data.

(a) Required Fields. The probation department shall fill in all applicable data fields for each referral in their CASEWORKER system to minimize missing information.

(b) Comprehensive Folder Edit. Probation departments shall run the Comprehensive Folder Edit on a monthly basis.

(c) Errors. Errors detected by the Comprehensive Folder Edit , the annual TJPC monitoring visit, or the TJPC Research and Planning Division upon analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§352.106. Security of Data.

(a) Passwords. Passwords shall be assigned by the CASEWORKER administrator or management information systems administrator for each individual user and should not be shared by employees or other persons. Each department shall have a limited number of employees that are authorized to delete information contained within CASEWORKER. Access to the department's CASEWORKER system shall be removed concurrent with the termination of the person's employment.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy for the backup and restoration procedures relating to data, requiring, at a minimum, a system backup once per week. Departments must maintain at least five generations (copies) of data backups.

(c) Off-Site Storage. All juvenile probation departments shall store a system backup off-site to be accessible in case of a disaster at the department (fire, tornado, etc). An updated backup for off-site storage must be run at a minimum of once a month, in addition to the five generations of backup.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 1999.

TRD-9903936
Vicki Spriggs
Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 424-6681

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Subchapter B. Non-CASEWORKER Systems

37 TAC §§352.201-352.206

The new standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for collecting and reporting data.

No other code or article is affected by these new standards.

§352.201. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Data Coordinator - A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(2) TJPC Monthly Folder Extract - An automated process to gather data relating to all case files in the case management system designed to analyze crime and juvenile trends, program success, and profiling of juvenile offenders.

(3) CASEWORKER Extracted File Layout - A document developed by TJPC outlining the data fields and file structures that each department is required to follow to submit the TJPC Monthly Folder Extract.

(4) Annual Resource Survey - A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures the department's staff size, salary range and caseload.

§352.202. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection and reporting. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall attend training, as required and deemed necessary by TJPC, relating to updates on statistical and research-based information and requirements.

(c) Duties. The data coordinator is responsible for ensuring that the data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§352.203. TJPC Monthly Folder Extract.
The TJPC Monthly Folder Extract data shall be sent to TJPC in an acceptable electronic format. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§352.204. Other Reports.
(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§352.205. Accuracy of Data.
(a) Required Fields. Departments shall fill in all applicable fields as specified in the CASEWORKER Extract File Layout. If TJPC requires additional fields, each department shall update their case management system to include such information.

(b) Maintaining Accuracy. Each department shall have a written policy and procedure to maintain accuracy of data submitted and methods of correcting errors. Each department shall report data elements that are consistent with TJPC definitions.

(c) Errors. Errors detected by the department during daily operation, or by TJPC during the annual monitoring visit or by the TJPC Research and Planning Division analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§352.206. Security of Data.
(a) Passwords. Department users shall be required to obtain a password to their case management system. Each department shall have a written policy and procedure to ensure secured access and to limit the number of employees that have access to delete information from the case management system. Access to the department case management system shall be terminated for people no longer employed by the department.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy for the backup and restoration procedures relating to data.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 1999.

TRD-9903937

Vicki Spriggs
Executive Director
Texas Juvenile Probation Commission
Earliest possible date of adoption: August 15, 1999
For further information, please call: (512) 424-6681

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 45. Community Living Assistance and Support Services

Subchapter D. Fiscal Monitoring

40 TAC §45.401

The Texas Department of Human Services (DHS) proposes an amendment to §45.401, concerning Administrative Errors, in its Community Living Assistance and Support Services chapter. The purpose of the amendment is to make non-substantive changes to the section. This rule is being amended because it was found that inclusion of some of the rule was inappropriate.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to promote quality of services, and provide better accessibility for clients and consumer satisfaction. There will be no effect on small businesses because the changes are clarifications to existing rules. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Gerardo Cantu at (512) 438-3693 in DHS's Community Care Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-178, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Under section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§45.401. Administrative Errors.

A recoupment of 12% of the paid unit rate is the administrative error exception for services billed [~~on an hourly basis~~]. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to, the items in paragraph (1)-(2) of this section:

(1) Administrative errors on documentation of services delivered form or the facsimile:

(A)-(J) (No change.)

(K) The attendant, nurse, therapist, other professional, or other agency representative fails to sign the documentation of services delivered form or [~~approved~~] facsimile. DHS applies the error to the total number of units documented on the time sheet.

(L)-(M) (No change.)

(2)-(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 29, 1999.

TRD-9903887
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438-3765

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Chapter 47. Primary Home Care

Subchapter B. Service Requirements

40 TAC §§47.2902, 47.2910-47.2912

The Texas Department of Human Services (DHS) proposes amendments to §§47.2902, 47.2910, and 47.2912, concerning requesting prior approval for primary home care, service breaks, and service plan changes; and proposes new §47.2911, concerning orientation of attendants, in its Primary Home Care chapter. The purpose of the amendments and new section is to add performance standards currently contained in the provider manual and include procedures for orientation of attendants, service plan changes, and additional documentation requirements for service breaks.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to promote quality of services, and provide better accessibility for clients and consumer satisfaction. There will be no effect on small businesses because the program standards are currently being followed by providers. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Gerardo Cantu at (512) 438-3693 in DHS's Community Care Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-178, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Under section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments and new section are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§47.2902. Requesting Prior Approval for Primary Home Care.

(a)-(e) (No change.)

(f) Using the service plan form, the RN must develop a service plan for the client. The service plan must be agreed upon and signed by the client/client's family and agency. The service plan must include:

(1) (No change.)

(2) tasks and hours; [~~and~~]

(3) the attendant service schedule; and [~~.~~]

(4) frequency of supervisory visits.

(g)-(i) (No change.)

§47.2910. Service Breaks.

(a) (No change.)

(b) Verbal approval for a service break extension beyond 14 days must be obtained from the caseworker before obtaining written approval. The provider agency must request written approval by submitting a case information form to the caseworker within seven days of the date verbal approval was given. Subsequent approval(s) for service break(s) are not needed if the initial break(s) extend another 15 days or more. Regardless of how long the service break lasts, it is considered only one service break if the break is consecutive.

(c) The provider agency must ensure that a Priority 1 client is not without authorized/scheduled services after service initiation unless:

(1) the service break is caused by circumstances described in §47.2914(a) and (b) of this title (relating to Suspension of Services); or

(2) (No change.)

(3) the client requests that services not be provided on a specific day(s); or

(4) the client agrees to less than scheduled hours as documented in the record; and

(5) the provider agency notified the caseworker on the case information form (or facsimile) of the reason within seven days of the break.

(d) (No change.)

§47.2911. Orientation of Attendants.

(a) The supervisor, who is a registered nurse (RN) for a licensed home health agency, or is not an RN for a personal assistance services (PAS) agency, must orient that attendant before or when services for the client begin. The supervisor must meet with the attendant and the client at the client's home to give the attendant a general orientation about the client. The purpose of the orientation is to:

(1) provide the attendant with information needed to provide the authorized services;

(2) ensure that the attendant is able to recognize and report any changes in the client's health (such as shortness of breath, swelling of feet, or chest pains in the presence of certain health conditions); and

(3) ensure that the attendant is competent to provide authorized tasks.

(b) The supervisor is not required to give this onsite orientation to the special (substitute) attendant, but must give the special attendant verbal or written orientation before the special attendant goes to the client's home.

§47.2912. Service Plan Changes.

(a) No later than the first Texas Department of Human Services (DHS) workday after becoming aware of the change, the provider agency must verbally notify the caseworker or staff in the caseworker's office about any change that may require an increase in hours or service termination. The provider agency must follow up this verbal notification with further notification in writing, to the caseworker, using the attendant orientation/supervisory visit form. Written notification must occur within seven days after verbal notification.

(b) When a caseworker initiates an increase or decrease in hours or service termination, he sends the approval for Community Care for Aged and Disabled (CCAD) services-referral response form to the provider agency to: [~~authorizes the increase in hours on the prior approval/confirmation of services form.~~]

(1) authorize the change if the client receives family care or primary home care under Medicaid eligibility status; and

(2) notify the provider agency to request authorization of the change from DHS's regional nurse when the change is for a client who is eligible for primary home care under the provisions of the Social Security Act, §1929(b). To request approval of the change, the provider agency must forward to DHS's regional nurse the approval for CCAD services-referral response form and the attendant orientation/supervisory visit form within seven days of the receipt of the approval for CCAD services-referral response form from the caseworker.

(c)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 29, 1999.

TRD-9903888

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: September 1, 1999

For further information, please call: (512) 438-3765

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Chapter 48. Community Care for Aged and Disabled

Subchapter J. 1915(c) Medicaid Home and Community-Based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

40 TAC §§48.6020-48.6024, 48.6052, 48.6058, 48.6090, 48.6092, 48.6096

The Texas Department of Human Services (DHS) proposes new §§48.6020-48.6024, concerning pre-enrollment home health assessment, delay of pre-enrollment health assessment, community based alternatives annual reassessment, routine service plan changes, and changes to personal assistance services; and proposes amendments to §§48.6052, 48.6058, 48.6078, 48.6090, 48.6092, and 48.6096, concerning cost-effective purchases of adaptive aids, cost-effective purchases of medical supplies, billable units, fiscal monitoring and recoupment, initiation of community based alternatives (CBA) home and community support services (HCSS), and service breaks, in its Community Care for Aged and Disabled chapter. The purpose of the new sections and amendments is to add performance standards that are contained in the Community Based Alternatives (CBA) Provider manual, which will facilitate enforcement. The rules also establish timeframes and procedures for the pre-enrollment assessments and specify documentation requirements for service initiation, annual re- assessments, and service plan changes. DHS developed provider performance standards and uniform monitoring guides for use by regional staff, as part of the initiative to assure the quality of community care services through better contract monitoring.

Eric M. Bost, commissioner, has determined that for the first five- year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to promote the quality of services, and provide better accessibility for clients and consumer satisfaction. There will be no effect on small businesses because the program standards are currently being followed by providers. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Gerardo Cantu at (512) 438-3740 in DHS's Community Care Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-178, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Under section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new sections implement §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

§48.6020. Pre-Enrollment Home Health Assessment.

The Home and Community Support Services agency must complete and return the pre- enrollment home health assessment to the case manager's office according to the time frame entered in Item 14 of the Pre-Enrollment Home Health Authorization form, or within 14 days after receipt of the Pre-Enrollment Home Health Authorization form, whichever is sooner.

§48.6021. Delay of Pre-Enrollment Home Health Assessment.

(a) The only valid reasons for the Home and Community Support Services (HCSS) agency to not complete the pre-enrollment home health assessment within 14 days for routine applicants or by the negotiated date for priority applicants are that:

(1) the decision to initiate Medicare home health services is pending; or

(2) there is a delay in getting the Client Assessment, Review, and Evaluation form signed by the physician.

(b) The HCSS agency must notify the case manager of a delay in obtaining the physician's signature which would prevent the HCSS agency from meeting the time frame for completion of the pre-enrollment home health assessment by:

(1) verbally notifying the case manager no later than 24 hours before the negotiated assessment completion date, if it is a priority referral, of the delay in obtaining the physician's signature. The agency must submit written documentation on the Case Information form to the case manager within two Texas Department of Human Services (DHS) workdays of the verbal notification, documenting the reason for the delay; and

(2) submitting the Case Information form to the case manager no later than 24 hours before the 14-day time frame allowed for routine referrals and documenting the reason for the delay.

§48.6022. Community Based Alternatives Annual Reassessment.

The Home and Community Support Services agency must complete and return the Individual Service Plan attachments and the Client Assessment, Review, and Evaluation form to the case manager's office between the fifth and the 20th day of the fourth month before the expiration of the individual service plan (ISP), according to reassessment due dates listed in Appendix XIX of the Community Based Alternatives manual (CBA Reassessment Packet Due Dates).

§48.6023. Routine Service Plan Changes.

The Home and Community Support Services agency must submit routine service plan changes, for all services except personal assistance services, within seven Texas Department of Human Services (DHS) work days of identifying the need for a change in the service plan by submitting the following:

(1) Case Information form, containing the rationale for service plan change, the type and amount of additional services needed and the anticipated duration, signed by the home and community support services agency professional;

(2) the appropriate individual service plan (ISP) attachment page, B-E, identifying the service plan change, signed by the provider professional; and

(3) documentation of necessity from a physician, physician's assistant, registered nurse, nurse practitioner, or therapist for any adaptive aid, medical supply, or minor home modifications identified.

§48.6024. Changes to Personal Assistance Services.

The Home and Community Support Services agency must submit a Case Information form, within seven Texas Department of Human Services (DHS) work days of identifying a need for a change, containing the rationale for the requested change, the type and amount of additional services needed, and the anticipated duration.

§48.6052. Cost-Effective Purchases of Adaptive Aids.

(a) (No change.)

(b) For any single adaptive aid expenditure costing $500 or more, in addition to complying with the requirements listed in subsection (a) of this section, the HCSS agency must:

(1) (No change.)

(2) obtain a minimum of three written bids if not using price lists or price quotes as identified under subsection (a)(4) [~~subsections (a)(5) and (6)~~] of this section, and document the reason for the selection including cost, delivery time of item, record of quality services, access to loaners during repairs, repair history, and warranties.

§48.6058. Cost-Effective Purchases of Medical Supplies.

The Home and Community Support Services agency must:

(1) prior to the selection of medical supplies, obtain comparative price quotes or use a price list to document prices of the medical supplies from a minimum of three suppliers, [~~or~~] document the basis for selection and for those selected, document in the vendor records the names of the suppliers from whom all quotes/price lists were obtained, the amount of the quotes/price lists, the items for which the quotes/price lists were requested, and the dates the quotes/price lists were obtained; or [~~and~~]

(2) (No change.)

§48.6078. Billable Units.

The following activities may be billed as Community Based Alternatives (CBA) services by Home and Community Support Services agencies:

(1) Nursing services:

(A)-(E) (No change.)

(F) time spent in performing the [~~annual reassessment or~~] Texas Index for Level of Effort resets which include direct [~~actual~~] participant contact and documentation of assessment and completion of forms [~~forms and care plan~~];

(G)-(H) (No change.)

(2)-(7) (No change.)

(8) Annual reassessment-direct participant contact, documentation of assessment, and completion of forms/care plan.

§48.6090. Fiscal Monitoring and Recoupment.

(a) Administrative errors. A recoupment of 12% of the paid unit rate is the administrative error exception for services billed on

an hourly basis. It represents the administrative portion of the rate. Administrative errors are applied to the documentation reviewed and are not extrapolated. Administrative errors include, but are not limited to, the items in paragraphs (1)-(2) of this subsection:

(1) administrative errors on the documentation of services delivered form or the facsimile:

(A)-(J) (No change.)

(K) The attendant, nurse, therapist, or other agency representative fails to sign the documentation of services delivered form or [~~approved~~] facsimile. DHS applies the error to the total number of units documented on the time sheet.

(L)-(M) (No change.)

(2) (No change.)

(b) Financial errors. A reduction of 100% of the paid unit rate is the financial error exception. This exception is applied to the units of service on the documentation reviewed. This exception is not extrapolated. Financial errors include, but are not limited to, the following:

(1)-(2) (No change.)

(3) DHS reimburses the provider agency for hours that exceed the authorization given by DHS. DHS applies the error to the total number of units reimbursed in excess of the units authorized by DHS, unless purchased following emergency procedures. For nursing tasks [~~services~~], the maximum monthly hours that may be reimbursed is the number of hours listed under "NURSING TASKS, Direct Nursing Performed by HCSS Provider" [~~"direct nursing hours"~~] on the individual service plan/nursing service plan.

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

(7) DHS reimburses the provider agency for a claim for service, other than a pre-enrollment home health assessment, delivered prior to the eligibility effective date on the notification of Community Based Alternatives services form. DHS applies the error to the entire amount [~~total number of units~~] reimbursed for such services that were delivered before the effective date on the form.

(8) DHS reimburses the provider agency for any hours or items that consisted of non-billable time and activities as identified in the rule §48.6080 of this title (relating to Non-Billable Time and Activities). DHS applies the error to the entire amount [~~total number of units~~] reimbursed for such services.

(9)-(12) (No change.)

§48.6092. Initiation of Community Based Alternatives (CBA) Home and Community Support Services (HCSS).

In order to initiate CBA HCSS services, the provider agency must:

(1) (No change.)

(2) initiate waiver services:

(A) on or before any negotiated start date; [~~or~~]

(B) within seven calendar days from the effective date on the Texas Department of Human Services' (DHS's) Notification of CBA Services form for routine status applicants, if no earlier start date has been negotiated; [~~and~~]

(C) within seven DHS workdays of the initiation of personal assistance services and send a Case Information form to the case manager with the:

(i) service initiation date; and

(ii) name of the attendant performing personal assistance services; and

(3) (No change.)

§48.6096. Service Breaks.

The home and community support services (HCSS) agency must ensure that any authorized or scheduled personal assistance services are delivered in accordance with the Individual Service Plan unless the actions specified in paragraphs (1)-(5) [~~(4)~~] of this section occur:

(1)-(2) (No change.)

(3) the participant is not at home when services are scheduled to be delivered; [~~or~~]

(4) the participant requests that services not be provided on specific days; or

(5) the participant agrees to less than the scheduled hours as documented in the record.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State, on June 29, 1999.

TRD-9903889
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: September 1, 1999
For further information, please call: (512) 438-3765

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter E. Crime Stoppers Program Certification

Division 1. Crime Stoppers Program Certification

1 TAC §§3.9000, 3.9100, 3.9200

The Office of the Governor adopts new Subchapter E, Crime Stoppers Program Certification, §§3.9000, 3.9100, and 3.9200 without changes to the proposed text published in the June 4, 1999 issue of the *Texas Register* (24 TexReg 4091).

This subchapter clearly identifies, defines, and provides information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes.

No comments were received regarding adoption of the new rules.

The new rules are adopted under Texas Government Code, Title 7, §772.006 (a) (11). which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1999.

TRD-9904028
James Hines
Assistant General Counsel
Office of the Governor
Effective date: July 26, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 475-2595

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TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

16 TAC §§65.10, 65.20, 65.50, 65.60, 65.65, 65.100

The Texas Department of Licensing and Regulation adopts amendments to §§65.10, 65.20, 65.50, 65.60, 65.65, and 65.100, concerning the certification of boilers. These sections are adopted without changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3674) and will not be republished.

The amendments number definitions as required by the *Texas Register* and revise existing language for clean-up and clarity.

The justification for these changes is that the rules were reviewed as required by Rider 167 to ensure that the language is clear and that reasons exist for the continued existence of all rules.

No comments were received regarding adoption of these amendments.

The amendments are adopted under Texas Health and Safety Code Annotated, §755 (Vernon 1997) which gives the Executive Director of the Texas Department of Licensing and Regulation the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The Code and Article affected by the amendments are the Texas Health and Safety Code Annotated, §755 (Vernon 1997) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1999.

TRD-9903910
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 20, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 463–7348

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Chapter 75. Air Conditioning and Refrigeration Contractor License Law

The Texas Department of Licensing and Regulation adopts the repeal of §§75.1, 75.10, 75.20-75.26, 75.30, 75.40, 75.60, 75.65, 75.70, 75.80, 75.90, 75.91, 75.100 and new §§75.1, 75.10, 75.20-75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, and 75.100 concerning air conditioning and refrigeration contractors. Sections 75.1, 75.10, 75.20, 75.21, 75.70 and 75.90 are adopted with changes to the proposed text as published in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2820) and §§75.22-75.26, 75.30, 75.40, 75.65, 75.80 and 75.100 are adopted without changes and will not be republished.

The new rules replace existing rules which are simultaneously repealed. The new sections rearrange, consolidate, and revise existing language for clarification and delete several items already stated in the Department's enabling statute, Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

The 76th Legislature enacted HB3155 which made non-substantive changes to Article 9100 and codified the article into the Occupations Code. These changes are reflected in §§75.1 and 75.90.

In §75.10. Definitions new definitions were added for "Full time employee" to clarify how much time a licensee must devote to his assigned company; for "Licensee" to clarify to whom the rules apply; and for "Repair work" to clarify the definition in the statute. We received one comment on §75.10(1) "Advertising or Advertisement" pointing out that the definition could be misunderstood. We have added the words "in directories" to the definition. We also received one comment on §75.10(18) "Proper installation" stating that the International Fuel Gas Code is separate from the International Mechanical Code and should be included, as current rules include the Standard Gas Code. We have added the International Fuel Gas Code to the definition. All other changes are non-substantive and do not change the meaning of the definition.

In §75.20. Licensing Requirements-Application and Experience Requirements a new provision is added which serves notice that obtaining a license by fraud or misrepresentation is grounds for a sanction or penalty. Also, the number of classroom hours equivalent to a semester hour was changed from 45 to 40, as this is more accurate. We received one comment on the change in wording concerning the equivalence between semester hours and classroom hours for purposes of satisfying the experience requirement. The commentor stated that the difference between semester hours granted by colleges and universities and classroom hours granted by trade schools is not clear to everyone reading the rules. Wording has been added to illustrate the differences. All other changes are for clarification.

In §75.21. Licensing Requirements-Examinations the time period within which an applicant must take an exam that was either cancelled or rescheduled has been deleted, so that the only time period the applicant must meet is the two year window to pass the exam from the date of notice of eligibility. This will streamline the examination process for the Department as well as for applicants. The description of the information to be provided to applicants as an analysis of failed exams has been deleted, as this type of analysis is available to the public under the Public Information Act. The subparagraph describing the basis for reciprocal agreements was deleted because it is unnecessary since all such agreements are negotiated with other states. We received one comment regarding §75.21(f) pointing out that inclusion of a statement concerning reciprocal agreements with other states in a subsection about language translation costs was confusing. The statement concerning reciprocal agreements was included in error and is being removed. All other changes in this section are for clarification.

In §75.22. License Requirements-General §75.70(r) has been moved to this section because it fits better with the subject matter. A new section has been added which prohibits altering a license or ID card to facilitate prosecution of such violations. A new section has been added that notifies licensees that they are responsible for the mechanical integrity of their work regardless of a contract with builders or home warranty companies. Other changes in this section are for clarification.

The changes in §75.23. Licensing Requirements-Temporary Licenses are for simplification and clarification.

In §75.24. Licensing Requirements-Renewal the date for timely license renewal is changed from the date of receipt by the Department to the postmark date, which eliminates penalizing the licensee for slow or undelivered mail. The requirement to send renewal requests at least thirty days prior to the license expiration date has been deleted because there is no administrative violation for mailing a renewal less than 30 days before a license expires. If a licensee does not timely renew his license, he may not legally perform air conditioning and refrigeration work until the expired license is renewed. Other changes in this section are for clarification.

The changes in §75.25. Licensing Requirements-Reissuance eliminate restatement of the requirements stated elsewhere.

Section 75.26. Certificates of Registration adds sentence which states that a Certificate of Registration does not authorize the holder to perform air conditioning and refrigeration work not covered by the appropriate exemption in the Act. This sentence clarifies that Certificate of Registration holders may not legally perform air conditioning work on equipment not owned by their employer. The section is also amended by adding an exemption for purchasing equipment containing less than one-half of an ounce of refrigerant, because such a purchase is not within the intent of the Act. Other changes are for clarification.

Section 75.30. Exemptions has been restated for clarity and an exemption has been added for persons who perform air conditioning contracting on unducted fireplace stoves, as those stoves were not in existence when original exemptions were listed in the Act and installations of unducted stoves do not affect the operation of air conditioning and heating systems covered by the Act.

Section 75.40. Insurance Requirement has been restated to eliminate a listing of the required items on a certificate of insurance, since a completed Department form is required for licensure and the items are listed on the form. The Department received a comment against the deletion of the requirement to show deductibles, exclusions, and policy amounts from the rules, and in favor of eliminating the requirement that the policy amount be reinstated in the event of a large claim against the policy both from the rules and from the Department form. The Department does not agree with the comment against the deletions. Since the Department's form requires the listing of deductibles and exclusions, and these are part of the coverage offered in the policy, the statement is being eliminated from

the rules as proposed. We also received comments on the minimum coverage amounts and minimum deductible amounts. These amounts were not changed in the rule proposal; the Department is reserving consideration of these comments so that advice may be received from the Air Conditioning and Refrigeration Contractors Advisory Board and other interested parties. Other changes are for clarification.

Section 75.60. Responsibilities of the Department concerning exam administration has been deleted because some of the subject matter is sufficiently covered in the statute and forms and procedures handle the remainder items.

The changes in §75.65. Advisory Board are for clarification.

Section 75.70. Responsibilities of the Licensee has been amended by adding a provision that prohibits subcontracting the design of a system to an unlicensed entity because the design of a system commits the licensee to installing equipment that may not be appropriate for the space for which it is designed. We received a comment on the addition of subsection (c) concerning the subcontracting of design work to an unlicensed person or firm which questioned whether manufacturer representatives or supply house personnel would be considered subcontractors since many routinely offer free design services to licensees. The Department believes that they are acting as consultants, not subcontractors.

The rule subsection in §75.70 requiring the licensee to register with municipalities in the form required by each municipality has been deleted because it is covered in the statute.

The subsection in §75.70 regarding advertising has been amended to exempt advertisements by manufacturers and distributors endorsing contractors in telephone directories and to require that advertising in electronic media contain the license number. Manufacturer and distributor advertisements need not show the license number because they are primarily intended to advertise the manufacturer's products, not installations. The Department believes electronic media advertising should follow the same rules for public information on licensing as other media.

The Department received a comment stating that §75.70(d) was ambiguous and difficult to understand. The Department does not agree, but is making a minor adjustment to the wording. Section 75.70(j) which requires contractors to show their company name and license number on a sign at job sites that are not identified by a marked vehicle was proposed to be deleted because it was considered unnecessarily restrictive. The Department received a comment on the proposed deletion of §75.70(j) in that the rule serves to identify the responsible person when an unlicensed subcontractor is present at the site. The Department agrees and is reinstating the provision for a sign or a temporary sign on a vehicle when the person at the location is an unlicensed subcontractor.

The Department received a comment against requiring a notification in the licensee's place of business if consumers must visit the place of business for service or products. The party commenting has retail locations where equipment is displayed as well as service locations that might be visited by consumers, and the party believes the new rule is unduly burdensome on large corporations. The Department agrees that locations functioning only as retail outlets need not post the notice; also the requirement to post the notice in any location where a consumer "must" visit the location for service will be changed to "may". All other changes in §75.70 are for clarification and simplification.

In §75.80. Fees application fees are not refundable because the processing time is the same, regardless of whether or not the applicant takes an examination. The fee for a lost, revised, or duplicate wallet card has been raised to $25, the same cost as replacing a license. The fee for rescheduling an exam has been raised to $30 to cover processing costs. Other changes in this section are for clarification.

Section 75.90. Sanctions-Administrative Sanctions/Penalties has been restated for greater accuracy.

The rule in §75.100. Technical Requirements concerning requirements of The Texas Boiler Law, Health and Safety Code, §755 has been deleted because the Boiler Law speaks for itself and the rule is redundant. The subsection of §75.100 relating to electrical connections has been restated for clarification. The subsection of §75.100 relating to fuel gas piping that may be installed by a licensee under the Act has been amended to limit connection of such piping to existing shut-off valves because if a licensee changed out or removed a shut-off valve or tied into an opening rather than a valve, he would be required by most municipalities to pull a permit for plumbing work in order to have the gas system tested by the municipality, and most licensees do not have the requisite plumbing license.

The subsection of §75.100 relating to drain piping has been amended by adding a requirement that all such piping be installed in accordance with applicable plumbing and building codes. The changes to the subsection of §75.100 relating to duct cleaning are for the purpose of clarification.

The Department received comments for and against the new rules as well as comments clarifying information and wording from Sears, Roebuck and Co., Hooper & Hines Insurance, Foodservice Equipment Distributors Association, Metro-Tech Service Company, Allan Vorda & Associates, and Department staff.

The Department held a public hearing on May 14, 1999 and received comments from several individuals representing Arnold Refrigeration Inc. and Southern Building Code Congress International. All comments were considered in reviewing and revising the new rules for adoption. No comments were received regarding the adoption of the repeal.

The justification for the adoption of the repealed and new rules is that the rules were reviewed to ensure that the language was clear, that statutory provisions are not needlessly restated, that there are continued reasons for the existence of all rules, and to address newly perceived problems.

The repealed and new rules will increase program integrity.

16 TAC §§75.1, 75.10, 75.20–75.26, 75.30, 75.40, 75.60, 75.65, 75.70, 75.80, 75.90, 75.91, 75.100

The repeal is adopted under Texas Revised Civil Statutes Annotated, Article 8861 (Vernon 1997) which authorizes the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the repeal are Texas Revised Civil Statutes Annotated, Article 8861 (Vernon 1997) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1999.

TRD-9903933
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Effective date: July 1, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 463–7348

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16 TAC §§75.1, 75.10, 75.20–75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, 75.100

The new rules are adopted under Texas Revised Civil Statutes Annotated, Article 8861, (Vernon 1997) which authorizes the Executive Director of the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the new rules are Texas Revised Civil Statutes Annotated, Article 8861 (Vernon 1997) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

§75.1. Authority.

The sections in this chapter are authorized by the Air Conditioning and Refrigeration Contractor License Law, Texas Revised Civil Statutes Annotated Articles 8861 (the Act) and the Texas Occupations Code, Chapter 51 (Vernon 1999).

§75.10. Definitions.

The following words and terms have the following meanings:

(1) Advertising or Advertisement-Any commercial message which promotes the services of an air conditioning and refrigeration contractor. The terms do not include one-line listings in directories or signs that state only the business name.

(2) Air conditioning and refrigeration subcontractor-A person or firm who contracts with a licensed air conditioning contractor for a portion of work requiring a license under the Act. The subcontractor contracts to perform a task according to his own methods, and is subject to the contractor's control only as to the end product or final result of his work.

(3) Air conditioning or heating unit-A stand-alone system with its own controls that conditions the air for a specific space and does not require a connection to other equipment, piping, or ductwork in order to function.

(4) Assumed name-As defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, Section 36.02.

(5) Biomedical Remediation-The treatment of ducts, plenums, or other portions of air conditioning or heating systems to reduce or eliminate the presence of molds, mildews, or other contaminants.

(6) Boiler-As defined in the Health and Safety Code, Title 9, Subtitle A, Chapter 755.Boilers.

(7) Business affiliation-The business organization with which a licensee elects to affiliate.

(8) Cheating-Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception.

(9) Contracting-Agreeing to perform work, either verbally or in writing, or performing work, either personally or through an employee or subcontractor.

(10) Cryogenics-refrigeration that deals with producing temperatures ranging from:

(A) -250 degrees F to Absolute Zero (-459.69 degrees F);

(B) -156.6 degrees C to -273.16 degrees C;

(C) 116.5 K to 0 K; or

(D) 209.69 degrees F to 0 degrees R.

(11) Direct personal supervision-Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or equipment for compliance with mechanical integrity.

(12) Employee-An individual who performs tasks assigned to him by his employer. The employee is subject to the deduction of social security and federal income taxes from his pay. An employee may be full time, part time, or seasonal. Simultaneous employment with a temporary employment agency, a staff leasing agency, or other employer does not affect his status as an employee.

(13) Employer-One who employs the services of others, pays their wages, deducts the required social security and federal income taxes from the employee's pay, and directs and controls the employee's performance.

(14) Full time employee-an employee who is present on the job 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(15) Licensee-an individual holding a license of the class and endorsement appropriate to the work performed under the Act and these rules.

(16) Permanent office-Any business location at which contractual agreements to perform work requiring a license under the Act are arranged and where supervising control for those contracts originate. Temporary construction sites or other locations at which employees of a licensee work under contract to provide service, maintenance and repair work are not permanent offices.

(17) Primary process medium-a refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(18) Proper installation-installing air conditioning or refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the most stringent current Uniform Mechanical Codes, Standard Mechanical Code, Standard Gas Code, International Mechanical Code, and International Fuel Gas Code in areas where no code has been adopted;

(C) the manufacturer's instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(19) Repair work-diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, evaporator coil, and unitary indoor equipment.

§75.20. Licensing Requirements - Application and Experience Requirements.

(a) Examination fees must accompany the application. The application must be complete, meet all Department requirements, and be received by the Department not less than 45 days prior to an examination date.

(b) An applicant who wishes to use credit for air conditioning and refrigeration courses to fulfill up to two years of the required 36 months of experience with the tools of the trade must furnish a copy of:

(1) a transcript or diploma showing a degree in air conditioning engineering, refrigeration engineering, or mechanical engineering;

(2) a transcript, certificate or diploma in a course emphasizing hands-on training with the tools of the trade; or

(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Education, the Coordinating Board of the Texas College & University System, or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, 1,200 classroom hours are equivalent to six months of credit of experience.

(c) Obtaining a license by fraud or false representation is grounds for an administrative sanction and/or penalty.

§75.21. Licensing Requirements - Examinations.

(a) A passing grade is 70%.

(b) An applicant must pass an exam within two years of the date of the notice of eligibility to avoid reapplying.

(c) An applicant who does not show up for a scheduled exam may reschedule an exam up to six months after the date of the exam, provided the applicant pays the re-exam fee.

(d) An applicant who wishes to reschedule a written exam must send to the Department, a rescheduling fee and a written request to reschedule, which must be received no later than ten days before the examination.

(e) An applicant may request a waiver of the reschedule fee one time for an emergency reschedule. The reason for the emergency reschedule must be submitted to the Department in writing no later than ten working days after the exam for which the applicant was scheduled. The Department will determine if the circumstances constitute an emergency.

(f) An applicant may request individual arrangements for an exam, based on disability, in accordance with the Americans with Disabilities Act, and/or language translation needs.

(1) The request must be in writing and received by the Department at least 45 days before the exam date.

(2) Requests must specify the type of special arrangement needed and the basis for the request.

(3) Proof of disability may be required.

(4) Language translation requests must specify the language in which the examination is requested.

(5) Language translation costs shall be paid by the applicant.

(g) Cheating on an examination is grounds for an administrative sanction and/or penalty.

(h) An applicant is not eligible to take the same exam more often than every 30 days.

(i) An applicant who has passed an exam for a particular class and endorsement and has been licensed or is eligible for licensure in that class and endorsement, may not retake that examination.

(j) Applicants have six months from the date of the exam results to complete the licensure process. If six months has elapsed, an applicant desiring licensure must begin the process anew.

§75.70. Responsibilities of the Licensee.

(a) The licensee shall:

(1) if affiliated with a business, choose one business affiliation that will use the licensee's license;

(2) be a bona fide employee, owner, or officer of the business affiliation, and must work full time at the business affiliation, or permanent office of the business affiliation;

(3) use his license for one business affiliation and one permanent office at any given time;

(4) furnish the Department with his or her permanent mailing address and the name, physical address, and telephone number of the business affiliation; and

(5) furnish to the Department, copies of assumed name registrations.

(b) A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:

(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's bona fide employees;

(2) the work or service provided in person or with the licensee's bona fide employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(c) The design of a system may not be subcontracted to an unlicensed person, firm or corporation.

(d) A licensee who subcontracts with an air conditioning and refrigeration company other than his own, must work under the license of the other air conditioning and refrigeration business. The work must be billed by the other air conditioning and refrigeration company, and the licensee working as a subcontractor must be paid by the other company. The licensee who is the contractor is responsible for all subcontracted work.

(e) Each air conditioning and refrigeration company shall have a licensee employed full time in each permanent office operated in Texas. All work requiring a license under the Act shall be under the direct personal supervision of the licensee for that office. The licensee's license number shall appear on all proposals and invoices for that office.

(f) If a licensee is employed as the license holder for the company or the permanent office of that company, the licensee is responsible for work performed under his supervision. If the owners, officers, or managers of the company do not allow the licensee the authority to supervise, train, or otherwise control compliance with the Act, the licensee is still responsible under the Act.

(g) If an air conditioning and refrigeration company uses locations other than a permanent office, those locations shall be used only to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service. The air conditioning and refrigeration company shall provide the address of these other locations to the Department no later than 30 days after the locations are established or changed.

(h) A licensee may not permit a person or any company with which his or her license is not affiliated to use his or her license for any purpose.

(i) Each licensee shall display his/her license at the permanent office to which it is assigned.

(j) Each licensee shall display the license number and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's license number and company name.

(k) All advertising by licensees designed to solicit air conditioning or refrigeration business shall include the licensee?s license number. Advertising which requires the license number includes:

(1) printed material;

(2) television ads, except that in nationally placed television advertising, a statement indicating that license numbers are available upon request may be used in lieu of the licensee's license number;

(3) newspaper ads;

(4) telephone book ads, except:

(A) telephone book listings that contain only the name, address, and telephone number;

(B) manufacturers' and distributors' ads endorsing an air conditioning and refrigeration contractor;

(5) business cards;

(6) billboards;

(7) telephone solicitations, except that the statement that the company is licensed by the state may be substituted unless the consumer requests the number;

(8) proposals, quotations, and invoices; and

(9) electronic media such as the Internet and websites, and solicitation through electronic mail.

(l) Items intended to attract business, other than promotional items of nominal value such as ball caps, tee shirts, and other gifts, must include the license number. Letterheads and printed forms for office use are not required to have the license number included. Signs located outside the contractor's permanent business location are not required to have the license number displayed.

(m) A licensee must have the following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(n) A licensee that also acts as a general contractor may provide a one-time notice stating the information above to customers for whom they provide services requiring a license under the Act.

(o) If information provided to the Department by the licensee changes, the licensee shall:

(1) notify the Department, in writing, within 30 days of any change in permanent mailing address, business affiliation, business location, or business telephone number;

(2) revise the license, if the information is printed on the license by:

(A) returning the current original license to the Department;

(B) paying the appropriate revision fee required in Section 75.80 of this title (relating to Fees); and

(C) providing a revised insurance certificate if the business affiliation name or address has changed.

(p) The permanent address shall be considered the licensee's permanent mailing address and address of record. All correspondence from the Department will be mailed to that address.

§75.90. Sanctions - Administrative Sanctions/Penalties.

If a person violates Texas Revised Civil Statutes Annotated, Article 8861 (Vernon 1997), or a rule, or order of the Executive Director or commission relating to the Act, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Act or the Texas Occupations Code, Chapter 51 (Vernon 1999) and 16 Texas Administrative Code, Chapter 60 (1998) of this title (relating to the Texas Department of Licensing and Regulation).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1999.

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Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
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Proposal publication date: April 9, 1999
For further information, please call: (512) 463–7348

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TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

22 TAC §§213.13, 213.17, 213.28, 213.29

The Board of Nurse Examiners adopts amendments to §213.13 concerning Complaint Investigation and Disposition; §213.17 concerning Discovery; §213.28 concerning Licensure of Persons with Criminal Convictions; and §213.29 concerning Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters without changes to the proposed text as published in the May 28, 1999 issue of the *Texas Register* (24TexReg 3976) and will not be republished.

Subsequent to implementation of new Rule 213 in September 1998, staff identified minor oversights or unintended consequences of the new rule. In addition, there is a significant amendment to §213.29 which removes major depression from the list of reportable mental illnesses.

The amendments streamline disciplinary case processing. In §213.13, it was not anticipated that this rule preclude the Board from opening its own investigations or receiving TPAPN or TDH referrals without having them fill out a standardized complaint form. Eliminating this requirement gives the BNE more flexibility in accepting proper complaints. In §213.17, the Board removed reference to Texas Rules of Civil Procedure because the Board's discovery procedures are outlined in the NPA and Administrative Procedures Act. §213.28 will contain similar language to §213.29, allowing the Board to close an eligibility case when an applicant fails to provide requested documentation in a reasonable time frame. The amendment to §213.29 removes a mental health diagnosis which is frequently inappropriately applied and which rarely results in a denial or restrictions.

No comments were received.

The amendments are adopted under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and article 4525(a) which permits the Board to refuse to issue or renew a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1999.

TRD-9903896
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: July 20, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 305–6816

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 419. Medicaid State Operating Agency Responsibilities

Subchapter G. Medicaid Fair Hearings

25 TAC §419.301

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §419.301 of new Chapter 419, Subchapter G, concerning Medicaid fair hearings, without changes to the proposed text as published in the April 16, 1999, issue of the *Texas Register* (24 TexReg 3018).

The new section adopts by reference rules of the Health and Human Services Commission (HHSC) contained in 1 TAC §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, and 357.29 of Chapter 357 (relating to Medicaid Fair Hearings), which were adopted in the March 26, 1999, issue of the *Texas Register*. The new section also defines the term "authorized representative."

The adoption implements fair hearing procedures for Medicaid recipients that are uniform for all operating agencies, as required by §531.024(6) of the Government Code. The fair hearing procedures are consistent with the federal regulations concerning fair hearings set forth in 42 CFR §431.200 et seq. The uniformity of rules among the operating agencies allows the public to more easily become familiar with fair hearing procedures.

Comments were received from a parent of a person with mental retardation; Garland; the Parent Association for the Retarded of Texas (PART), Austin; and San Antonio State Hospital, San Antonio.

Two commenters questioned the membership of a workgroup referenced in the adoption preamble of HHSC's rules that TDMHMR adopted by reference. In the preamble, HHSC responded to a commenter's concerns about stakeholder involvement by stating HHSC conducted "a workgroup in which advocates who represent people requesting fair hearings participated." The commenters asked why PART was not included in the workgroup. The commenters also objected to the use of the term "stakeholder" to "put private providers and others on the same level as consumers and their legally authorized representatives." The department responds that HHSC is the appropriate agency to address these inquiries and to that end has forwarded a copy of the comments to HHSC.

Regarding 1 TAC §357.1(b)(2), two commenters requested that the term "authorized representative" be changed to "legally authorized representative." The commenters also requested that the phrase "as defined by the operating agency" be changed to "as defined by law." The department responds that neither the term "authorized representative" nor "legally authorized representative" is defined by law. HHSC's rules must accommodate every state agency that operates a part of the Texas Medicaid program. HHSC directed each operating agency to define the term "authorized representative" instead of "legally authorized representative" to allow an agency to include persons who have been designated as a representative other than through a court proceeding. In 25 TAC §419.301(b), TDMHMR defines "authorized representative" as "the parent,

guardian, or managing conservator of an individual who is a minor or the guardian of the person of an individual who is an adult."

Regarding 1 TAC §357.7(b)(1), two commenters asked why the operating agency could terminate or reduce services if the sole issue of the hearing is one of state or federal law or policy. The department responds that such action is permitted by 42 CFR §431.230(a).

Regarding 1 TAC §357.7(b)(2), the two commenters stated that notifying the individual just five days before services are terminated or reduced is not enough time to make necessary arrangements. The department responds that the five-day notification is adequate and in compliance with 42 CFR §431.230(a). Under 1 TAC §357.7(b)(1), the individual will be informed at the hearing that the sole issue is one of state or federal law or policy and, therefore, is aware that services may be terminated or reduced prior to the hearing official's rendering of the written decision. Also, before the hearing, the individual is aware that his/her services may be terminated or reduced because he/she was initially notified of such by the operating agency at least 10 days before the proposed termination or reduction date (1 TAC §357.5(a)(2)). Therefore, an individual who receives the five-day notice under 1 TAC §357.7(b)(2) has had adequate time to make necessary arrangements for a termination or reduction of services.

Regarding 1 TAC §357.9, two commenters expressed concern that the language of this section "will not provide for a 'real' impartial hearing official," apparently because it permits the agency to designate one of its staff members as the hearing official. The commenters suggested, for "a 'real' arm's length [impartiality]," an operating agency should be required to designate a staff member of another operating agency to be the hearing official. The department responds that the rule is consistent with federal regulations (42 CFR §431.240(3)), which recognizes that an agency staff member can be impartial in conducting fair hearings for that agency.

One commenter stated that he did not have any comments.

This section is adopted under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program; and the Texas Government Code, §531.024, which requires the promulgation of uniform fair hearings rules for all Medicaid-funded services. HHSC has delegated to TDMHMR the authority to operate certain Medicaid programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9903854

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Effective date: July 19, 1999

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For further information, please call: (512) 206–4516

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §114.1, concerning Definitions; and new §§114.301, 114.302, and 114.305-114.309, concerning Requirements for Gasoline Volatility and Sulfur Content. The amendment and new sections are adopted with changes to the proposed text as published in the January 1, 1999 issue of the *Texas Register* (24 TexReg 54). The commission adopts these revisions to Chapter 114, concerning Control of Air Pollution from Motor Vehicles, and to the State Implementation Plan (SIP) in order to reduce overall background levels of ground-level ozone in attainment, near-nonattainment, and ozone nonattainment areas. Cleaner gasoline is one option the state is using to meet the national ambient air quality standards (NAAQS) for ground-level ozone. Cleaner gasoline will help to reduce overall background levels of ozone and help in keeping ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/ Marshall, San Antonio, and Victoria in compliance with the federal ozone standards. It is also necessary to help the Beaumont/Port Arthur, Dallas/ Fort Worth, and Houston/Galveston ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS. Recent science shows that regional approaches such as clean gasoline may provide improved control of ozone air pollution. In particular, staff has conducted photochemical grid modeling which indicates that implementation of cleaner burning gasoline, Stage I vapor recovery, and national low-emitting vehicles (NLEV) will result in ozone reductions (peak eight-hour average) of one to four parts per billion (ppb) in much of Central and East Texas. Additional modeling conducted specifically for the one-hour standard has shown reductions of up to 3.6 ppb in Central and East Texas. Additional details concerning the need for a regional strategy are given in the BACKGROUND section of this preamble.

The cleaner burning gasoline will lower the evaporative emissions of volatile organic compounds (VOC), as well as improve the catalytic converter performance through reductions in gasoline sulfur, which in turn results in reduced emissions of VOC and oxides of nitrogen (NO_x). There is a provision (§114.302(b)) which would halt the implementation of the state gasoline sulfur regulation provided the federal government acts to control sulfur in gasoline by January 1, 2004. However, early opt-in areas, if acted on by the commission, would continue to receive low sulfur gasoline until EPA's regulation is implemented. Because NO_x and VOC are precursors to ground-level ozone formation, reduced emissions of NO_x and VOC will result in ground-level ozone reductions. To comply with the state cleaner burning gasoline regulations, refiners, gasoline distributors, and retail

outlets will need to ensure that gasoline distributed in affected counties meets the specifications set forth in these rules. The rules require that gasoline transferred, placed, stored, or held for use in gasoline engines in the affected area does not exceed 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP) for the seasonal control period of May 1st through October 1st of each year, beginning May 1, 2000. If EPA does not take action by January 1, 2004, the rules would further require that gasoline sulfur levels do not exceed 150 ppm year-round, beginning January 1, 2004.

The new rules will require cleaner gasoline in the following 95 counties in the eastern half of Texas: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

In addition, the low sulfur requirements found in §114.302 cover the counties of the Beaumont/Port Arthur nonattainment area (Hardin, Jefferson, and Orange). Beaumont/Port Arthur has participated in the federal low RVP program since 1992. The federal low RVP program has an RVP level of 7.8 psi, the same RVP level as adopted under these rules. Therefore, requirements of §114.301 will not apply to the Beaumont/Port Arthur area.

The new rules for RVP and sulfur do not apply in the 12 counties of the Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas: Brazoria, Chambers, Collin, Dallas, Denton, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties. Currently, the Houston/Galveston and Dallas/Fort Worth ozone nonattainment areas have their own cleaner burning gasoline, federal reformulated gasoline (RFG). In these areas, federal rules prohibit the sale of gasoline which is not certified by the United States Environmental Protection Agency (EPA) as federal RFG. Consequently, gasoline in these areas will have to continue to meet the federal RFG requirements.

BACKGROUND

At the time the 1990 Federal Clean Air Act (FCAA) Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an increasing number of air quality professionals have felt that ozone is a regional problem requiring regional strategies in addition to local control programs. As nonattainment areas across the United States prepared attainment demonstration SIPs in response to the 1990 FCAA Amendments, several areas found that demonstrating attainment was made much more difficult, if not impossible, because of high ozone and ozone precursor levels entering from the boundaries of their respective modeling domains, commonly called transport.

The commission has conducted air quality modeling and upper air monitoring that found regional air pollution should be considered when studying air quality in Texas' ozone nonattainment areas. This work is supported by research conducted by the Ozone Transport Assessment Group (OTAG), the most comprehensive attempt ever undertaken to understand and quantify the transport of ozone. Both the commission and OTAG study results point to the need to take a regional approach to ozone control.

As part of the Coastal Oxidant Assessment for Southeast Texas (COAST) project, the commission and its contractor Environ, Inc., conducted regional-scale modeling to develop future-year boundary conditions for the COAST modeling domain. The emissions inventory used in this modeling was based on the OTAG emission inventory and the modeling was conducted for a domain covering most of Texas as well as several southern states.

During the OTAG process, the commission's modeling staff ran several sensitivity analyses using this regional modeling setup to assess the impact of potential OTAG reductions on Texas. Applying the OTAG 5c reductions across the domain (60% reduction of point source NO_x, 30% reduction of low level NO_x, 30% reduction of VOC) compared to the case of no reductions, indicated that modeled reductions would significantly reduce ozone throughout most of the eastern half of Texas. Overall, the modeling indicated that a regional reduction strategy would be beneficial across the wide area of the state.

During modeling for the Houston/Galveston attainment demonstration SIP for the one-hour ozone standard, the commission's modeling staff conducted sensitivity analyses to determine the benefits regional reductions might have on Houston/Galveston, when applied simultaneously with local reductions. Unlike the commission's regional modeling exercises discussed in the previous paragraphs, these model runs offer an opportunity to assess separately the benefits of reductions made within and outside a region, since model runs with and without the regional reductions scenarios in Houston/Galveston were conducted. Modeling runs were completed to evaluate the eight-hour average ozone concentrations in the COAST modeling domain for September 8, 1993, with 2007 projected emissions and assuming a 70% reduction of NO_x and a 15% reduction of VOC's in the eight-county Houston/Galveston area. Even with the large reductions in Houston/Galveston, much of the upper Texas Coast is well above the eight-hour standard. Also, Austin, Victoria, and Corpus Christi show eight-hour average concentrations above 85 ppb. The benefit of applying OTAG 5c reductions outside the Houston/Galveston eight-county area clearly showed that the reductions are beneficial to Houston/Galveston and provided additional ozone benefits of between five and ten ppb in Houston/Galveston.

Additional modeling has been completed by commission staff assessing the potential benefits of regional strategies. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak eight-hour ozone averages of between one and four ppb in much of Central and East Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling completed since this rule was proposed further backs the effectiveness of this rule for reducing ozone. The latest modeling indicates one-hour and eight-hour ozone reductions in most of Central and East Texas, with the most benefit seen in Northeast Texas (Tyler/Longview) and central Texas (Austin and San Antonio). This modeling indicates significant reductions in some areas with lessor reductions in others. The main conclusion

to be drawn from these models is that the appropriate controls have been selected for reducing ozone levels.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and provides further justification that a regional strategy will help maintain air quality in attainment and near-nonattainment areas. Conclusions from the commission's work are supported by OTAG studies that also illustrate the importance of implementing a regional air quality control strategy.

EXPLANATION OF ADOPTED RULES

The change to §114.1, concerning Definitions, adds a definition of reformulated gasoline. This definition is adopted with changes from the proposal to conform the FCAA cite to *Texas Register* style requirements.

The new §114.301, concerning Control Requirements for Reid Vapor Pressure, limits gasoline to an RVP of 7.8 psi in 95 counties in the eastern half of Texas. The RVP limit is seasonal (May 1st through October 1st of each year), beginning May 1, 2000. This section further defines that gasoline wholesale suppliers must start deliveries of this fuel by May 1st of each year. Retailers have until June 1st of each year to ensure only 7.8 RVP fuel is in their tanks. This change from the proposal to have different start dates for wholesalers and retailers was to give gasoline retailers the month of May to turn over their noncompliant winter grade gasoline and to ensure that their retail sales after May 31st meet the 7.8 psi RVP requirement. The rule allows gasoline storage, sales, and transfers within the affected counties during the control period, provided that the gasoline is not ultimately used to power a gasoline engine within the control region during the control period.

The new §114.302, concerning Control Requirements for Sulfur, limits gasoline to a sulfur content of 150 ppm in 98 counties in the eastern half of Texas. This sulfur limit would apply year-round, beginning on January 1, 2004. This section would no longer apply if EPA adopts federal gasoline sulfur limits which are scheduled to be implemented by January 1, 2004. However, any early implementation schedule which has been ordered by the commission under §114.308 would apply up until the time which such federal controls are implemented.

The new §114.305, concerning Approved Test Methods, establishes American Society for Testing and Materials (ASTM) Test Method D5191, 40 Code of Federal Regulations (CFR) Part 80, Appendix D (Sampling Procedures for Fuel Volatility), and 40 CFR Part 80, Appendix E (Test For Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends) as the approved test methods for determining gasoline volatility, and establishes ASTM Test Methods D2622 and D5453 as the approved test methods for determining sulfur content. Section 114.305 also includes a paragraph which authorizes the use of test methods other than those specifically listed in §114.305, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This paragraph is included because in some unique situations the listed test methods may be inappropriate. The paragraph increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The new §114.306, concerning Recordkeeping Requirements, requires the owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 and §114.302 to maintain records of the RVP and sulfur content of gasoline. Gasoline retailers are exempt from the recordkeeping requirements, as stated in §114.307(2). Added to the proposed language is a provision allowing off-site recordkeeping, as long as records are made available within five business days at the site in question.

The new §114.307, concerning Exemptions, establishes exemptions for gasoline used in agriculture, aviation, and any tank, reservoir, storage vessel, or other container with a nominal capacity of 500 gallons (1,893 liters) or less. The exemption for aviation gasoline ("av-gas") is due to the unique fuel performance requirements of aircraft, which cannot be met by gasoline for land-based motor vehicles. The exemptions for agricultural and small-capacity gasoline storage tanks are included because these tanks often have such a low throughput that they might still contain higher RVP gasoline at the start of the seasonal control period. In addition, the new §114.307 establishes an exemption from the recordkeeping requirements for the owner or operator of motor vehicle fuel dispensing facilities (gasoline retailers). For clarity, new subsection (b) has been added since the proposal to make it clear that gasoline that does not meet the requirements of §114.301 and §114.302, may be transferred, placed, stored, and/or held within the affected counties during the control period, as long as it is not ultimately used to power a gasoline engine in the control region during the control period.

The new §114.308, concerning Alternative Early Implementation, allows a county with a population of 200,000 or more located in Central or East Texas, or a city with a population of 200,000 or more in a covered county to request the early implementation of sulfur controls for the area under their jurisdiction. The rule limits the size of counties and cities allowed to opt-in due to gasoline distribution concerns. Early controls, or phased in controls, for sulfur may be available to these areas as long as the levels are not more stringent than those contained within the rule. The new §114.308 further provides that the commission may enter an order adopting some or all of the provisions of an area's request for accelerated sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality. Early opt-in for RVP controls has been dropped from this adoption to address concerns with notice and the time industry may require for implementation of controls.

The new §114.309, concerning Affected Counties, specifies the counties which are subject to the new requirements. The listing of counties has been narrowed from 110 counties to 98 counties. The eight counties that make up the Houston/Galveston nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller) and the four counties that make up the Dallas/Fort Worth nonattainment area (Collin, Dallas, Denton, and Tarrant) have been removed from this rulemaking. They are removed from the adoption due to their inclusion in the federal RFG program and because of the proposed federal rulemaking regarding gasoline sulfur requirements which will also apply to these counties. Additionally, the three counties which make up the Beaumont/Port Arthur area (Hardin, Jefferson, and Orange) have been removed from the RVP requirements. Beaumont/Port Arthur has received low RVP gasoline for several years under a federal low RVP program and will continue to receive this fuel in the future.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the 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. Although it meets the definition of a "major environmental rule" as defined in the Texas Government Code, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within these rules were developed in order to meet the NAAQS for ozone set by EPA under of the 1990 FCAA, §109 and, therefore, meet a federal requirement. States are primarily responsible for ensuring attainment and maintenance of NAAQS once EPA has established them. Under of the FCAA, §110 and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This rule is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. This rule will help prevent a real and substantial threat to public health and safety by reducing VOC and NO_x emissions in ozone nonattainment areas. Specifically, the rule is necessary to reduce overall background levels of ozone and help bring ozone nonattainment areas into compliance, and help keep attainment and near-nonattainment areas from going into nonattainment. These rules do not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and were not developed solely under the general powers of the agency. Comments received during the comment period regarding the draft regulatory impact analysis are addressed in the HEARING AND COMMENTERS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to establish gasoline RVP limits in 95 counties and sulfur content limits in 98 counties in the eastern half of Texas. The purpose of this rule is to help keep ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Victoria in compliance with the federal ozone standard, and to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. Promulgation and enforcement of the rules may possibly burden private real property because this rulemaking action may result in investment in the permanent installation of new refinery processing equipment. The rule revisions fulfill a federal mandate under the 1990 Amendments to the FCAA, §110. Specifically, the emission limitations and control requirements within the rule were developed in order to meet the NAAQS for ozone set by EPA under the FCAA, §109. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once EPA has established them. Under the FCAA, §110 and related provisions, states must submit, for approval by EPA, SIPs that provide for the attainment and maintenance of the NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rule is to implement cleaner burning gasoline which is necessary for the state to meet the air quality standards established under federal law as NAAQS. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law. Comments received during the comment period regarding the takings impact assessment are addressed in the HEARING AND COMMENTERS section of this preamble.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 CFR, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule amendments, and the amendments are expected to result in a reduction in VOC and NO_x emissions by reducing emissions resulting from the fueling and operation of motor vehicles. Additionally, the rule amendments do not authorize any contamination of waters of the state, nor do they modify the petroleum storage tank rules in any way. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. Comments were received during the comment period regarding the consistency of the rules with the CMP are addressed in the HEARING AND COMMENTERS section of this preamble.

HEARINGS AND COMMENTERS

Public hearings on this rule were held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the TNRCC Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999 at 7:00 p.m. at the San Antonio City Council Chambers located at 103 Main Plaza; in Lufkin on January 26, 1999 at 2:00 p.m. at the Lufkin City Council Chambers located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. The comment period initially was to close on February 1, 1999, but was extended and ultimately closed on February 15, 1999.

Almost four hundred comments were received. Some commenters commented on the proposal both orally and in writing.

Three-fourths of the commenters commented substantially only in opposition to the use of methyl tertiary butyl ether (MTBE) in Texas and/or in opposition to the rules because MTBE was not banned. The majority of these were individuals, and the remainder were the following organizations: Point Enterprise W.S.C., City of Muenster, Northeast Regional Water Planning Group, West Harrison W.S.C., Sharon Water Supply Corporation, the Panola County Judge, City of Chandler, City of Sealy, City of Kilgore, City of Winnsboro, Gum Springs Water Supply Corporation, City of Sherman, City of Lufkin, the County Judge for Rusk County, City of Sugarland, City of Henderson, the Texas House of Representatives, District 6, City of Dayton,

Frankland County, City of Jacksonville, Hopkins County, City of College Station, Atlanta City Development Corporation, City of Bryan, City of Denison, City of Navasota, City of Lewisville, Delta County, Cass County, Northeast Texas Municipal Water District, Liberty City Water Supply Corporation, Northeast Texas Economic Development District, City of Port Neches, Upper Neches River Municipal Water Authority, City of Kaufman, City of Dayton, Sierra Club Lone Star Chapter, SRI Consulting, Texas Center for Policy Studies, Oxybusters of New Jersey, Bistone Municipal Water Supply District, and Rains County, Texas State Inspection Association, East Texas Council of Governments, Tyler Water Utilities, Community Relations City of Tyler, TOSCO, People United for the Environment, Analytical Environmental Labs, Texas Campaign for the Environment, City of Sachse, Franklin County Water District, East Texas Council of Governments, Atlanta Economic Development Board, City of Atlanta, City of Wylie, City of Wake Village, Upper Sabine Basin Water Alliance, and Water Utilities for the City of Lufkin.

Two commenters supported the rule as written: Austin Transportation Study, and the Lower Colorado River Authority.

The remaining commenters commented on aspects of the rule and in most cases also on the use of MTBE. These commenters included: The Cities of Longview, Marshall, and Tyler, Valero Energy Corporation, City of Corpus Christi, EPA, A 2nd Opinion, Inc., Renewable Fuels Association, Oxybusters of Texas, Environmental Defense Fund (EDF), Central Texas Clean Air Force, American Lung Association of Texas, American Corn Growers Association, Volvo Cars of North America, Texas Petrochemicals Corporation, Information Resources Inc., Pennzoil Quaker State Company, Mobile Oil Corporation, Koch Petroleum Group, Exxon Company USA, Citgo, Motiva Enterprises LLC, Enron, Texas Oil and Gas Association (TxOGA), Clean Fuels Development Coalition, Oxygenated Fuels Association Inc., Tosco Corporation (TOSCO), Austin Sierra Club, Ultramar Diamond Shamrock, City of San Antonio, City of Austin, Association of International Automobile Manufacturers, and several individuals.

ANALYSIS OF SPECIFIC COMMENTS

Over 300 individuals and groups submitted comments only in regard to MTBE use. These commenters were mainly in opposition to MTBE use and/or in opposition to the rule due to a lack of MTBE ban due to a threat to water quality through MTBE contamination. Two citizens commented in support of MTBE usage due to its ability to reduce the cost of producing cleaner fuels. One citizen was also concerned about the loss of jobs that may be associated with a ban on MTBE use. TxOGA, the Clean Fuels Development Coalition, the Oxygenated Fuels Association, ENRON, MOTIVA Enterprises, Exxon, Koch, Valero, Mobil, the Texas Center for Policy Studies, Information Resources Inc., Citgo, and Ultramar Diamond Shamrock opposed a ban on MTBE at this time. The Central Texas Clean Air Force recommended that the commission act to minimize the use of MTBE.

The rule was not modified regarding the use of oxygenates. Although it is possible to meet the requirements of this rule with gasoline oxygenated with MTBE, staff's discussions with the Texas gasoline suppliers have determined that the 7.8 RVP requirement will not require them to increase the use of MTBE. Additionally, sulfur reductions will likely not lead to the additional use of MTBE.

Currently, much higher levels of oxygenates are already required in the national RFG program (in place in the Houston/Galveston and Dallas/Fort Worth areas since 1995). Because of the high level of oxygenates used nationwide in RFG and the establishment of EPA's Blue Ribbon Panel on MTBE use in gasoline, the comments on MTBE will be forwarded to this group for their consideration.

The Texas Center for Policy Studies asked the commission to establish minimum taste and odor thresholds for MTBE.

The commission proposed Risk Reduction groundwater rules for MTBE contaminated sites based on taste and odor thresholds of 15 ppb for Class I and Class II groundwaters in the March 26, 1999 issue of the *Texas Register* (24 TexReg 2165).

Valero commented that a multi-step plan may be the way to address potential remediation needs for possible MTBE contamination of ground water.

The commission's rules do not address the use of MTBE in gasoline. Ground water remediation is handled in other TNRCC rules and not dealt with in this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

The Renewable Fuels Association recommended fuel pump labeling for pumps which dispense fuel oxygenated with MTBE. The justification given was to so "ethanol is given a fair opportunity to compete."

The Texas Legislature (Texas Civil Statutes, Article 8614, Sales of certain fuel mixtures, Senate Bill 665, Acts of the 71st Legislature, 1989) required fuel pump labeling for pumps which dispense ethanol and methanol oxygenated fuel, but not MTBE oxygenated fuel. Because the Legislature has acted to require fuel pump labeling but has chosen not to cover MTBE, the commission will not require fuel pump labeling for MTBE blended fuels at this time.

One citizen was opposed to benzene use in gasoline due to the potential for water contamination and the cancer concerns with benzene.

The agency has not elected to address benzene use in gasoline with this rulemaking. Therefore, this comment is beyond the scope of this rulemaking.

The Clean Fuels Development Coalition, American Corn Growers Association, Texas Petrochemical Corporation, Valero, Oxygenated Fuels Association, and Information Resources Inc. opposed low RVP/low sulfur fuels. The commenters suggested that the commission adopt federal RFG in place of low RVP/low sulfur fuel for various reasons including price, emission reduction potential, and low farm product prices. Several of the commenters noted the ability of RFG to reduce toxics including the carcinogen benzene while low RVP/low sulfur rules would not address these contaminants. It was argued by the American Corn Growers Association that low farm prices could be helped by the use of ethanol (a corn product) in RFG. Oxybusters commented in opposition to federal RFG due to the oxygenate requirement.

The commission has been evaluating a cleaner gasoline for the eastern and central parts of Texas. After much research, industry consultation, and communication with local, state, and federal agencies, the commission has arrived at a fuel that we believe will move Texas much closer to achieving its overall air quality goals. The fuel the commission is now adopting, as mentioned previously, is a low RVP gasoline with a sulfur cap.

The rule does not prohibit nor require any specific oxygenate, including the use of MTBE or ethanol. Results of evaluation efforts to date are summarized in the following paragraphs.

Automobile manufacturers have made a commitment to introduce cleaner cars to the nation earlier than otherwise would have been required by the Clean Air Act Amendments through the NLEV program. Additionally, EPA has proposed even cleaner cars through the Tier II proposal. The reductions from this action, although significant, may not be enough to get Texas where it needs to be in relation to overall air quality. Improvements in gasoline quality alone also may not be enough. However, an improvement in gasoline quality, combined with the advanced vehicle technology, will move Texas closer to achieving its overall air quality goals than either step alone could possibly achieve.

Texas refineries supply gasoline not only to the Texas market, but also to markets outside of Texas. One state which will be relying on Texas and other Gulf Coast refineries for its supply of low RVP/low sulfur gasoline is Georgia. Gasoline that is proposed for the Atlanta area is very similar to the type of fuel being adopted by Texas, thereby creating more of a demand for this type of fuel. Also at the national level, sulfur reductions are likely the means most refiners will use to meet the Phase II RFG requirement for NO_x reductions. Phase II RFG will have sulfur levels very close to the fuel adopted for the Texas market. Based on these factors, EPA's proposal of fuel sulfur limits are even more stringent than adopted here (30 ppm average), Phase II RFG with reductions in fuel sulfur, and other states' consideration of sulfur limits, we believe that the low RVP/low sulfur fuel adopted here is consistent with national trends regarding improvements in fuel quality.

Starting in late 1997, staff began to evaluate different types of cleaner burning fuels (gasoline, diesel, etc.) as part of an overall regional strategy. Staff eventually settled its focus on a cleaner burning gasoline. Of the clean gasolines under consideration, four were evaluated thoroughly: federal RFG, a gasoline with equal emissions performance to federal Phase II RFG, a formula based fuel with low RVP and low sulfur content, and California RFG.

After further discussions, staff completed its analysis on the top two fuels of choice, a performance based fuel with emissions limits equal to federal phase II RFG, and a fuel with controls on RVP and sulfur. The formula based low RVP/low sulfur fuel was settled upon for the following reasons.

1. EMISSIONS PERFORMANCE

Several of the state's areas are in need of significant NO_x reductions along with some level of VOC reduction. Agency modeling shows that NO_x reductions are necessary for the Houston/Galveston, Dallas/Fort Worth, and Beaumont/Port Arthur nonattainment areas to demonstrate attainment of the one-hour ozone standard and are very beneficial for the state's near-nonattainment areas. Therefore, one of the first objectives of a cleaner fuel was that it achieve NO_x reductions.

Additional state and federal modeling has shown that reductions in VOCs, specifically in the urbanized areas, continue to contribute to reductions in ozone. Reduction in RVP will reduce evaporative emissions of VOCs from not only motor vehicles, but from refueling operations, bulk plants, off-road equipment, and refineries. The reduction of sulfur will help existing cars maintain their certified emissions levels and the future's more advanced (NLEV and Tier II) cars reach and maintain their low tailpipe emission limits.

Specific modeling was completed for the agency in September 1997 (Evaluating the Impact of Reformulated Gasoline in the Dallas/Fort Worth Area) evaluating low RVP and RFG. EPA's complex model indicates VOC emission reductions of 14.3% with 7.8 pounds per square inch absolute (psia) fuel and a 150 cap on sulfur. NO_x reductions of 8.5% are also seen with the low RVP/low sulfur fuel adopted here.

Some national studies regarding the impact of fuel sulfur on current and advanced technology vehicles have been completed. Some of these groups include: private industry, such as the American Automobile Manufacturers Association, the automotive and refining industries (The Auto/Oil Air Quality Research (Auto/Oil) program), the federal government (EPA), state government (California, Georgia, Arizona), and other groups, such as the Coordinating Research Council and OTAG.

Estimates by EPA in their "Staff Paper on Gasoline Sulfur Issues" indicate that in use vehicles, such as Tier 0's which have been available through model year (MY) 1993 and Tier I's which have been available since MY 1994, show reductions in emissions associated with a reduction in gasoline sulfur levels. Figure 1: 30 TAC Chapter 114-preamble

Using EPA's Complex Model, Georgia estimated the benefits of their low RVP/low sulfur gasoline. The Complex Model shows the following reductions from conventional fuel (8.7 RVP, 330 ppm sulfur, benzene at 1.53 volume percent, olefins at 9.2 volume percent, and aromatics at 32 volume percent) for the second phase of Georgia's program (RVP at 7.0 psi, 40 ppm sulfur, olefins 4 volume percent, and aromatics 22 volume percent). Figure 2: 30 TAC Chapter 114-preamble

It should be noted that the Complex Model assumes a 1990 (Tier 0) technology vehicle. It does not take into consideration Tier I or advanced technology cars (low emission vehicles (LEV), ultra low emission vehicles (ULEV)), nor does it consider the effects on heavier light-duty trucks (LDT) (3's and 4's).

OTAG also evaluated a low sulfur fuel in typical attainment areas (no inspection and maintenance (I/M), etc.) and found that with a 150 ppm sulfur level the following emission reductions were obtainable. Figure 3: 30 TAC Chapter 114-preamble

2. EFFECT ON ADVANCED TECHNOLOGY CARS

For advanced technology cars (light-duty vehicles (LDV)) and LDTs covered by the NLEV and the proposed Tier II program (LEVs/ULEVs), EPA estimated emission increases with fuel sulfur above 40 ppm. These numbers are not comparable to the earlier table on Tier 0 and Tier I emissions improvements with low sulfur fuel. It was assumed that a low sulfur fuel would be used to certify advanced technology vehicles; therefore, the emissions impacts of fuel sulfur levels are indicated as percent increases over 40 ppm sulfur certification fuel. Figure 4: 30 TAC Chapter 114-preamble

3. IMPACTS ON OFF-ROAD EMISSIONS

For non-road engines, there will be evaporative VOC and air toxic benefits associated with the low RVP/low sulfur fuel. There may also be some exhaust benefits for VOC. However, NO_x benefits may end up being very minor, mainly because sulfur benefits are associated with catalyst equipped vehicles and engines. VOC emission reductions of upwards of 3% may be seen in off-road sources.

In summary, the commission believes a low RVP/low sulfur fuel is the most cost-effective gasoline control program to implement at this time.

The following commenters commented that the air quality benefits of the rule are "not significant" to air quality in their area: City of Sealy, City of Kilgore, Cities of Longview, Marshall, and Tyler, City of Winnsboro, Gum Springs Water Supply Corporation, City of Sherman, City of Lufkin, Rusk County, City of Sugarland, City of Henderson, the Texas House of Representatives, District 6, City of Dayton, County of Frankland, City of Jacksonville, Hopkins County, City of College Station, Atlanta City Development Corporation, City of Bryan, City of Denison, City of Navasota, City of Lewisville, Delta County, Cass County, Northeast Texas Municipal Water District, Liberty City Water Supply Corporation, North East Texas Economic Development District, Inc., City of Port Neches, Upper Neches River Municipal Water Authority, City of Kaufman, City of Dayton, and County of Rains.

Regional approaches to air quality, as a concept, are designed to reduce the overall background levels of ozone in the eastern part of Texas. It was not developed to focus on specific areas. A combination of the state regional controls, federal control programs, and area-specific local controls are necessary for the vast majority of Texas nonattainment and near-nonattainment areas to reach attainment. Modeling has shown positive ozone benefits across the entire eastern and central parts of Texas. It is an oversimplification of the ozone problem to expect any one program to provide the entire solution. Ozone is a complex regional problem requiring an equally sophisticated solution which includes federal, regional, and local control programs. The commission has made no change in response to these comments.

Koch Petroleum Group does not believe the agency has the authority to set gasoline specifications. Koch believes that the air quality benefits of the clean gasoline rule are unclear and may not meet the federal criteria for being granted a waiver from the EPA. Koch further believes that other available control programs such as vehicle I/M programs should be evaluated as to their potential for being more cost-effective than a cleaner gasoline program. Exxon also commented that the agency's legal authority to adopt these fuel regulations in attainment areas is "a stretch." TxOGA further commented that the agency's regulation of fuel RVP and sulfur levels are "explicitly pre-empted by federal regulation". TxOGA additionally added that Congress has "pre-empted if not banned" state regulation of RVP in §211(h) of the Clean Air Act. TxOGA finally commented that state regulation of fuel is prohibited to the extent that it may affect interstate commerce under the Commerce Clause.

The agency believes that once EPA waives the federal preemption pursuant to FCAA, §211(c)(4)(C), the state will have full authority to adopt gasoline control regulations and further, that such an action would not violate the Commerce Clause. The amendments and new sections are adopted under state authority found in the Texas Health and Safety Code (Vernon 1992), §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act (TCAA); §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

The commission is confident that it has met all federal criteria for being granted a waiver from EPA. Through the accompanying SIP and photochemical modeling, the commission has demonstrated the effectiveness of this clean gasoline program in reducing levels of ozone in the eastern part of the state. The commission further believes that clean gasoline in combination with other elements of a regional plan are necessary to ultimately achieve the federal air quality standards for ozone.

An additional criteria for being granted a waiver under §211(c)(4)(C) is an evaluation of all other control programs outside of regulating fuels. The agency has completed this analysis in respect to vehicle I/M programs. State law (Texas Health and Safety Code, §382.037(c)) prohibits the Texas Motorist Choice I/M program from expanding to additional areas unless the mayor of the largest city and the county judge requests an expansion of the program. At this time, there is not significant local interest in expanding the Texas Motorist Choice program to attainment areas, making I/M impracticable as a wider control measure.

Lastly, to address TxOGA's comments regarding the state's legal authority to adopt State fuel controls and their potential for challenge under the Clean Air Act or the Commerce Clause, the state of Texas has already adopted fuel control regulations which are included as part of SIPs for control of gasoline RVP and oxygen content. These regulations can be found in Chapters 114 and 115 regarding RVP of gasoline sold in El Paso county and oxygen content of gasoline sold in El Paso county. EPA has granted the state a waiver to control RVP in El Paso. Precedence for state control of RVP, even Texas regulations for RVP, have been previously approved by the regulating authority, EPA.

Koch and the City of Corpus Christi believe that the Corpus Christi area should be removed from the regional strategy because the Corpus Christi area is already voluntarily using low RVP gasoline during the ozone season as part of a federal flexible attainment plan. In addition, Koch believes that Corpus Christi does not significantly contribute to elevated ozone levels in Austin, San Antonio, or Dallas/Fort Worth, therefore Corpus Christi should not be included as part of these rules. However, TxOGA, Mobil, Exxon, the City of San Antonio, and Enron commented in support of a regional basis for improvements in air quality.

The commission disagrees with the comment based on modeling and other information that demonstrates that Corpus Christi does in fact contribute to the air quality in these cities. The state's major population centers and, therefore, the most significant air quality challenges, are located in the eastern part of the state. Ozone is a complex widespread regional type of pollutant which requires an integrated strategy to be handled effectively. Regional approaches to air pollution, in the long run, are the most effective types of solutions. The network of highways and their interconnection of the major urban areas leads to significant immigration and emigration of vehicles. Because of this, a cleaner burning gasoline has the potential of making a significant contribution to the overall air quality in the region.

The commission agrees with Mobil that air quality is best approached on a regional basis.

Because the Corpus Christi area already uses low RVP gasoline, and is relatively close to other major areas of the state facing air quality challenges, and because of the ozone exceedances experienced by the Corpus Christi area in the past, the commission does not agree with removing the Corpus Christi area from the clean gasoline regulations. Making the Corpus Christi low RVP program enforceable by the states also adds the benefit of creditable reductions in the SIP.

As noted in the BACKGROUND section of this preamble, the commission staff has conducted modeling which indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak eight-hour and one-hour ozone averages of between one and four ppb in much of Central and East Texas. While the greatest reductions are seen in the Austin, San Antonio, and Tyler/Longview areas, modeling of the combined point source and mobile source strategies shows a large area, including near-nonattainment areas (such as Corpus Christi) and attainment areas, of additional reductions in peak eight-hour and one-hour ozone averages. Additional modeling shows reduction in peak one-hour concentrations of up to 3.6 ppb in Central and Northeast Texas.

Koch commented that the commission should set VOC and/or NO_x performance standards instead of setting fuel property standards. Koch believes that setting VOC and/or NO_x standards allows refiners the flexibility to create clean gasolines in a more cost-effective manner.

Setting specific standards for refiners to meet enables the commission to ensure that air quality benefits are being achieved while at the same time greatly simplifying enforcement of the program. Enforcement of a performance standard type program would require significantly more oversight from the commission. It would require establishing baseline fuels for refiners, tracking refinery output by parameter (T10, T50, T90, benzene, aromatics, olefins, sulfur, RVP, oxygen and others), establishing performance levels, validating models (such as EPA's complex model or a California fuel model), and then tracking all these throughout the system. It could also cause gasoline mixing problems where comingled performance standard gasolines would not meet the performance requirements. Overall, the commission believes that setting one or two gasoline content parameters, such as RVP and sulfur, will be simpler, more effective, and less costly than a performance standard system as suggested by the commenter. The commission has made no change in response to this comment.

TxOGA, CITGO, Koch, Exxon, Motiva, and Mobil were in favor of splitting the rule into two packages, one for adoption of RVP controls and a second for adoption of sulfur control. Reasons for the split include two different adoption timelines and time for the federal sulfur regulations to come into place, thereby, possibly negating the need for a state sulfur rule. Further, Mobil commented that the state should include language that would terminate the agency's regulation of fuel sulfur levels if EPA were to regulate fuel sulfur levels. In contrast, the Central Texas Clean Air Force and the Environmental Defense Fund argued for keeping the RVP and sulfur components of the rule together to strengthen the state's argument for being granted a §211(c)(4)(C) waiver for regulation of RVP and sulfur. The City of San Antonio argued that any advantage gained by separating the package into two rules is outweighed by the air quality benefits gained by through VOC and NO_x control.

The commission has elected not to separate the rule into separate packages. To address the commenters' concerns that EPA's regulation of sulfur is emanate, the commission has modified §114.302 to include a new subsection (b), which will end the state's regulation of sulfur if EPA adopts national sulfur limits which are scheduled to be implemented by January 1, 2004. The rule would continue to regulate sulfur for early opt-in areas if the early opt-in requests are acted upon by the commission.

TxOGA, Pennzoil-Quaker State, Motiva Enterprises, CITGO Petroleum Corporation, Exxon, Koch, Ultramar Diamond Shamrock, and Mobil were opposed to state regulation of sulfur and/or wanted any state rule to mirror the future federal sulfur control program. The opposition to state sulfur control mainly centered on the pending federal (EPA) control of gasoline sulfur levels, costs of state sulfur control programs, and the potential of a "patchwork" of different state sulfur control programs. American Lung Association of Texas commented that Texas should only defer to EPA limits if they are more stringent and sooner than those adopted by the commission. TOSCO supports deferral to EPA limits only if they are more stringent and implemented by May 2004. EDF commented that the commission should not defer to EPA regulation but should adopt the proposed sulfur standard as an interim measure to the national standard.

At the time the commission proposed clean gasoline, there was nothing firm from EPA regarding reduction in sulfur levels. Now that issuance of the EPA's proposal for a lower sulfur gasoline for the entire nation has been published, the commission has added a new §114.302(b), which will end the state's regulation of sulfur if EPA adopts national sulfur limits which are scheduled to be implemented by January 1, 2004. Early opt-in areas would, however, continue with state gasoline sulfur controls where applicable. The commission agrees that a nationwide sulfur standard is preferable to state-by-state regulation. Therefore, the commission has changed the rule to defer to EPA's standards even though they may be later than the standards proposed by the commission.

The commission solicited comment on whether or not to include a 150 ppm sulfur average or a 150 ppm sulfur cap. TxOGA, Koch, Mobile, CITGO, and Exxon supported the American Petroleum Institute (API) proposal of a 150 ppm sulfur average with a 300 ppm cap. TOSCO commented in support of averages because they provide more flexibility to the refiner. EDF commented in support of caps in general because they are easier to enforce than averages.

The commission disagrees with the API proposal of a 150 ppm average with a 300 ppm cap because it is not as protective of air quality as the 150 ppm sulfur cap adopted here. For ease of enforceability, the commission agrees with EDF's comment and has retained the cap as proposed.

Exxon commented that the commission should have a statewide sulfur cap to guard against dumping in western Texas areas. A 2nd Opinion, in commenting for Texas Petrochemical Corporation, recommended that Texas implement a sulfur cap in 1999, at the same time as other states begin implementing lower sulfur standards to ensure that Texas does not then receive higher sulfur fuel.

The commission disagrees with the comments. Anti-dumping requirements contained in the federal Clean Air Act prevent exceeding a 1990 baseline for fuel emissions performance.

Therefore, additional state requirements are not needed to guard against dumping.

Association of International Automobile Manufacturers commented in support of a statewide sulfur standard to protect air quality from cars moving from west Texas into the proposed affected counties.

The agency has made no change in response to this comment and believes that statewide regulation of sulfur is not needed at this time. However, the commission may consider such a regulation at a later date.

Koch commented that sulfur controls are only necessary during the summer ozone season.

The commission disagrees with this comment and has not made any change. Catalytic converter performance can be permanently compromised by elevated sulfur levels at any time of year. Therefore the commission believes a year round sulfur requirement is necessary to achieve the reductions needed.

The Environmental Defense Fund, Central Texas Clean Air Force, City of San Antonio, City of Austin, American Lung Association of Texas, Volvo Cars of North America, the Association of International Automobile Manufacturers, and A 2nd Opinion, in commenting for Texas Petrochemical Corporation, suggested that Texas should regulate sulfur sooner than 2003 due to Texas refineries supplying lower sulfur fuel to other states (Alabama and Georgia) in 1999. Texas Petrochemical Corporation further recommended that the agency cap sulfur levels at 300 ppm between 1999 and 2003 to prevent the sulfur levels in Texas fuel from rising.

The commission has decided not to regulate sulfur content in gasoline until 2004. Additionally, if the federal government acts to adopt sulfur rules the commission may ultimately not implement any state sulfur levels. The commission has also provided the option for local areas to request early implementation of the sulfur requirements under §114.308.

TxOGA, MOTIVA, CITGO, Exxon, Koch, Mobil, Pennzoil-Quaker State, and the Renewable Fuels Association were opposed to the RVP season being different from the federal RVP control season of May 1st through September 15th of each year, the justification being supply and storage, and lack of legal authority to regulate RVP. Further, they commented that the start of the season should be May 1st for gasoline suppliers and June 1st for gasoline retailers. In contrast, the Environmental Defense Fund and the American Lung Association supported the lengthened ozone season. Ultramar Diamond Shamrock and the City of San Antonio suggested an alternative of May 1st through October 15th for the RVP control season in acknowledgment of high ozone levels through October 15th in most areas. EDF commented in support of lengthening the RVP season even further to run between April 15th and October 15th.

Last summer, as has happened over the past several years, a number of Texas areas experienced high ozone levels between September 15th, the end of the federal RVP control season, and October 1st. Therefore, the commission believes that the RVP control season should be extended past September 15th. However, based on comments the commission received from refiners and gasoline distributors, October 31st may be too late in the season to obtain substantial benefit. As a compromise between the two, the commission is adopting October 1st as the end of the RVP control season. The commission disagrees with EDF's comment regarding earlier start of the RVP control season due to drivability concerns during potential cold temperatures in early spring. Therefore the commission has not changed the start date of the RVP control season to conform with the comment.

The start of the commission's RVP control season has also been modified to match the federal provisions of May 1st for gasoline wholesalers and June 1st for gasoline retailers in response to comments. The commission believes that an extension of the control season is appropriate, cost-effective, within the commission's legal authority to adopt (after the federal waiver is granted), and necessary for improvement in air quality in the eastern part of Texas.

The Renewable Fuels Association believes the agency is required to incorporate a one psi RVP waiver for ethanol blended fuels under what they believe is a requirement in the Clean Air Act for a state fuel control program to be identical to the federal control program. The Renewable Fuels Association believes that the commission can omit the one psi RVP waiver for ethanol only if it demonstrates that the omission of the waiver is necessary for attainment.

The commission disagrees with the statutory interpretation of the commenter. The requirement that a state fuel control program is identical to the federal control program under FCAA, §211(c)(4)(A) has to do with whether the program is preempted by federal law. If the program is identical, it is not preempted. The demonstration that the state program is necessary for attainment is required under FCAA, §211(c)(4)(C) when a program is not identical. This provision allows EPA to waive preemption if the program as a whole is demonstrated to be necessary. There is no requirement that each aspect of the fuel which differs from federal law be demonstrated necessary. The commission believes that such a reading of the statute confuses two separate concepts. Therefore, the commission is not making any changes in response to this comment.

The American Lung Association of Texas supports 7.0 RVP fuel starting in 1999. The commission also received comment from TxOGA, Koch, Diamond Shamrock, Motiva Enterprises, CITGO, Mobil, TOSCO, and Exxon supporting the proposed level of 7.8 RVP. Additionally, Koch commented that RVP requirements below 7.5 psi could add significant cost due to potential patent payments which could be ordered by courts through current litigations.

The commission has decided to require 7.8 RVP by 2000, since the rule's effective date is after the start of the 1999 ozone season. However, there are several voluntary agreements which have been worked out to supply certain areas with lower RVP fuel starting in 1999. The commission has further not modified the rule to change the RVP from 7.8 to 7.0 psi in response to comment. The reason for not modifying the rule is due to the cost-effectiveness of going down to 7.0, including potential for patent expenses, is not significant for the additional emission reduction achieved by this change. The commission believes that a 7.8 RVP fuel will provide the most benefit for the least cost.

TxOGA, MOTIVA Enterprises, Exxon, and Koch (due to lack of legal authority to overlap federal RFG areas and/or complication of duplicate fuel requirements in RFG areas, and a lack of air quality benefit), and EPA (due to the potential for confusion from the regulated community with overlapping fuel requirements) were opposed to the overlay of the Texas gasoline control

program and the federal RFG program in the Houston/Galveston and Dallas/Fort Worth areas.

Based on comments and the potential for confusion, the commission has modified §114.309 to remove Houston/Galveston and Dallas/Fort Worth nonattainment counties and to allow the federal RFG program to take precedence in the areas where it is applicable. This modification will negate any need for both state and federal enforcement of gasoline in these areas. The commission also concludes that the federal RFG program is equally as effective as the state program in the areas where it is applicable, especially if the recently proposed federal sulfur regulations are finally adopted by EPA.

The commission has received resolutions from the Cities of Austin and San Antonio requesting a 150 ppm sulfur average beginning the year 2000. In addition, the commission has received resolutions from the Alamo Area Council of Governments (AACOG) and Bexar County commenting on timing of gasoline sulfur levels. EDF commented in support of the requests from Austin and San Antonio.

The commission will consider the resolutions from the Cities of Austin and San Antonio at a later commission agenda date. The resolution from AACOG will not be considered as it does not qualify under §114.308 as a resolution from a city or county. The resolution from Bexar County does not request early implementation of RVP or sulfur controls and, therefore, requires no action.

TxOGA, Exxon, Koch, MOTIVA Enterprises, Pennzoil-Quaker State, Mobil, and CITGO were opposed to the early implementation for large cities and counties due to the "chaos" it would cause to the fuel distribution system, limits to competition, the proposal being unworkable, and lack of legal authority and perceived lack of public input on early opt-ins. EPA was opposed to this provision due to the time it would take to approve SIPs with this provision. The commission also received comments from Central Clean Air Force, American Lung Association of Texas, EDF, the City of Austin, and the City of San Antonio supporting the concept of allow areas to request early implementation schedules.

The commission has modified the rule to limit early opt-ins to counties with populations of 200,000 or more. The commission also removed early opt-in for RVP partly to address industry concerns about the time needed to meet the requirements. The commission is aware that those areas which have requested early opt-in, the Cities of Austin and San Antonio, have worked out voluntary arrangements with their major fuel suppliers to have cleaner low RVP/low sulfur gasoline starting in ozone season 1999. Koch Industries, which supplies 90 to 95% of the greater Austin market, has agreed to supply cleaner gasoline to Austin starting in the summer of 1999. In addition, the four major suppliers in the San Antonio market (Koch, Diamond Shamrock, Exxon, and CITGO) have agreed to supply San Antonio with cleaner gasoline in the summer of 1999. Therefore, both Austin and San Antonio will be receiving cleaner gasoline earlier than the rule requires. The commission applauds these organizations' efforts to forge voluntary agreements with the common goal of achieving air quality improvements. The commission believes that ultimately these and other areas may need the ability to take SIP credit for this measure in order to meet their federal mandates under either the eight-hour or one-hour NAAQS. The commission believes that it is fully within its authority to allow for early opt-in through commission order. The public input has occurred through this rulemaking and through the open meeting that's required for the commission to adopt an order placing any early opt-in into effect. The distribution concerns raised by the commenters can be raised upon commission consideration of each resolution since distribution concerns will vary on a case by case basis. Since the commission must find the early implementation "practicable" in order to approve the request, such concerns would certainly be relevant. In response to the timing issues raised by the EPA concerning approvability of the §211(c)(4)(C) waiver, the commission will work closely with EPA to provide all necessary information to expedite the review.

Motiva Enterprises requested clarification of the meaning of "practicable and needed" in regard to the early implementation provision of §114.308(c).

While these decisions will have to be made on a case-by-case basis, the types of factors the commission would consider in deciding whether or not to grant a request for early opt-in would include distribution, supply, cost, and effectiveness to determine practicability. Need would be based upon factors such as the area's recent ozone levels and their potential for exceeding an NAAQS.

TxOGA, MOTIVA, Mobil, and the Cities of Tyler, Longview, and Marshall believe that this rulemaking exceeds a federal standard and therefore requires a full regulatory impact analysis (RIA).

The commission is adopting this rule to help the state meet the specific federal requirement that the state be in compliance with the ozone NAAQS. The accompanying SIP narrative explains why the commission believes the rule is necessary to meet the NAAQS.

The commission is not required to perform a full RIA for this rulemaking under the Texas Government Code, §2001.0225, because the rules being adopted will not exceed a federal standard. The relevant federal standards in this case are the ozone NAAQS. For each current nonattainment area, the state is required to submit a SIP which demonstrates how it will achieve the NAAQS one-hour standard by its deadline. Additionally, for nonattainment and near-nonattainment areas, the state will be required to submit a SIP which will demonstrate how it will achieve the NAAQS eight-hour ozone standard. This rulemaking is being submitted to EPA as part of the state's ozone SIP. As part of that SIP submittal, the state is requesting a waiver under 42 United States Code, §7545(c)(4)(C) (also referred to as Clean Air Act, §211(c)(4)(C)). In that package, the state has demonstrated why this rulemaking is necessary for attainment of the NAAQS and why other strategies are either not sufficient or impracticable. Because this package is a necessary part of the ozone SIP demonstration, this package does not exceed a federal standard and, therefore, does not necessitate an RIA.

For those persons interested in the types of information contained in an RIA such as benefits of the rule, anticipated costs to the regulated community, the purpose of the rule, and why other alternatives were not selected, a great deal of that information is contained in the preamble for the proposed rule and the SIP narrative that was made available in the rulemaking process. All of that information has been open to public comment and the commission is responding to any comments received regarding that information.

The commenters also state that an RIA is required because the proposed rule was published without reference to a specific state law as opposed to general agency powers. This is incorrect. In addition to citing Texas Health and Safety Code, §382.017, which provides general rulemaking authority, the rule cites §§382.011, 382.012, and 382.019. Each of these references provide authority beyond the general powers of the agency. Therefore, the Texas Government Code, §2001.0225(a)(4) does not require that the commission perform a full RIA for this rulemaking.

The Cities of Tyler, Longview, and Marshall believe that the commission must complete a full takings impact analysis (TIA).

The commission does not need to complete a full TIA for the same reasons that it is not required to complete a full RIA; i.e., because the rules are being adopted to meet a federal mandate.

The Cities of Tyler, Longview, and Marshall stated that the commission has not met the requirements of the CMP. The commenters suggested that the commission has not considered potential water quality impacts of the rule as required by the CMP.

The commenters stated that water quality concerns should be considered in determining consistency with the CMP. Based upon their concerns stated in other comments, the commission presumes that they are referring to the possibility of MTBE contamination of groundwater due to leaking storage tanks. However, as discussed elsewhere in response to comments regarding MTBE in this preamble, the rule does not require an increase in the use of MTBE or any other specific fuel component. The rule also does not govern leaks from petroleum storage tanks, which is regulated elsewhere in commission rules. The rule itself does not authorize any contamination of waters of the state, nor does it modify the petroleum storage tank rules in any way. Since this rule will reduce air contaminants, the commission's analysis of consistency with the CMP is sufficient to meet statutory and rule requirements.

TxOGA, MOTIVA, Exxon, Pennzoil-Quaker State, and Koch commented that the commission should reword its section regarding gasoline that does not meet requirements of §114.301 and §114.302 being stored, sold to other gasoline wholesalers, and/or transferred within, but not used in motor vehicles within the controlled areas. There is the perception by several commenters that noncompliant gasoline destined for areas outside the affected counties or for a time other than the control period is not allowed by the rules.

The agency has modified the wording of §114.307(b) in response to these comments. Gasoline not meeting the sulfur or RVP standards may be transferred, placed, stored, or held in an affected county is allowed as long as the gasoline is not used to power a gasoline engine within the affected counties during a control period.

TxOGA, MOTIVA , Exxon, and Pennzoil-Quaker State commented that the rule should allow for off-site recordkeeping for gasoline retailers.

The rules regarding recordkeeping requirements do not apply to gasoline retailers, as stated in §114.306.

Hopkins County was of the opinion that the NLEV program would make mandatory the use of MTBE oxygenated gasoline.

The use of cleaner gas may require the use of cleaner gasoline, however, the use of MTBE may or may not be part of the federal clean gasoline program. The NLEV program is a federally mandated program. The rules adopted here do not address NLEV vehicles and, therefore, this comment is beyond the scope of the rulemaking. The commission has made no change in response to this comment.

Pennzoil-Quaker State and Exxon requested that off-site record storage be allowed and that up to seven days be allowed for retrieval of records.

The commission has not designated where records must be stored. Off-site record storage is allowed under this rulemaking, as long as the records are made available to the agency, EPA, and local air pollution control agencies. The commission has modified §114.306 to allow five business days for retrieval of records if they are kept off-site.

Exxon commented that the rule should include language to require the RVP to be listed on the delivery documents. Exxon further commented that the agency should require recordkeeping by gasoline retailers.

The rule currently requires records of the RVP of all gasoline delivered. The rule has not been modified to cover retail gasoline outlets for recordkeeping requirements. The commission believes that the program can be effectively enforced without requiring recordkeeping by gasoline retailers.

TOSCO, American Lung Association of Texas, Volvo Cars of North America, Association of International Automobile Manufacturers, Cities of Austin and San Antonio, Alamo Area Council of Governments, Bexar County, Environmental Defense Fund, one individual, and Oxybusters of Texas commented in support of Texas regulating sulfur in gasoline, and in fact recommended a more stringent sulfur standard. American Lung Association of Texas recommended a 30 ppm sulfur in 2003 whereas TOSCO recommended 80 ppm. Association of International Automobile Manufacturers supports standards similar to those in California, 30 ppm average with an 80 ppm cap as soon as practicable.

The commission has retained the originally proposed 150 ppm sulfur cap. Further, the commission is aware that EPA may adopt a nationwide standard of 30 ppm average. Therefore, if the EPA regulation is adopted, Texas will receive very low sulfur gasoline meeting the demands of these commenters. If EPA does not follow through on its rulemaking, the commission's rule for a 150 ppm cap on sulfur will ensure a lower sulfur fuel for Texas. Additionally, the commission has received early opt-in resolutions from the Cities of Austin and San Antonio which will be considered at a later commission agenda.

Pennzoil-Quaker State recommended that references to psia be changed to psi to match current industry practice and convention.

The commission agrees with the comment and has modified the rule accordingly.

TOSCO supported the agency's decision not to adopt federal RFG for the 95 counties of east Texas mainly due to the benefits of low RVP/low sulfur fuels and the water quality threat from the oxygenates required by federal RFG.

The commission is in concurrence with these comments regarding the benefits of low RVP/low sulfur fuel. However, the commission has elected not to make any decision regarding the oxygenate MTBE, and is deferring any action pending the report from the EPA's Blue Ribbon Panel on MTBE.

The Association of International Automobile Manufacturers, Information Resources Incorporated, Texas Petrochemical Corporation, and A 2nd Opinion, in commenting for Texas Petrochemical Corporation, requested that the commission adopt driveability indices (DI), limits on heavy aromatics, and/or T50 and T90 distillation temperature requirements. Information Resources International commented that low RVP fuels can actually increase tailpipe emissions due to changes in overall volatility and therefore distillation limits of T50 and T90 would address this problem.

To lower RVP, a refiner can remove some of the lighter compounds in gasoline. Removal of these compounds can concentrate the heavier elements of gasoline leading to a possible increase in the DI of the fuels. The commission is also aware that DIs above 1,200 may cause increases in emissions in some vehicles. However, 7.8 psi fuel has been in use since the early 1990's and likely will not require the significant removal of light compounds which would lead to excessively high DIs and concentration of heavy aromatics. Therefore, the commission is not adopting DIs, limits on heavy aromatics, or distillation temperature requirements at this time.

Exxon questioned the agency's cost analysis of RVP and sulfur control and suggested that the high end of the cost estimates supplied to the agency by various sources would likely be the case. Given the higher cost estimates, Exxon believes that the impact to small businesses will be greater than those identified by the agency. However, the commission did receive alternative comments from the Association of International Automobile Manufacturers which indicated that in its review of nine cost studies for reducing gasoline, sulfur levels are overestimated. Its research shows a cost of 0.2 to 3 cents per gallon for 100-150 ppm sulfur levels.

The commission used the most recent data available for cost analysis. Even more recent technologies have since come to light and all are even less expensive than what was provided in the proposal. As Exxon notes in its comments, most of the costs are associated with control of sulfur which would not be required under this rule for several years. The future will likely bring even further innovations in RVP and sulfur control which may prove that today's cost estimates were over-estimations of the actual cost of control. Today, 25 counties surrounding Atlanta, Georgia and two counties in Birmingham, Alabama, are receiving 7.0 RVP and 150 ppm average sulfur fuel level gasoline. This gasoline is costing an average of 2.0 cents more than conventional gasoline. Likely, by 2004, the costs will be much less than 2.0 cents per gallon. The commission has not modified its cost estimates for large or small businesses in response to this comment.

Exxon and EPA commented on the need for further enforcement efforts to make this program successful.

The agency will enforce the program at the refinery gate and at the bulk terminal. Enforcement of refineries and bulk terminals will also be accomplished through retail level scheduled and unscheduled sampling. With only two parameters to check for (RVP and sulfur), fuel testing will be simplified. The area to be covered by the clean burning gasoline program is very large (98 counties), and a majority of the state's population will be using cleaner fuel.

Stage II inspections are conducted at gas stations in the nonattainment counties on an annual basis. Some of this is done by local air quality agencies through a pass-through grant from EPA. The amount of the grant dedicated to Stage II inspections is $229,500 matched at 33% by the local areas. Therefore, the total amount spent on annual Stage II inspections by the local area programs is about $305,235. Commission inspectors inspect the remaining stations (about 3,709) with nine staff members for the 16 counties with Stage II vapor recovery programs. Each person in field operations is considered to cost the agency about $67,000 per year on average, making the total annual Stage II inspection cost $908,235 for gasoline stations in 16 counties.

About half of the fuel in the 110 counties of east Texas is consumed in the DFW and HGA areas. The other half is consumed in a remaining area for cleaner burning gasoline. Therefore, about half of the gasoline stations are located in the DFW and HGA area. If this assumption is accurate, it suggests that inspections of the remaining half of the gasoline stations on an annual basis would approximately double these costs. However, the costs of inspection could be reduced through a reduction of frequency of inspection. This assumes the inspector's can collect a sample of gasoline as they are doing their other inspections. The agency will also have to allocate additional money to either a fuels testing contractor or for a commission-run fuels testing lab. The commission believes that this is an exaggerated amount of enforcement and the actual enforcement costs will be much lower.

Koch suggested that the agency provide rebates or discounts on air permit and emissions fees to refiners who choose to comply early. Further, Koch suggested that tax exemptions for equipment installed to manufacture clean gasoline should apply. Motiva Enterprises and the City of San Antonio, requested streamlining of the permitting process for those refineries that must make modifications to their facilities in order to comply with the rule. Association of International Automobile Manufacturers commented in support of incentives such as emissions trading. The American Lung Association of Texas, the City of San Antonio, and the Environmental Defense Fund also generally supported incentives for compliance and early compliance with this regulation.

Staff will continue to further explore the possibility of rebates or discounts on air permit and emissions fees as well as streamlining of the permit process and other incentives for early compliance. The commission does have rules to make a "positive use determination" which would allow for a tax exemption for pollution control property (see 30 TAC Chapter 17). However, the commission's authority is limited by the enabling statute found in Chapter 11 of the Tax Code. Section 11.31(a) states that, "A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution." In this case, a tax exemption would not appear to be available for equipment used to produce a cleaner burning gasoline. Only equipment installed for on-site emission reduction could qualify.

TxOGA and Pennzoil-Quaker State commented that the agency should accept alternative ASTM/EPA test methods where they correlate with the listed test methods. Koch commented that terminals and wholesalers should be able to use other methods that are more suitable for them.

The rule allows flexibility for minor modifications to test methods where approved by the executive director as stated in

§114.305(3). Under §114.305(4), alternative methods may also be approved if validated by 40 CFR 63, Appendix A, Test Method 301. Under §114.305, the executive director does not have the discretion to accept alternatives not validated by 40 CFR 63, Appendix A, Test Method 301, because such alternatives have not been accepted by the EPA.

EPA commented that in order to be granted the §211(c)(4)(C) waiver the agency must: 1) quantify the reductions necessary for attainment in areas in violation of the one-hour standard; 2) quantify the reductions necessary for areas that are or will be violating the eight-hour standard; and 3) show that controls in specific areas, based on modeling, are necessary to achieve attainment in neighboring areas under either the one-hour or eight-hour standard.

As part of ongoing SIP revisions, the commission has submitted photochemical modeling showing the reductions necessary to meet the one-hour ozone standard in those areas in violation of the one-hour standard. To date, no area in Texas has been designated nonattainment for the eight-hour standard; however, pre-emptive measures such as clean gasoline are appropriate to be taken at this time. In addition, the commission has submitted photochemical modeling which clearly shows the benefits a clean gasoline provides toward reducing the overall background levels of ozone in the eastern half of Texas.

EPA requested that the commission submit specific modeling data to substantiate the conclusion that a regional fuel control program is necessary for attainment. EPA also commented that it has not seen the results of the detailed modeling done in support of the clean gasoline and this SIP revision.

The commission is including additional modeling reports with this SIP submittal that show the need for a fuels control program. A fuel control program is one part of an overall strategy for reducing overall background levels of ozone in Texas. This fuel control program is necessary for the timely and ultimate attainment of the ozone NAAQS.

EPA commented that the commission should submit a thorough analysis of what alternative measures were considered and why those are unreasonable or impracticable. If timing is a key reason for the decision of current unreasonableness or impracticality, then this should be explained.

The commission has included this analysis in the final SIP package. The commission reviewed several different control programs over the course of SIP development for the state's nonattainment areas. In looking at all the control options available to a state, the most effective programs, from an economic, cost, and impact basis, are those which take effect in the least amount of time, reach out to all sources of emissions from a category, and are relatively inexpensive. Cleaner gasoline provides immediate benefits as opposed to cleaner automobiles, which would take a longer time to impact a significant amount of the vehicle fleet. Cleaner gasoline provides benefits to the entire fleet and is not limited to certain MYs or counties, as are I/M programs. Cleaner gasoline, as adopted here, is also highly cost-effective for both VOC and NO_x reductions. Other types of control programs, such as those on point sources, can be cost-effective, but cannot be implemented as quickly as a fuel improvement. The commission is also working aggressively to implement point source reductions, either on a voluntary basis or through regulation. However, these types of programs will not be as timely as a fuel control program.

EPA commented that the state should fully explore and articulate the rationale for not pursuing other NO_x control measures in lieu of clean fuel. If timing is a key reason, then this should be explained.

The commission has included this analysis in the final SIP package. The state is pursuing other NO_x control measures with appropriate implementation schedules. The agency will consider additional NO_x controls for large industries on a different time line from clean gasoline. Cleaner gasoline will provide for the most timely and cost-effective NO_x controls for the short term and is necessary for ultimate attainment of the NAAQS and continued reductions in overall background levels of ozone in the eastern part of Texas.

Subchapter A. Definitions

30 TAC §114.1

STATUTORY AUTHORITY

The amendment and new sections are adopted under the Texas Health and Safety Code, the TCAA, §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

§114.1. Definitions.

Unless specifically defined in the TCAA or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(13) (No change.)

(14) Reformulated gasoline-Gasoline that has been certified as a reformulated gasoline under the federal certification regulations adopted in accordance with the Federal Clean Air Act, §211(k)(42 United States Code, §7545(k)).

(15) Revised Texas I/M State Implementation Plan (SIP)-The portion of the Texas SIP which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted by the commission May 29, 1996, in accordance with the 40 CFR Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995. A copy of the revised Texas I/M SIP is available at the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas, 78753; mailing address: P.O. Box 13087, MC 166, Austin, Texas 78711-3087.

(16) Tier I federal emission standards-The standards are defined in the FCAA as amended in §202, USC Title 42 §7521, and in 40 CFR, Part 86. The phase-in of these standards began in model year 1994.

(17) Ultra low emission vehicle-A vehicle as defined by 40 CFR, Part 88.

(18) Zero emission vehicle-A vehicle as defined by 40 CFR, Part 88.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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Subchapter H. Gasoline Volatility and Sulfur Content

30 TAC §§114.301, 114.302 114.305–114.309

STATUTORY AUTHORITY

The new sections are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.012, which requires the commission to develop plans for protection of the state's air; §382.019, which provides the commission with the authority to regulate emissions from motor vehicles; and §382.037(g), which governs the conditions under which the commission may adopt fuel content standards.

§114.301. Control Requirements for Reid Vapor Pressure.

(a) In the counties listed in §114.309(a) of this title (relating to Affected Counties), no person shall transfer, allow the transfer, place, store, or hold in any stationary tank, reservoir, or other container any gasoline with a Reid vapor pressure greater than 7.8 pounds per square inch which may ultimately be used to power a gasoline engine in the affected counties according to the schedule in subsection (b) of this section.

(b) Beginning May 1, 2000, all adjustments in the operation of affected facilities and all transfers or alterations of gasoline not meeting the requirements of this section must be completed as necessary to conform with the provisions of subsection (a) of this section during the following periods of each calendar year:

(1) June 1 through October 1 of each year for gasoline dispensing facilities; and

(2) May 1 through October 1 of each year for all other affected facilities.

§114.302. Control Requirements for Sulfur.

(a) In the counties listed in §114.309 of this title (relating to Affected Counties), no person shall transfer, allow the transfer, place, store, or hold in any stationary tank, reservoir, or other container any gasoline which may ultimately be used to power any gasoline engine in the affected counties and which exceeds 150 parts per million sulfur, beginning January 1, 2004 and continuing year-round.

(b) If the federal government adopts gasoline sulfur limits, which at a minimum would cover the affected counties, and require compliance by January 1, 2004:

(1) the requirements of subsection (a) of this section will no longer apply upon the compliance date of the EPA rule; and

(2) the requirements of an early implementation schedule issued by commission order under §114.308(c) of this title (relating to Alternative Early Implementation) will continue to apply until the compliance date of such federal limits, unless otherwise specified in the order.

§114.305. Approved Test Methods.

Compliance with the Reid vapor pressure and sulfur content limitations of §114.301 and §114.302 of this title (relating to Control Requirements for Reid Vapor Pressure; and Control Requirements for Sulfur) shall be determined by applying one or more of the following test methods and procedures, as appropriate.

(1) Use the following test methods for determining gasoline volatility:

(A) American Society for Testing and Materials (ASTM) Test Method D5191 for the measurement of Reid vapor pressure;

(B) Sampling Procedures for Fuel Volatility (40 Code of Federal Regulations (CFR) Part 80, Appendix D); and

(C) Test For Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends (40 CFR Part 80, Appendix E).

(2) Use ASTM Test Methods D2622 or D5453 for determining sulfur content.

(3) Minor modifications to these test methods may be used, if approved by the executive director.

(4) Test methods other than those specified in paragraphs (1) and (2) of this section, may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§114.306. Recordkeeping Requirements.

The owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant subject to the provisions of §114.301 and §114.302 of this title (relating to Control Requirements for Reid Vapor Pressure; and Control Requirements for Sulfur) shall maintain records of the Reid vapor pressure and sulfur content of all gasoline stored or transferred during the compliance period. All records shall be maintained for two years and be made available for review by the executive director, EPA, and local air pollution control agencies. Records do not have to be stored on-site, but must be made available for inspection at the site within five business days.

§114.307. Exemptions.

(a) The following exemptions apply in the counties listed in §114.309 of this title (relating to Affected Counties).

(1) The following uses are exempt from §§114.301, 114.302, 114.305, and 114.306 of this title (relating to Control Requirements for Reid Vapor Pressure; Control Requirements for Sulfur; Approved Test Methods; and Recordkeeping Requirements):

(A) any stationary tank, reservoir, or other container:

(i) used exclusively for the fueling of implements of agriculture; or

(ii) with a nominal capacity of 500 gallons (1,893 liters) or less; and

(B) all gasoline solely intended for use as aviation gasoline ("av-gas").

(2) The owner or operator of a motor vehicle fuel dispensing facility is exempt from the recordkeeping requirements of §114.306 of this title.

(b) Gasoline that does not meet the requirements of §114.301 or §114.302 of this title is not prohibited from being transferred, placed, stored, and/or held within the affected counties and during the control period so long as it is not ultimately used to power a gasoline engine in the affected counties during the control period.

§114.308. Alternative Early Implementation.

(a) Counties listed in §114.309 of this title (relating to Affected Counties), and cities located in these counties, with populations of 200,000 or more according to the most recent federal census, may request early implementation of lower sulfur requirements so long as they are not more stringent than the requirements of §114.302 of this title (relating to Control Requirements for Sulfur) through one of the following:

(1) resolution by the City Council requesting that a specific geographic area under its jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the City Council is requesting that sulfur control be made mandatory; or

(2) resolution by a County Commissioners Court requesting that the county under its jurisdiction be included. The resolution must include the level of sulfur control requested, and a schedule for which the County Commissioners are requesting that sulfur control be made mandatory.

(b) The commission may enter an order adopting some or all the provisions of a resolution submitted under this section requesting sulfur controls upon a finding that the requested controls are practicable and needed to improve air quality.

§114.309. Affected Counties.

(a) All affected persons in the following counties shall be in compliance with §§114.301, 114.302, and 114.305-114.307 of this title (relating to Control Requirements for Reid Vapor Pressure; Control Requirements for Sulfur; Approved Test Methods; Recordkeeping Requirements; and Exemptions) no later than the dates specified in §§114.301(b), 114.302, and 114.308 (relating to Alternative Early Implementation) of this title: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

(b) All affected persons in the following counties shall be in compliance with §§114.302 and 114.305-114.307 of this title no later that the dates specified in §114.302 and §114.308 of this title: Hardin, Jefferson, Orange. Texas Natural Resource Conservation Commission

Page 1 Chapter 114 - Control of Air Pollution From Motor Vehicles Rule Log No. 98058-114-AI

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 115. Control of Air Pollution From Volatile Organic Compounds

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §115.10, concerning Definitions; §§115.211-115.217 and 115.219, concerning Loading and Unloading of Volatile Organic Compounds (VOC); §§115.221-115.227, and 115.229, concerning Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities; and §§115.234-115.237 and 115.239, concerning Control of VOC Leaks from Transport Vessels. Adopted with changes to the proposed text as published in the January 1, 1999 issue of the *Texas Register* (24 TexReg 61) are §§115.10, 115.211-115.217, 115.219, 115.221, 115.222, 115.224-115.227, 115.229, 115.234, 115.235, 115.237, and 115.239. Sections 115.223 and 115.236 are adopted without changes and will not be republished.

The commission adopts these revisions to Chapter 115, concerning Control of Air Pollution from VOCs, and to the State Implementation Plan (SIP) in order to reduce overall background levels of ground-level ozone in attainment, near-nonattainment, and ozone nonattainment areas.

The revisions are one element of the new Texas Clean Air Strategy (TCAS), which includes a variety of options in order to meet the National Ambient Air Quality Standards (NAAQS) for ground-level ozone. The purpose of the strategy is to reduce overall background levels of ozone in order to assist in keeping ozone attainment areas and near-nonattainment areas, such as Austin, Corpus Christi, Longview/Tyler/Marshall, San Antonio, and Victoria in compliance with the federal ozone standards. The new strategy is also necessary to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas move closer to ultimately reaching attainment with the ozone NAAQS. The TCAS takes into account recent science which shows that regional approaches may provide improved control of air pollution. In particular, staff has conducted photochemical grid modeling which indicates that implementation of Stage I vapor recovery, cleaner burning gasoline, and national low-emitting vehicles (NLEV) will result in ozone reductions (peak eight-hour average) of one to four parts per billion (ppb) in much of east and central Texas. Additional modeling conducted specifically for the one-hour ozone standard has shown reductions of up to 3.6 ppb in east and central Texas. Additional details concerning the need for a regional strategy are as follows.

BACKGROUND

At the time the 1990 Federal Clean Air Act (FCAA) Amendments were enacted, the focus on controlling ozone pollution was centered on local controls. However, for many years an increasing number of air quality professionals have felt that ozone is a regional problem requiring regional strategies in addition to local control programs. As nonattainment areas across the United States prepared attainment demonstration SIPs in response to the 1990 FCAA Amendments, several areas found that modeling attainment was made much more difficult, if not impossible, because of high ozone and ozone precursor levels entering from the boundaries of their respective modeling domains, commonly called transport.

The commission has conducted air quality modeling and upper air monitoring that found regional air pollution should be considered when studying air quality in Texas' ozone nonattainment areas. This work is supported by research conducted by the Ozone Transport Assessment Group (OTAG), the most comprehensive attempt ever undertaken to understand and quantify the transport of ozone. Both the commission and OTAG study results point to the need to take a regional approach, such as that proposed in the TCAS, to controlling air pollutants.

As part of the Coastal Oxidant Assessment for Southeast Texas (COAST) project, the commission and its contractor, Environ, Inc., conducted regional-scale modeling to develop future-year boundary conditions for the COAST modeling domain. The emissions inventory used in this modeling was based on the OTAG emission inventory and the modeling was conducted for a domain covering most of Texas as well as several southern states.

During the OTAG process, the commission's modeling staff ran several sensitivity analyses using this regional modeling setup to assess the impact of potential OTAG reductions on Texas. Applying the OTAG 5c reductions across the domain (60% reduction of point source oxides of nitrogen (NO_x), 30% reduction of low-level NO_x, 30% reduction of VOC), compared to the case of no reductions, indicated that modeled reductions would significantly reduce ozone throughout most of the eastern half of Texas. Overall, the modeling indicated that a regional reduction strategy would be beneficial across a wide area of the state.

During modeling for the Houston/Galveston attainment demonstration SIP for the one-hour ozone standard, the commission's modeling staff conducted sensitivity analyses to determine the benefits that regional reductions might have on Houston/Galveston, when applied simultaneously with local reductions. Unlike the commission's regional modeling exercises discussed in the previous paragraphs, these model runs offer an opportunity to assess separately the benefits of reductions made within and outside a region, since model runs with and without the regional reductions scenarios in Houston/Galveston were conducted. Modeling runs were completed to evaluate the eight-hour average ozone concentrations in the COAST modeling domain for September 8, 1993 with 2007 projected emissions and assuming a 70% reduction of NO_x and a 15% reduction of VOC in the eight-county Houston/Galveston area. Even with the large reductions in Houston/Galveston, much of the upper Texas Coast is well above the eight-hour standard. Also, Austin, Victoria, and Corpus Christi show modeled eight-hour average concentrations above 85 ppb. The benefit of applying OTAG 5c reductions outside the Houston/Galveston eight-county area clearly showed that the reductions are beneficial to Houston/Galveston and provided additional ozone benefits of between five and ten ppb in Houston/Galveston.

Additional modeling has been completed by commission staff assessing the potential benefits of the TCAS. This modeling indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) have a potential to reduce peak eight-hour ozone averages of between one and four ppb in much of east and central Texas, with the greatest reductions seen in the Austin and San Antonio areas. Modeling completed since these rules were proposed further backs the effectiveness of these rules for reducing ozone. The latest modeling indicates one-hour and eight-hour ozone reductions in most of east and central Texas, with the most benefit seen in northeast Texas (Tyler/Longview) and central Texas (San Antonio and Austin). This modeling indicates significant reductions in some areas with lesser reductions in others. The main conclusion to be drawn from these models is that the appropriate controls have been selected for reducing ozone levels.

This modeling provides part of the evidence of the benefit of regional reductions on Texas' nonattainment areas and further provides justification that a regional strategy will help maintain air quality in near-nonattainment and attainment areas. Conclusions from the commission's work are supported by OTAG studies that also illustrate the importance of implementing a regional air quality control strategy.

The adopted rule revisions implement the Stage I vapor recovery option of the TCAS. The Stage I vapor recovery rules currently apply to approximately 7,000 gasoline stations in the Beaumont/Port Arthur, El Paso, Houston/Galveston, and Dallas/Fort Worth ozone nonattainment areas (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties). These rules regulate the filling of gasoline storage tanks at gasoline stations by tank-trucks. To comply with Stage I requirements, a vapor balance system is typically used to capture the vapors from the gasoline storage tanks which would otherwise be displaced to the atmosphere as these tanks are filled with gasoline. The captured vapors are routed to the gasoline tank-truck, and the vapors are processed by a vapor control system when the tank-truck is subsequently refilled at a gasoline terminal or gasoline bulk plant. The adopted rules will reduce VOC emissions which are precursors to ground-level ozone formation, resulting in ground-level ozone reductions.

The effectiveness of Stage I vapor recovery rules depends on the captured vapors being: (1) effectively contained within the gasoline tank-truck during transit; and (2) controlled when the transport vessel is refilled at a gasoline terminal or gasoline bulk plant. Otherwise, the emissions captured at the gasoline station will simply be emitted at a location other than the gasoline station, resulting in no reduction in VOC emissions despite the Stage I requirements.

Chapter 115 includes specific requirements for gasoline terminals in 16 ozone nonattainment counties (Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller). A gasoline terminal is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput of at least 20,000 gallons per day, averaged over any consecutive 30-day period. Less restrictive Chapter 115 gasoline terminal rules apply in Gregg, Nueces, and Victoria Counties. Chapter

115 regulates gasoline terminals in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties under general VOC transfer rules.

On December 14, 1994, the United States Environmental Agency (EPA) promulgated Title 40 Code of Federal Regulations (CFR) 63, Subpart R, pursuant to §112(d) of the 1990 Amendments to the FCAA. Subpart R is the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution. Subpart R requires gasoline terminals nationwide to control emissions from the refilling of gasoline tank-trucks if emissions of hazardous air pollutants (HAPs) reach a threshold of ten tons per year of any one HAP or 25 tons per year of total HAPs.

Gasoline tank-trucks may also be refilled at a gasoline bulk plant, which is a gasoline transfer facility, excluding marine terminals, with a gasoline throughput less than 20,000 gallons per day, averaged over any consecutive 30-day period. Sections 115.211-115.219 require gasoline bulk plants in ozone nonattainment counties to control gasoline transfer emissions using a vapor balance (similar to that used at gasoline stations meeting Stage I requirements). Outside of the ozone nonattainment counties, however, there is currently no Chapter 115 requirement for control of emissions from gasoline bulk plants. Likewise, there is no Chapter 115 requirement for control of emissions from gasoline tank-truck leaks outside of the ozone nonattainment counties.

The adopted rule changes extend the existing Chapter 115 Stage I vapor recovery, gasoline terminal, gasoline bulk plant, and gasoline tank-truck leak testing requirements (§§115.211-115.217, 115.221-115.227, and 115.234-115.237) to 95 counties in the eastern half of Texas. These counties are: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood.

Concurrently, the commission adopts revisions which reorganize and clarify the rules, including incorporation of a variety of rule interpretations made by the agency's Air Rule Interpretation Team (RIT). These clarifying/reorganizing revisions include, where possible, consolidation or elimination of redundant language or requirements, the use of the active (rather than passive) voice, and relocation of rule language to more logical locations. In general, the commission's goal is to make the rules easier to read and more explicit concerning which requirements apply.

EXPLANATION OF ADOPTED RULES

The changes to §115.10, concerning Definitions, add a new definition of covered attainment counties which specifies the 95 counties to which Stage I, gasoline tank-truck testing, gasoline terminal, and gasoline bulk plant controls were extended; and add new definitions of flare, vapor combustor, and vapor control system. The definition of vapor control system is identical to the existing definition of vapor recovery system, and will facilitate a transition in the Chapter 115 rules to this term from the misleading term "vapor recovery system," which is defined to include both recovery and combustion control devices. The changes to §115.10 also delete the definitions of consumer-solvent products, municipal solid waste landfill emissions, and hand-held lawn and garden and utility equipment because these three definitions are no longer used in the Chapter 115 rules.

In addition, the changes to §115.10 delete the definitions of alcohol, alcohol substitutes, batch, cleaning solution, fountain solution, heatset, lithography, non-heatset, and offset lithography. These terms are used within the Chapter 115 offset printing rules (§§115.442, 115.443, 115.445, 115.446, and 115.449). In separate rulemaking, the commission recently adopted revisions which relocated the definitions of these terms to a new §115.440, concerning Offset Printing Definitions (see the March 12, 1999 issue of the *Texas Register* (24 TexReg 1777)).

The changes to §115.10 also delete the definition of cutback asphalt. This term is used within the Chapter 115 cutback asphalt rules (§§115.512, 115.513, 115.515-115.517, and 115.519). In separate rulemaking, the commission is proposing to relocate the definition of this term to a new §115.510, concerning Cutback Asphalt Definitions (see the April 23, 1999 issue of the *Texas Register* (24 TexReg 3178)).

Finally, the changes to §115.10 delete the following redundant definitions because these terms are already defined in 30 TAC §101.1, concerning Definitions, and are used in multiple chapters of the commission's rules: capture system, carbon adsorber, cold solvent cleaning, condensate, control device, control system, conveyorized degreasing, custody transfer, exempt solvent, gasoline, industrial solid waste, leak, liquid-mounted seal, marine vessel, mechanical shoe seal, motor vehicle fuel dispensing facility, municipal solid waste facility, municipal solid waste landfill, open-top vapor degreasing, process or processes, property, remote reservoir cold solvent cleaning, sludge, solid waste, source, submerged fill pipe, system or device, true vapor pressure, vapor-mounted seal, vent, and VOC water separator. Definitions which remain in §115.10 have been numbered in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The changes to §115.211, concerning Emission Specifications, establish an emission limit for gasoline bulk plants in the covered attainment counties which is equivalent to the current emission limit for gasoline bulk plants in ozone nonattainment counties. Likewise, the changes also establish an emission limit for gasoline terminals in the covered attainment counties. A 1990 rule effectiveness study, in which the agency staff stack-tested all gasoline terminals in the Dallas/Fort Worth area (other than those equipped with flares), found these gasoline terminals to be capable of meeting an emission limit of 10.8 milligram per liter (mg/l) of gasoline loaded. In order to gather more current data, the commission surveyed the test results for gasoline terminals in the covered attainment counties and the current ozone nonattainment counties and determined that the vast majority (94%) meet the 10.0 mg/l emission limit in 40 CFR 63, Subpart R (Gasoline Distribution NESHAP). The remaining 6.0% of the test results show compliance with a 20.0 mg/l emission limit. Consequently, the commission adopts a 20.0 mg/l emission limit for gasoline terminals in the covered attainment counties. Based on the test results, the commission believes that properly-maintained control devices at

gasoline terminals can consistently meet the 20.0 mg/l emission limit. The commission solicited information regarding specific gasoline terminals in the covered attainment counties which cannot meet this emission limit when properly maintained, but none were identified. In addition, the revisions establish an expiration date for the less-stringent emission limit (80 mg/l) which currently applies to gasoline terminals in Gregg, Nueces, and Victoria Counties, and relocate the emission limit for gasoline terminals in these three counties from the existing §115.211(b) to the proposed §115.211(1)(B). The less stringent emission limit will expire upon the compliance date for the new limits. Finally, the revisions delete the emission limit of the existing §115.211(a)(3) for marine terminals in the Houston/Galveston ozone nonattainment area because this limit is already included in the existing §115.212(a)(8)(A).

The changes to §115.212, concerning Control Requirements, extend to the covered attainment counties the requirement that vapors from gasoline transfers at gasoline bulk plants be controlled rather than vented to the atmosphere. Likewise, the changes extend to the covered attainment counties the requirement that vapors from gasoline loading at gasoline terminals be controlled rather than vented to the atmosphere. Also, the changes establish requirements designed to minimize emissions during gasoline transfer at gasoline terminals and gasoline bulk plants in the covered attainment counties. In addition, the changes also extend to the covered attainment counties the requirement that VOC vapors remaining in transport vessels after unloading be kept in vapor-tight transport vessels until the vapors are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation; and update references to definitions which previously were in §115.10 but are now included only in §101.1.

The changes to §115.212(a)(1) also add an option which allows general VOC (i.e., non-gasoline) loading to be controlled through pressurized loading. This will clarify the control requirements for loading of VOCs which are stored and transported under pressure, such as propane.

The changes to §115.212 further add an allowance for draining VOC from a liquid line after transfer into a portable container, which is then closed vapor-tight and disposed of properly. This was added to the existing §115.212(a)(3) and (4) and (b)(3) and (4). The changes to §115.212 also concurrently relocate the requirements of the existing §115.212(a)(4) and (b)(4) to the revised §115.212(a)(3)(E) and (b)(3)(E), respectively. The gasoline terminal loading lockout provision of existing §115.212(a)(9), which currently applies in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas, is relocated to the revised §115.212(a)(4)(C)-(E). This rule requires instrumentation which prevents gasoline transfer if the vapor line is not connected between the transport vessel and the terminal's vapor collection system, or if the control device malfunctions or is not operational. The purpose is to prevent uncontrolled gasoline loading at the loading rack. In addition, the changes to §115.212 extend to the covered attainment counties and the Beaumont/Port Arthur ozone nonattainment area a requirement for instrumentation which prevents gasoline transfer if the gasoline terminal's control device malfunctions or is not operational.

Also, the changes to §115.212 consolidate the gasoline bulk plant loading and unloading requirements of existing §115.212(a)(6) and (7) into the revised §115.212(a)(5), and add an option for gasoline bulk plants to control emissions using a vapor control system rather than a vapor balance system between the storage tank and the storage vessel. The revisions delete the existing §115.212(a)(6)(B), which concerns permissible pressure-vacuum relief valve emissions from gasoline transfer at gasoline bulk plants during emergency situations, because upset conditions are already addressed in §101.6, Upset Reporting and Recordkeeping Requirements.

In addition, the changes to §115.212(b)(1), concerning general land-based VOC loading (i.e., non-gasoline, non-marine), require that at VOC loading operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the vapors from the transport vessel must be controlled by a vapor control system which maintains a control efficiency of at least 90%, a vapor balance system, or pressurized loading. Under the current §115.212(b)(1) and (c)(1), VOC emissions from loading operations in these nine counties must be controlled such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia. When the Texas Air Control Board (TACB) first adopted this requirement on April 10, 1973, the intent and expectation was that the 1.5 psia control level represented a 90% control efficiency, according to a TACB staff memo dated November 12, 1973. However, the use of an aggregate true vapor pressure as a surrogate control efficiency has resulted in some confusion over the past 25 years. To eliminate this confusion, the rule revisions change the control efficiency to reflect the rule's original intent by using more commonly understood terminology. Most control devices can readily achieve and maintain a control efficiency of at least 90%. For example, flares which meet the standard design and operating criteria of 40 CFR 60.18(b) have been shown to operate with a control efficiency of at least 98%. However, some existing control devices, such as condensers, may be unable to consistently meet a 90% control level. The commission believes that the 90% overall control option for general land-based VOC loading, which is available in the proposed §115.213(c), will allow many general VOC loading operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties the flexibility to offset the increased emissions from existing lower-efficiency (less than 90%) control devices with reduced emissions from higher-efficiency (greater than 90%) control devices at the same account number. The commission solicited information regarding specific situations in these nine counties for which the 90% overall control option for general land-based VOC loading will not be a viable method for addressing existing lower-efficiency control devices. However, none were identified.

For marine terminals in the Houston/Galveston ozone nonattainment area, the changes to §115.212 also relocate the vapor balance option and the non-dedicated loading lines control requirement from the existing §115.217(a)(7)(C) and (D) to the revised §115.212(a)(6)(A) and (D), respectively. In addition, the revised §115.212(a)(6)(A) and (D) add an option which allows marine vessel loading to be controlled through pressurized loading. This will clarify the control requirements for loading of VOCs which are stored and transported under pressure, such as propane. Finally, the changes relocate the annual marine vessel vapor-tightness test in the existing §115.212(a)(8)(B) to the revised §115.214(a)(3)(A).

The changes to §115.213, concerning Alternate Control Requirements, revise the term "section" (which should have been "undesignated head") to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); extend the

availability of alternate means of control to the entire covered attainment counties; and condense the three existing subsections into a single subsection. In addition, the changes relocate the 90% overall control options for marine terminals and general land-based VOC loading (i.e., non-gasoline, non-marine) in the existing §115.217(a)(6), (a)(8), (b)(4), and (c)(4) to the revised §115.213(b)-(d), with the addition of a requirement that loading of VOC with a vapor pressure of 11 psia or more must be controlled by either pressurized loading, a vapor control system, or a vapor balance system.

The changes to §115.214, concerning Inspection Requirements, establish inspection requirements for gasoline terminals and gasoline bulk plants in the covered attainment counties; require annual vapor-tightness testing of gasoline tank-truck tanks in the covered attainment counties; specify that the leak testing requirements apply to gasoline tank-truck tanks at both the loading and unloading points; specify that the leak testing requirements apply to general VOC (i.e., non-gasoline) tank-truck tanks at the loading point; and update references to definitions which previously were in §115.10 but are now included only in §101.1.

The changes to §115.214 also relocate the monthly gasoline terminal leak inspection requirement of the existing §115.214(a)(5), which currently applies in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas, to the revised §115.214(a)(2). The revisions extend this monthly gasoline terminal leak inspection requirement to the Beaumont/Port Arthur ozone nonattainment area and the covered attainment counties.

In addition, the changes to §115.214 relocate the annual marine vessel vapor-tightness testing requirements in the existing §115.212(a)(8)(B), which applies to marine terminals in the Houston/Galveston ozone nonattainment area, to the revised §115.214(a)(3)(A). The revised §115.214(a)(3)(D) (currently §115.214(a)(4)(C)) is updated to reference an additional vapor-tightness test available under 40 CFR 63.565(c). The inclusion of this second test method for determining marine vessel vapor-tightness will provide additional flexibility to the regulated community.

The revised §115.214(a)(1)(D), (a)(3)(G), and (b)(1)(D) add exclusions from the leak inspection requirements for fumes from hatches or vents resulting from VOC transfer for which control of the transfer emissions is not required. The revised §115.214(b)(1)(C) adds a requirement to gasoline terminals and gasoline bulk plants in the covered attainment counties that gasoline tank-truck tanks pass an annual leak-tightness test.

The changes to §115.215, concerning Approved Test Methods, extend the existing test methods to the covered attainment counties and consolidate the existing §115.215(a) and (b) into a single subsection. Because it is not reasonably possible to measure the mass emission rate from an elevated flare (an elevated flare's flame is open to the atmosphere, such that the emissions cannot be routed through a stack), the test methods for flow rate and VOC concentration in §115.215(1) and (2) do not apply to flares. In order to specify performance requirements for flares, the revised §115.215(3) establishes the test requirements of 40 CFR 60.18(b). Because flares cannot be stack-tested, the revised §115.215(3) also specifies that compliance with the requirements of 40 CFR 60.18(b) represents compliance with the emission specifications of §115.211 and the control efficiency requirements of §115.212. The revisions to §115.215 also add a new paragraph (10), which authorizes the use of test methods other than those specifically listed in §115.215, provided that any new test method is validated using the procedures in 40 CFR 63, Appendix A, Test Method 301, with the executive director acting as the administrator. This revision is necessary because in some specific unique situations, the listed test methods may be inappropriate. The new paragraph (10) increases flexibility by allowing the use of additional test methods which may be more cost-effective and more appropriate in certain unique situations.

The changes to §115.216, concerning Monitoring and Recordkeeping Requirements, extend the recordkeeping requirements to gasoline terminals and gasoline bulk plants in the covered attainment counties; update references to definitions which previously were in §115.10 but are now being included only in §101.1; revise a reference to the EPA for consistency with the commission's style guidelines; consolidate the existing §115.216(a) and (b) into a single subsection; specify that flares must meet the requirements of 40 CFR 60.18(b) and 30 TAC Chapter 111; and state that records of appropriate operating parameters must be kept for types of vapor control systems not specifically listed in §115.216(1)(A) and (B). The revised §115.216(1)(A)(iv) and (1)(B) specify exhaust gas temperature monitoring of vapor combustors, with an option that the owner/operator of a vapor combustor may consider it to be a flare and monitor the unit under the flare requirements specified in 40 CFR 60.18(b) and Chapter 111. These revisions are necessary to ensure that control devices are functioning properly, and to clarify how vapor combustors are to be monitored. Based upon information from the agency's New Source Review Permits Division, most existing flares at gasoline terminals and land-based general VOC (non-gasoline) loading facilities meet the design and operating criteria of 40 CFR 60.18(b). The commission solicited information regarding flares that do not meet the requirements of 40 CFR 60.18(b). However, none were identified. The commission deleted the proposed change to §115.216 which would have added a requirement that records must include information on how the design standard or operation of equipment meets the emission specifications and control requirements. The commission believes a more thorough analysis of the impacts on the regulated community is needed.

The revisions to the existing §115.216(a)(3)-(5), (b)(3), and (b)(5), which specify the daily recordkeeping for land-based VOC transfer operations, consolidate and relocate these requirements to the revised §115.216(3), with the only records required being those which are necessary to establish compliance with, or exemption from, the rule requirements. The existing §115.216(a)(1) and (b)(1), which require a daily record of the total quantity of VOC loaded at the plant, are being consolidated and relocated to the revised §115.216(3)(D), and the applicability reduced. Specifically, this record of daily VOC loaded will only be required when needed to establish the exemption eligibility of loading operations and gasoline bulk plants below the 20,000 and 4,000 gallons per day thresholds, respectively. Similarly, for general VOC (non-gasoline) transfer operations in which all VOC handled has a low vapor pressure, the revised §115.216(3)(C) will allow these operations to simply keep records of the type and vapor pressure of each VOC transferred, and any appropriate test results.

Previously, §115.216 did not include specific recordkeeping requirements for land-based VOC transfer operations in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

The revisions to §115.216 add recordkeeping requirements for land-based general VOC (i.e., non-gasoline) transfer operations in these counties which are sufficient to document compliance with the control requirements, inspection requirements, and exemptions.

The existing §115.216(a)(2)(D) and (b)(2)(D), which concern records associated with control device maintenance activities, are being deleted because maintenance activities are already addressed in 30 TAC §101.7, Maintenance, Start-up and Shutdown Reporting, Recordkeeping, and Operational Requirements.

The changes to §115.217, concerning Exemptions, establish an exemption for small (less than 4,000 gallons per day) gasoline bulk plants in the covered attainment counties; update references to definitions which previously were in §115.10 but are now being included only in §101.1; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and consolidate the existing §115.217(b) and (c) into a single subsection.

In addition, the revisions to §115.217 relocate the 90% overall control options for marine terminals and general land-based VOC loading (i.e., non-gasoline, non-marine) in the existing §115.217(a)(6), (a)(8), (b)(4), and (c)(4) to the revised §115.213(b)-(d). The revisions also relocate the marine vessel exemptions in the existing §115.217(a)(4) and (7) to the revised §115.217(a)(5), and add §115.217(a)(5)(A)(ii) to clarify that transfer of VOC from one marine vessel to another marine vessel ("lightering") is exempt, as long as the VOC transfer does not use loading arm(s), pump(s), meter(s), valve(s), or piping that are part of a marine terminal. Any lightering which uses a marine terminal's loading arm(s), pump(s), meter(s), valve(s), or piping is treated as though the VOC was loaded directly from the marine terminal into the marine vessel, and is required to be controlled the same as any other marine vessel loading which occurs at the terminal.

Further, the changes to §115.217 revise the existing exemptions for low vapor pressure VOC loading, low throughput of land-based VOC loading, crude oil, condensate, liquefied petroleum gas (LPG), and small gasoline bulk plants to make clear which requirements these operations must meet. In the existing §115.217(a)(1)-(3), (b)(1)-(3), and (c)(1)-(3), low vapor pressure VOC loading, low throughput of land-based VOC loaded, and LPG are exempt from the requirements of §115.212 only. Similarly, the existing §115.217(b)(3) and (c)(3) exempt the transfer of crude oil and condensate in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties from the requirements of §115.212 only. The revisions specify that after unloading, the transport vessel must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and are discharged in accordance with the control requirements of that operation.

The revisions broaden the existing exemptions for crude oil and condensate (applicable only in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties), LPG, low vapor pressure VOC loading, low throughput of land-based VOC loading, and small gasoline bulk plants to exempt most inspection, testing, and recordkeeping requirements. However, these operations will continue to be required to conduct inspections for visible liquid leaks, cease VOC transfer when a liquid leak is observed, and repair the leak before transferring additional VOC. General land-based (i.e., non-gasoline) transfer of low vapor pressure VOC and small general land-based VOC loading plants which handle both exempt and non-exempt VOC will be required to maintain records of test results (e.g., vapor pressure testing) and the vapor pressure and type of each VOC transferred (excluding gasoline). As noted previously, under the revised §115.216(3)(D), the requirement of the current §115.216(a)(1) and (b)(1) to maintain records of total VOC loaded will continue to apply to low throughput gasoline bulk plants and low throughput general VOC loading operations. The revisions to §115.217(b) also relocate the existing exemption for loading and unloading of marine vessels in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis and Victoria Counties to a new paragraph (6), and clarify that this exemption applies to all of the covered attainment counties.

The changes to §115.219, concerning Counties and Compliance Schedules, specify the compliance schedule for the new requirements; delete language which is obsolete due to the passing of a November 15, 1996 compliance date; and revise references to the Texas Natural Resource Conservation Commission (TNRCC) and the EPA for consistency with the commission's style guidelines.

The changes to §115.221, concerning Emission Specifications, add an emission limit for filling of gasoline storage tanks at motor vehicle fuel dispensing facilities in the covered attainment counties; and change a reference from "vapor recovery system" to "vapor control system" for clarification. This emission limit is the same one already required in ozone nonattainment counties.

The changes to §115.222, concerning Control Requirements, extend to the covered attainment counties the requirements designed to minimize emissions during these gasoline transfer operations, as well as the requirement that filling of gasoline storage tanks at motor vehicle fuel dispensing facilities be controlled through a vapor balance system rather than vented to the atmosphere. The changes to §115.222 also require non-coaxial Stage I connections for the installation of new storage tanks or modification of existing storage tanks in the covered attainment counties after December 22, 1998. In addition, the changes to §115.222 extend to the covered attainment counties the requirement that VOC vapors remaining in tank-truck tanks after unloading be kept in vapor-tight tank-truck tanks until the vapors are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. Finally, the changes to §115.222 update references to definitions which previously were in §115.10 but are now being included only in §101.1, and delete language which became obsolete upon the passing of the final Stage II compliance deadline on December 22, 1998.

The changes to §115.223, concerning Alternate Control Requirements, revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and establish the availability of alternate means of control in the covered attainment counties.

The changes to §115.224, concerning Inspection Requirements, extend to the covered attainment counties the inspection requirements for gasoline transfers at motor vehicle fuel dispensing facilities and the annual vapor-tightness testing requirement for gasoline tank-truck tanks; revise the term "undesignated head" to "division" in response to revised *Texas Register*

rules (23 TexReg 1289, February 13, 1998); and update the title of the division for consistency with a previous name change.

The changes to §115.225, concerning Approved Test Methods, extend the existing test methods to the covered attainment counties.

The changes to §115.226, concerning Recordkeeping Requirements, establish recordkeeping requirements for motor vehicle fuel dispensing facilities in the covered attainment counties; add recordkeeping requirements for exempt facilities in the covered attainment counties to ensure compliance with the gasoline tank-truck leak testing requirements; and correct the title of a division.

The changes to §115.227, concerning Exemptions, establish exemptions for gasoline storage tanks in the covered attainment counties; add an exemption from gasoline throughput recordkeeping for small gasoline storage tanks (no more than 1,000 gallons capacity); clarify that the requirements are applicable to motor vehicle fuel dispensing facilities; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and correct the title of a division. The revised rules include an exemption for gasoline stations in the covered attainment counties with a gasoline throughput less than 125,000 gallons per month.

The changes to §115.229, concerning Counties and Compliance Schedules, specify the compliance schedules for the new requirements in the covered attainment counties; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and correct the title of a division. The changes to §115.229 specify that larger gasoline stations (those with a gasoline throughput of at least 125,000 gallons per month) are required to comply by April 30, 2000. The changes also specify that the intent of the phrase "as soon as practicable, but no later than..." in §115.229(d) is that before this compliance date, gasoline stations which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery by a gasoline tank-truck which is likewise equipped for Stage I vapor recovery. The commission solicited comments regarding possible city, county, or state incentives to encourage early implementation of the Stage I requirements. However, no comments regarding possible incentives were received.

The changes to §115.234, concerning Inspection Requirements, establish annual vapor-tightness testing requirements for gasoline tank-truck tanks in the covered attainment counties; specify that the leak testing requirements apply to gasoline tank-truck tanks at both the loading and unloading points; specify that the leak testing requirements apply to general VOC (i.e., non-gasoline) tank-truck tanks at the loading point; and revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The changes to §115.235, concerning Approved Test Methods, specify the testing requirements and approved test methods for gasoline tank-truck tanks in the covered attainment counties; specify that the leak testing requirements apply to gasoline tank-truck tanks at both the loading and unloading points; specify that the leak testing requirements apply to general VOC (i.e., non-gasoline) tank-truck tanks at the loading point; and clarify that the alternative testing option of the existing §115.235(4) applies to general VOC (i.e., non-gasoline) tank-truck tanks at the loading point; and more specifically references the leakage test method of 49 CFR 180.407(h).

The changes to §115.236, concerning Recordkeeping Requirements, add recordkeeping requirements for gasoline tank-truck leak testing in the covered attainment counties; clarify that records of leakage tests conducted under 49 CFR 180.407(h) should be kept as specified in 49 CFR 180.417 instead of Method 27 records; revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998); and revise references to the TNRCC and the EPA for consistency with the commission's style guidelines.

The changes to §115.237, concerning Exemptions, add an exemption in the covered attainment counties for transport vessels other than tank-trucks (e.g., railcars); add an exemption for portable tanks, as defined in 49 CFR 171.8; delete language which is obsolete due to the passing of a May 31, 1995 compliance date; and revise the term "undesignated head" to "division" in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998).

The changes to §115.239, concerning Counties and Compliance Schedules, specify an April 30, 2000 compliance date for the gasoline tank-truck leak testing in the covered attainment counties; and delete language which is obsolete due to the passing of January 31, 1994 and May 31, 1995 compliance dates. The changes also specify that the intent of the phrase "as soon as practicable, but no later than..." in §115.239(b) is that before the applicable compliance date, gasoline tank-trucks which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery at a gasoline station which is likewise equipped for Stage I vapor recovery.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because although it meets the definition of a "major environmental rule" as defined in the Code, it does not meet any of the four applicability requirements listed in §2001.0225(a). Specifically, the emission limitations and control requirements within this rulemaking were developed in order to meet the NAAQS for ozone set by the EPA under §109 of the FCAA. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. This rulemaking is not an express requirement of state law, but was developed specifically in order to meet the air quality standards established under federal law as NAAQS. Specifically, this rulemaking is intended to help bring ozone nonattainment areas into compliance, and help keep attainment and near-nonattainment areas from going into nonattainment. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Therefore, this rulemaking does not involve an agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program, and was not developed solely under the general powers of the agency. No comments were received during the comment period regarding the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to extend to 95 counties in the eastern half of Texas the Chapter 115 rules for Stage I vapor recovery, gasoline terminals, gasoline bulk plants, and gasoline tank-truck leak testing which currently apply in the Beaumont/ Port Arthur, El Paso, Houston/Galveston, and Dallas/Fort Worth ozone nonattainment areas. This rulemaking is part of the new TCAS which includes a variety of options to control ground-level ozone. The purpose is to help keep ozone attainment and near-nonattainment areas, such as Austin, Corpus Christi, Longview/ Tyler/Marshall, and San Antonio, in compliance with the federal ozone standard, and to help the Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston ozone nonattainment areas reach attainment. Promulgation and enforcement of the rule amendments may possibly burden private real property because this rulemaking action requires the installation of Stage I vapor recovery systems at gasoline stations, which includes the permanent installation of subsurface piping. In addition, this rulemaking action requires the installation of a vapor balance system at gasoline bulk plants, which also requires the permanent installation of piping. Finally, this rulemaking action requires the permanent installation of a heat-sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame. Although the rule revisions do not directly prevent a nuisance, prevent an immediate threat to life or property, or prevent a real and substantial threat to public health and safety, the rule revisions fulfill a federal mandate under §110 of the 1990 Amendments to the FCAA. Specifically, the emission limitations and control requirements within this rulemaking were developed in order to meet the NAAQS for ozone set by the EPA under §109 of the FCAA. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under §110 of the FCAA and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, the purpose of the rulemaking is to meet the air quality standards established under federal law as NAAQS. Consequently, the following exemption applies to these rules: an action reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. 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, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency, and has determined that this rulemaking is consistent with the applicable CMP goals and policies. The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area. No new sources of air contaminants will be authorized by the rule revisions, and the revisions will result in a reduction in VOC emissions due to the new control requirements on gasoline stations, gasoline terminals, gasoline bulk plants, and gasoline tank-trucks in 95 counties in the eastern half of Texas. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. No comments were received during the comment period regarding the consistency of the proposed rules with the CMP.

HEARING AND COMMENTERS

Public hearings on this proposal were held in Austin on January 25, 1999 at 11:00 a.m. in Building F, Room 2210 at the TNRCC Complex, located at 12100 Park 35 Circle; in San Antonio on January 25, 1999 at 7:00 p.m. at the San Antonio City Council Chambers located at 103 Main Plaza; in Lufkin on January 26, 1999 at 2:00 p.m. at the Lufkin City Council Chambers located at 300 East Shepherd, Room 102; and in Tyler on January 26, 1999 at 7:00 p.m. at the Tyler Junior College Regional Training and Development Complex located at 1530 South Southwest Loop 323, Room 104. The comment period initially was to close on February 1, 1999, but was extended until February 15, 1999.

Two commenters submitted oral testimony, and 16 commenters submitted written testimony on the proposal. Austin Transportation Study, EPA, Lower Colorado River Authority, and the City of San Antonio (San Antonio) supported the proposed revisions. Austin Sierra Club (Sierra Club), Chevron Products Company (Chevron), Citgo Petroleum Corporation (Citgo), Dow Chemical Company (Dow), Exxon Company U.S.A. (Exxon), GATX Terminals Corporation (GATX), Jenkens and Gilchrist (Jenkens), Mobil Business Resources Corporation (MBRC), Mobil Oil Corporation (Mobil), Texas Chemical Council (TCC), Texas Oil and Gas Association (TXOGA), Ultramar Diamond Shamrock Corporation (UDS), and an individual generally supported the proposed revisions but suggested changes or clarifications. The City of Corpus Christi (Corpus Christi) opposed the proposed revisions. Chevron, Citgo, and GATX supported TXOGA's comments, while Dow supported TCC's comments.

The Sierra Club commented that Stage I vapor recovery reduces toxins and VOCs which can impact neighboring property.

The commission notes that implementation of Stage I vapor recovery results in reductions of ground-level ozone in ozone near-nonattainment areas, ozone nonattainment areas, and surrounding counties, as well as reduced public exposure to air toxics such as benzene.

Exxon, TXOGA, and UDS commented on the STATUTORY AUTHORITY section of the proposal and stated that the extension of the Texas Clean Air Act's authorizing provisions to adopt control measures in ozone attainment areas is "a stretch from a legal standpoint." However, Exxon, TXOGA, and UDS commented that from a technical standpoint, they believed the intent is directionally correct, although they would prefer "a complete sound science determination."

The commission believes that it does have authority to adopt the proposed rules pursuant to Texas Health and Safety Code, §382.012 and §382.017. This rulemaking is demonstrated to help the state achieve attainment of the ozone standards in its nonattainment areas as well as in its near nonattainment areas and therefore is needed to meet those federal standards. In adopting rules under §382.017(e), the commission's authority

is not limited by the attainment status of an area but instead the commission is required to consider factors including, "existing physical conditions topography, population, and prevailing wind direction and velocity." This statutory language clearly allows for the commission to consider a regional approach to improve air quality as it has done here. Additionally, while certain air control strategies such as Stage II vapor recovery systems are statutorily limited to use in nonattainment areas, control requirements for Stage I vapor recovery, gasoline terminals, gasoline bulk plants, and tank-truck leak testing are not.

An individual expressed concern about enforcement of the Stage I, gasoline bulk plant, gasoline terminal, and tank-truck leak testing rules in the 110-county TCAS area, while San Antonio commented that enforcement is critical to the success of the program.

The Field Operations Division and the Enforcement Division of the Office of Compliance and Enforcement are responsible for enforcing the Chapter 115 rules, with the Air Program responsible for the gasoline bulk plant, gasoline terminal, and tank-truck leak testing rules, and the Waste Program responsible for the petroleum storage tank (PST) rules at gasoline stations. The Waste Program's inspectors will enforce the Stage I vapor recovery rules at gasoline stations when conducting their routine PST inspections.

Most of the gasoline terminals which will have to comply with the proposed rules are currently subject to air permits and/or to similar requirements under 40 CFR 63, Subpart R (the Gasoline Distribution NESHAP), and therefore are already being inspected for compliance. Consequently, only a limited number of additional gasoline terminals will need to be inspected for compliance with the proposed Chapter 115 rules. Based on a survey of throughput at gasoline bulk plants, an estimated 75% are expected to be exempt from the vapor balance requirement because their gasoline throughput is less than 4,000 gallons per day (averaged over each consecutive 30-day period). Therefore, only a relatively small number of gasoline bulk plants will need to be inspected for compliance with the substantive requirements of the proposed rules. The Air Program's inspectors will enforce the gasoline tank-truck leak testing requirements when conducting their routine inspections at gasoline terminals and gasoline bulk plants. In conclusion, enforcement of these rules will not significantly increase the number of facilities currently inspected by the state and local governments. However, enforcement of these rules will cause a minor increase in workload during inspection of the affected facilities.

Mobil commented on a February 4, 1999, letter from the commissioners to Governor George W. Bush and suggested that this letter inaccurately represented that the proposed rulemaking only affects gasoline stations that dispense over 125,000 gallons of gasoline per month. Mobil noted that other facilities (for example, gasoline terminals and gasoline bulk plants) will be affected by the rulemaking.

The purpose of the letter was to clarify several common misconceptions regarding the TCAS and to provide a status report to Governor Bush. For example, the purpose of the portion of the letter that Mobil cited was simply to clarify that the proposed Stage I rules would not require installation of Stage I equipment at all gasoline stations in the covered attainment counties, but only at the largest of these gasoline stations (those with a monthly gasoline throughput of at least 125,000 gallons). The letter was never intended to give a detailed description of the elements of the proposed rulemaking.

Citgo suggested that it be clarified that the use of equipment in maintenance operations, which can involve transfer of VOC liquid, does not require controls when conducted for periodic maintenance purposes as allowed under §101.7. Citgo cited the following examples of these types of operations: removal of basic sediment and water or water draw into vacuum trucks from storage tanks, tank-to-tank product transfers using portable pumps, or other such activities.

Air emissions associated with upset conditions and maintenance are regulated by Chapter 101, 30 TAC §101.6 (concerning Upset Reporting and Recordkeeping Requirements), and §101.7 (concerning Maintenance, Start-up, and Shutdown Reporting, Recordkeeping, and Operational Requirements), and not by Chapter 115, unless otherwise specifically stated. The commission has made no changes in response to the comment.

Exxon, MBRC, TXOGA, and UDS commented on the definition of continuous monitoring in §115.10(6) and stated that this definition is more stringent than federal requirements and TNRCC monitoring protocols being developed for federal compliance assurance monitoring (CAM) and periodic monitoring (PM) requirements by state rule.

There are no federal CAM or PM requirements that define the percentage of data that must be collected for a monitoring device to be considered continuous. Therefore, the definition of continuous monitoring in §115.10(6) is not more stringent than federal requirements. The CAM requirements will be included in General Operating Permits (GOPs), but the commission has not established or even proposed any CAM requirements yet. It should be noted that Title 40 CFR 64.10 (Savings Provisions) of the CAM rules states:

"(a) Nothing in this part shall:

(1) Excuse the owner or operator of a source from compliance with any existing emission limitation or standard, or any existing monitoring, testing, reporting or recordkeeping requirement that may apply under federal, state, or local law, or any other applicable requirements under the Act. *The requirements of this part shall not be used to justify the approval of monitoring less stringent than the monitoring which is required under separate legal authority* and are not intended to establish minimum requirements for the purpose of determining the monitoring to be imposed under separate authority under the Act, including monitoring in permits issued pursuant to title I of the Act. The purpose of this part is to require, as part of the issuance of a permit under title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part. [emphasis added]"

Regarding PM, Title 40 CFR 70 (State Operating Permit Programs) simply specifies that states must implement PM, but there are no federal rules which establish the details of PM. Instead, the EPA is giving the states guidance on PM. No PM requirements established or drafted to date have required continuous monitoring.

In addition, neither CAM nor PM rules in 40 CFR 64 and 70, respectively, define "continuous monitoring." However, the CAM rule preamble does say that the rule requires data collection four times per hour, which is consistent with the EPA's definition of continuous monitoring. The rule does not specify a

certain percentage of data that must be collected, but instead simply requires monitoring at all times the unit is operating, except during events such as monitoring malfunctions, quality assurance/quality control, etc.

Finally, it should be noted that the commission did not propose to revise the existing definition of continuous monitoring. This definition is simply being numbered in response to revised *Texas Register* rules (23 TexReg 1289, February 13, 1998) which require numbering of definitions. The commission has made no changes in response to these comments.

No comments were received on the definition of cutback asphalt. This term is used within the Chapter 115 cutback asphalt rules (§§115.512, 115.513, 115.515-115.517, and 115.519). Because in separate rulemaking the commission is proposing to relocate the definition of this term to a new §115.510, concerning Cutback Asphalt Definitions (see the April 23, 1999 issue of the *Texas Register* (24 TexReg 3178)), the commission has deleted the definition of cutback asphalt from §115.10.

MBRC, TXOGA, and UDS commented on §115.10 and suggested that the proposed new definitions of flare and vapor combustor do not allow vapor combustors to be treated as flares.

While it is true that vapor combustors are clearly excluded from the definition of flare, §115.215 and §115.216 allow the owner/operator of a vapor combustor the option of treating the unit as a flare for purposes of testing, monitoring, and recordkeeping requirements as an alternative to meeting the corresponding vapor combustor requirements. The commission has made no changes in response to the comment. However, the commission has revised the definition of flare to make it clear that a flare is an open combustor which is used as a control device. This will prevent the definition from being incorrectly used for open combustors which are not control devices.

No comments were received on the proposed definition of regional VOC zone. The commission has replaced this definition with a definition of covered attainment counties because it believes this term is more descriptive. The counties specified in the definition are the same as proposed. The commission has replaced all references to regional VOC zone in the rule language accordingly.

Jenkens commented on §115.10 and suggested that the definition of tank-truck tank be revised to apply only to tanks that are permanently mounted on and affixed to a tank-truck or trailer. Jenkens' intent was to exclude portable tanks, known as "isocontainers," from the definition of tank-truck tank such that isocontainers would be exempt from the annual vapor-tightness testing requirements of §§115.214(a)(1)(C) and 115.234-115.239.

This comment focuses on vapor-tightness testing of "isocontainers." The commission does not believe that the definitions section (i.e., §115.10) is the appropriate place to address concerns about §§115.214(a)(1)(C) and 115.234-115.239, and has made no changes to §115.10 in response to the comment. The commission instead is addressing the commenter's concerns in the discussion regarding §115.214(a)(1)(C) and §115.234(4).

Exxon, MBRC, TXOGA, and UDS commented that the definitions of vapor control system and vapor recovery system in §115.10 are the same, and stated that a vapor recovery system can include a recovery device that does not destroy emissions but instead recovers them. The commenters also noted that federal rules differentiate a recovery device from a control device.

The new definition of vapor control system is deliberately identical to the existing definition of vapor recovery system. The existing definition of vapor recovery system includes both recovery and combustion (destruction) control devices, but often the term has been mistakenly read to mean that only recovery-type control devices are included. To minimize any confusion, the commission is adding a definition of vapor control system, which is identical to the existing definition of vapor recovery system. This will facilitate a transition in the Chapter 115 rules to the more general term "vapor control system" from the misleading term "vapor recovery system." The terminology used in federal rules is not pertinent to the clarification of the Chapter 115 state rules which the commission is making by adding a definition of vapor control system. The commission has made no changes in response to the comment.

Citgo and an individual commented on §115.211(1)(B), which establishes an emission limit of 20.0 mg/l for vapor control systems at gasoline terminals in the covered attainment counties. Citgo, while noting that the company's gasoline terminals meet the 20.0 mg/l emission limit, objected to this limit on the basis that it would remove approximately one half of the compliance margin which is now available to accommodate operational and test method variables. The individual suggested that since nearly all gasoline terminals in the covered attainment counties can meet a 10.0 mg/l emission limit, the TNRCC should require all gasoline terminals in this area to meet this limit.

The 20 mg/l limit is more stringent than the current 80 mg/l limits in Chapter 115 (for Gregg, Nueces, and Victoria Counties) and in 40 CFR 60, Subpart XX, for gasoline terminals; and the 35 mg/l limit of 40 CFR 60, Subpart XX, for gasoline terminals which were constructed or refurbished on or after December 17, 1980. As noted previously, the commission surveyed the test results for gasoline terminals in the covered attainment counties and the current ozone nonattainment counties and determined that the vast majority (94%) meet the 10.0 mg/l emission limit in 40 CFR 63, Subpart R (Gasoline Distribution NESHAP), with the remaining 6.0% showing compliance with a 20.0 mg/l emission limit. Adequate maintenance, rather than replacement, of existing control devices in the covered attainment counties is more cost-effective. It should be noted that Citgo stated that its control devices "operate well below both the current as well as the proposed [(20 mg/l)] mass emission limitation," which indicates that the 20 mg/l limit affords gasoline terminals in the covered attainment counties an adequate "compliance margin." Consequently, the commission believes that a 20.0 mg/l emission limit is appropriate for gasoline terminals in the covered attainment counties. The commission has made no changes in response to the comment.

MRBC, TXOGA, and UDS stated that §115.211 should specify that facilities are required to either meet the flare requirements of 40 CFR §60.18(b), or meet the specified emission limit.

Section 115.215(3) already specifies that compliance with the flare requirements of 40 CFR §60.18(b) is considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.211 and §115.212. The commission has made no changes in response to the comment.

The commission has revised §115.211(1)(B) by extending the compliance date to April 30, 2000 in response to Mobil's

comment on §115.219 that the proposed December 31, 1999 compliance date represents an aggressive schedule. The revised compliance date will provide the regulated community with additional time to comply with the new requirements, but will still ensure that the emission reductions occur prior to the critical 2000 ozone season.

Dow commented on §115.212(a)(1) and (6), and (b)(1) and suggested that pressurized loading should be given as an alternative to using a vapor control system or a vapor balance system.

The commission agrees and has made the suggested changes. This will clarify how compressed or liquefied gas loading is to be controlled.

Dow commented on §115.212(a)(2) and (b)(2), which state: "After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation." Dow requested confirmation that the intent of the new language "in accordance with the control requirements of that operation" is equivalent to the previous language "the requirement to discharge the vapors remaining in the transport vessel after unloading to a vapor recovery system does not apply if the transport vessel is refilled, degassed, and/or cleaned at an operation for which control of the vapors is not required."

The new language is intended to be a shorter, but equivalent, version of the old language. The commission has made no changes in response to the comment.

An individual suggested that the phrase "the contents may be placed in a portable container" in §115.212(a)(3)(A)(ii) and (E) and (b)(3)(A)(ii) and (E) be modified so that the portable container is leak-tight and will not emit any liquid or vapor VOC emissions.

As proposed, §115.212(a)(3)(A)(ii) and (E) and 115.212(b)(3)(A)(ii) and (E) allow residual VOC from a liquid transfer line, after VOC transfer, to be drained into a portable container, which is then closed and disposed of properly. The intent is that the portable container be closed vapor-tight when not in use, in order to prevent evaporation of the VOC into the atmosphere. The commission has clarified this intent by adding "vapor-tight" to the referenced rules.

Chevron, Exxon, MBRC, Mobil, TXOGA, and UDS commented on §115.212(a)(4)(C), which currently applies to gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas and is proposed to be relocated from the existing §115.212(a)(9) and extended to the Beaumont/Port Arthur ozone nonattainment area and the covered attainment counties. The existing §115.212(a)(9) states that: "Each vapor control system shall be instrumented so that the pump(s) transferring gasoline to the transport vessels will not operate unless the vapor control system is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor control system serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters." Chevron, Exxon, MBRC, TXOGA, and UDS stated that this "loading lockout" language is overly broad and needs to be clarified.

The intent of the requirements is twofold. First, the intent is for gasoline terminals to be equipped with sensors and other equipment which is designed and connected to monitor the status of the control device, and if the control device malfunctions (i.e., is not operating in accordance with the control device manufacturer's specifications) or is not operational (i.e., not in service), then the system automatically stops gasoline transfer to the transport vessel(s) immediately. Most control devices are equipped so that when they complete a startup cycle and are operating in accordance with the manufacturer's specifications, they send a permissive signal to the pump(s) serving the loading rack(s) which allows loading to begin. Because this is a standard feature on gasoline terminal control devices, the commission believes that this requirement is appropriate and has revised the proposed §115.212(a)(4)(C) and (b)(4)(C) to more clearly state the intent.

Second, the intent of the requirements is for gasoline terminals to be equipped with sensors and other equipment which is designed and connected to monitor either a positive coupling of the vapor return line to the transport vessel, or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system. Further, the intent is that if the system detects that the vapor return line is not connected during gasoline transfer, then the system automatically stops the transfer of gasoline to the transport vessel in the affected loading bay. These requirements have applied to gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas since the November 15, 1996 compliance date.

Chevron, TXOGA, and UDS commented that specific information regarding the emission reductions associated with loading lockout was unavailable from the commission staff. Chevron, MBRC, TXOGA, and UDS stated that the commission's cost estimates are low and that the cost of control is too high for relatively low emission reductions.

For the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas, the emission reductions associated with the loading lockout are included as part of the gasoline terminal emission reduction estimates of 2.17, 0.77, and 0.63 tons per day, respectively, as given in the 1996 "Fix-Ups to the 15% Rate-of-Progress SIP for Dallas/Fort Worth, El Paso, Beaumont/Port Arthur, and Houston/Galveston Ozone Nonattainment Areas." It should be noted that any loss of emission reduction credit could require the implementation of other rules to make up the difference. Specific estimates for the covered attainment counties were unavailable because most of the companies did not provide the necessary information regarding current terminal configuration when requested. The commission clarifies that the estimated cost given in the rule proposal for equipping a gasoline terminal in the covered attainment counties to meet the loading lockout requirement associated with vapor return line connections should have specified that the estimate was per loading bay. However, because gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas were already required to meet the loading lockout requirements by November 15, 1996, there is no additional cost to these terminals associated with continuing to comply with the rule. The commission believes that it is appropriate for gasoline terminals in ozone nonattainment areas to have more stringent requirements than in attainment and near-nonattainment areas, and therefore is retaining the vapor return line loading lockout requirement for gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. For the covered attainment counties and the Beaumont/Port Arthur ozone nonattainment area, the com-

mission has revised §115.212(b)(4)(C) to include the gasoline transfer lockout requirement when the vapor control system is out of service or not operating properly, but has deleted the proposed loading lockout requirement associated with vapor return line connections. In future rulemaking, the commission may propose to add this requirement to all or part of the covered attainment counties if additional VOC emission reductions are found to be necessary.

Chevron, MBRC, TXOGA, and UDS stated that the requirement for instrumentation on the vapor connection goes beyond federal requirements found in the gasoline distribution NESHAP (Title 40 CFR Part 63, Subpart R), the gasoline terminal new source performance standards (NSPS) (Title 40 CFR Part 60, Subpart XX), and benzene transfer operations NESHAP (Title 40 CFR Part 61, Subpart BB).

The benzene transfer operations NESHAP applies to materials which are predominantly benzene. Title 40 CFR Part 61, §61.300(a) specifically excludes loading racks at which gasoline is loaded. Consequently, the requirements of the benzene transfer operations NESHAP are not pertinent. The requirements of the gasoline distribution NESHAP and gasoline terminal NSPS were developed to apply to larger sources of air toxics and to new or modified gasoline terminals, respectively. In contrast, the Chapter 115 loading lockout requirements were developed to help achieve attainment with the ozone standard in ozone nonattainment areas. The commission believes that it is appropriate for the requirements of the rules to vary, given the varying purposes of those rules.

Chevron, MBRC, TXOGA, and UDS commented that automatic instrumentation cannot determine if the vapor hose is properly connected and can allow loading to continue if the hose is damaged or only partially connected. Chevron, MBRC, TXOGA, and UDS also stated that the operator loading the transport vessel can more effectively inspect the condition of the vapor hose and correct closure of the camlock latches, and also terminate gasoline loading if necessary. Mobil stated that ensuring transport vessels are prevented from loading without a properly connected and operating vapor control system should be left to the gasoline terminal.

While it is true that automatic instrumentation can allow loading to occur if the vapor hose contains a hole, or if the camlock fitting between the vapor hose and the truck is not completely secured, such instrumentation will prevent the uncontrolled loading of gasoline. During visits to various gasoline terminals, the commission's staff determined that transport vessel operators allow vapor and liquid gasoline leaks to occur without taking corrective action. Therefore, the commission does not believe that relying on the operators alone is sufficient to ensure control of gasoline loading emissions. The commission has made no changes in response to the comment.

Chevron, MBRC, TXOGA, and UDS commented that because of design limitations, there is a response time for certain technology (thermistor-based or pressure-based mass flow sensors) before mass flow is detected. Consequently, some time may pass in which gasoline transfer is allowed, even if the vapor hose is not connected.

The commission's staff reviewed existing systems at gasoline terminals and determined that the response time of these systems allowed from approximately 110 to as high as 290 gallons of gasoline loading before mass flow of the vapors was detected. A typical response time is one minute, based upon the manufacturer's recommendation. Therefore, the commission has revised §115.212(a)(4)(C) to allow a response time of up to one minute. This will ensure that completely uncontrolled loading of an entire transport vessel does not occur while still taking into account a reasonable response time for thermistor-based and pressure-based mass flow sensors.

Chevron, MBRC, TXOGA, and UDS commented that loading pumps generally serve multiple loading bays and that the requirement that instrumentation shut off the loading pump(s) for a failure at a single bay would unnecessarily shut down all loading bays.

The commission has added a new §115.212(a)(4)(C)(ii), which allows the lockout of gasoline transfer to be limited to the loading bay in which the sensor was triggered.

Chevron, TXOGA, and UDS stated that some facilities, which have a vapor collection and holding design, do not require that the control device be activated during each transfer, and therefore will not necessarily have the control device operating at the time of loading.

The commission is aware of one gasoline terminal which has a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. In order to address this unique design, the commission has revised the rule language to add a new §115.212(a)(4)(D), which specifies that for such gasoline terminals, if the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, then the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

Citgo commented on the proposed removal of the existing §115.212(a)(6)(B), which concerns permissible pressure relief valve emissions from gasoline transfer at gasoline bulk plants during emergency situations. This removal was proposed because upset conditions are already addressed in §101.6, Upset Reporting and Recordkeeping Requirements. Citgo commented that it is unclear whether this type of occurrence is in fact permissible or in fact an upset.

The paragraph being deleted only allows emissions from pressure relief valves during "emergency situations." While this term is not defined, the commission believes that an "emergency situation" which results in emissions from a pressure relief valve is clearly an upset condition. As noted earlier, air emissions associated with upset conditions (such as the venting of safety relief valves) are regulated by Chapter 101, §101.6 (concerning Upset Reporting and Recordkeeping Requirements), and not by Chapter 115, unless otherwise specifically stated. The commission has made no changes in response to the comment.

Dow commented on §115.212(a)(6)(D), concerning the nondedicated loading lines control requirements for marine terminals in the Houston/Galveston ozone nonattainment area. Dow noted that "flash point less than 150 degrees Fahrenheit" should be "flash point of 150 degrees Fahrenheit or greater" for consistency with the low vapor pressure/high flash point exemption of §115.217(a)(5)(B)(iv).

The commission has corrected this typographical error in §115.212(a)(6)(D).

Dow also suggested that §115.212(a)(6)(D) be deleted. Dow stated that United States Coast Guard (USCG) regulations (33

CFR 154.850(h)) do not allow residual vapors in the loading line to be cleared with compressed air or gas, that clearing the loading line using a nitrogen purge is not practical, and that clearing the loading line using pigging is defined as pneumatic clearing by the USCG and therefore is not allowed.

Section 115.212(a)(6)(D) does not require purging of the loading lines with compressed air or gas, such as nitrogen, or by pigging. Instead, §115.212(a)(6)(D) requires that when VOC with a vapor pressure of 0.5 psia or greater is loaded into a marine vessel and the next VOC transfer through the same (i.e., non-dedicated) loading line(s) is a VOC with a low vapor pressure (i.e., less than 0.5 psia), then the low vapor pressure loading must be controlled in order to recover or destroy the residual vapors from the previous VOC transfer. The commission has made no changes in response to the comment.

Dow requested clarification of the intent of the "once-in, always-in" requirement of §115.212(a)(7).

Once-in, always-in (OIAI) is an EPA concept which means that once emissions from a source exceed the applicability cutoff for a particular VOC regulation in the SIP, that source is always subject to the control requirements of the regulation. The purpose of this requirement is two-fold. First, it serves to discourage a source already subject to regulation from installing minimal controls to circumvent Reasonably Available Control Technology (RACT) requirements. Second, it improves the clarity of VOC regulations by minimizing the confusion over whether variations in production cause a particular source to be covered by a regulation. A major EPA concern which resulted in the OIAI requirements was their desire to prevent the removal of a control device, which would then result in a significant increase in emissions (i.e., a throughput reduction of 5.0% could result in an emissions increase of 90% if the control device were removed). To provide flexibility but prevent such emissions increases, the rule language includes an incentive for cost-effective and innovative approaches to pollution prevention and waste minimization which reduce emissions to no more than the controlled levels prior to removal of control devices. Also, it should be noted that in the event of revised rules which are less stringent than previous requirements (for example, revisions to definition of VOC which exclude additional compounds from classification as VOC), the OIAI requirements will apply to the extent that emissions from a source exceed the applicability cutoff for the revised version of the rules. The commission has revised §115.212(a)(7) to refer to "exemption from permitting" rather than "standard exemption" due to the repeal of §116.211, concerning Standard Exemption List, and the adoption of new sections in Chapter 106, concerning Exemptions from Permitting (see the March 4, 1997 issue of the *Texas Register* (22 TexReg 2439)).

Dow commented on §115.212(b)(1), concerning general (i.e., non-gasoline) VOC loading, and suggested that this rule specifically exclude marine terminals.

Section 115.212(b) specifically states that the requirements apply only to "land-based VOC transfer." In addition, the proposed §115.217(b)(4) specifically includes an exemption for all loading and unloading of marine vessels in the covered attainment counties. To clarify the exempt status of marine vessel loading/unloading in the covered attainment counties, the commission has relocated this exemption from the proposed §115.217(b)(4) to a new §115.217(b)(6). In addition, it has come to the commission's attention that the phrase "general vapor control" in the catchlines of §115.212(a)(1) and (b)(1) would more accurately reflect the contents of these rules if changed to "general VOC control." The commission has revised §115.212(a)(1) and (b)(1) accordingly.

Dow commented on the 90% overall control options of §115.213(b), (c), and (d). Dow stated that the applicable vapor pressure range should be stated as "equal to or greater than..." 0.5 or 1.5 psia, depending on the rule, because the vapor pressure exemptions in §115.217 are stated as "less than...."

The commission has corrected §115.213(b), (c), and (d) as suggested.

Dow stated that the parenthetical expression "(excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants)" in §115.213(b), (c), and (d) is redundant with the phrase "other than gasoline terminals, gasoline bulk plants, and marine terminals" and should be deleted.

Neither phrase is used in §115.213(d). In §115.213(b) and (c), both phrases are necessary to clearly delineate the operations and associated emissions which are included in and excluded from the 90% overall control option. However, because §115.213(b) and (c) include this clear delineation, the parenthetical phrase "(excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants)" in paragraph (1) of §115.213(b) is unnecessary. Therefore, the commission has deleted this phrase from §115.213(b)(1).

Dow commented that the reference to §115.212(b)(1)-(5) in §115.213(c) instead should be to §115.213(b)(1)-(5).

The commission has corrected this typographical error.

Dow suggested that §115.213(b) and §115.214(a)(1)(D) be reworded to add more exclusions from control for those VOC loading operations which, under the 90% overall control option in §115.213(b), are not required to control vapors caused by loading of VOC. Dow noted that the 90% overall control option in §115.213(b) was previously in the exemptions section but is being relocated to the alternate control requirements section. Dow suggested that §115.214(a)(1)(D) be reworded to exclude from the requirements of §115.214(a)(1)(A) and (B) a VOC loading operation which, under the 90% overall control option, is not required to control vapors caused by loading VOC. Dow also suggested that §115.213(b) exclude from §115.212(a)(3)(A) and (C) and §115.214(a)(1)(A)(ii) and (iii) and (C) any loading operations which, under the 90% control option, are not required to control vapors caused by loading VOC into transport vessels.

For VOC loading operations which are not required to control vapors caused by loading VOC into a transport vessel, the suggested changes would exclude the requirements for annual vapor tightness testing and inspections for visible fumes and significant odors. The commission agrees that it is not necessary to impose these requirements if the emissions from the transport vessel loading operation are not required to be controlled. The liquid leak inspection and repair requirements will still apply, however. The commission agrees that these revisions are appropriate and has added a new §115.213(b)(6) and §115.214(a)(1)(D) as suggested. For consistency, the commission has made similar revisions to §115.214(b)(1)(D) and §115.213(c).

Dow suggested that §115.213(d)(5) and §115.214(a)(3)(G) be reworded to add more exclusions from control for those marine vessel loading operations which, under the 90% control option

in §115.213(d)(5), are not required to control vapors caused by loading of VOC. Specifically, Dow stated that §115.214(a)(3)(g) should be clarified to exclude marine vessel loading operations which, under the 90% control option, are not required to control vapors caused by loading VOC into a marine vessel. Dow also suggested that §115.213(d) exclude from §115.214(a)(3)(A), (B)(ii) and (iii), and (D) any marine vessel loading operations which, under the 90% control option, are not required to control vapors caused by loading VOC into a marine vessel.

For marine vessel loading operations which are not required to control vapors caused by loading VOC into a marine vessel, the suggested changes would exclude the requirements for annual vapor tightness testing and inspections for visible fumes and significant odors. The commission agrees that it is not necessary to impose these requirements if the emissions from the marine vessel loading operation are not required to be controlled. The liquid leak inspection and repair requirements will still apply, however. The commission agrees that these revisions are appropriate and has revised §115.213(d)(5) and §115.214(a)(3)(G) as suggested.

Dow commented on §115.214(a)(1)(C) and (b)(1)(C), and §115.224(2), concerning the annual leak testing requirements for tank-truck tanks. Dow suggested that these rules be revised to only require that the tank-truck tank be leak-tested at the loading point (provided that the loading point is in Texas), and that all unloading operations be exempt from the leak testing requirements of §115.214(a)(1)(C) and (b)(1)(C), and §115.224(2). Dow noted that intermodal portable tanks (such as "isocontainers") can come from a multitude of world-wide shipping points. Dow commented that leak testing would be less burdensome on the loading facility because that facility will have more control over, and be in a better position to test, each tank before it is loaded.

Dow's comments are addressed in detail in the discussion regarding §115.235(4). In summary, the commission agrees that the leak testing requirements should apply to general (i.e., non-gasoline) VOC tank-truck tanks at the loading point, but not at the unloading point. However, the commission believes that for gasoline tank-truck tanks, the leak testing requirements should apply at both the loading point (i.e., gasoline terminals and gasoline bulk plants) and unloading point (i.e., gasoline bulk plants and gasoline stations). Therefore, the commission has revised §115.214(a)(1)(C) and (b)(1)(C), and §115.224(2) accordingly.

An individual commented on §115.214(a)(2), concerning the monthly leak inspection requirement for gasoline terminals. The individual suggested that wording from §§115.352-115.357, concerning Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas, be incorporated to make this leak repair effort equivalent. The individual also stated that the phrase "reasonable effort," concerning repairing of leaking components at gasoline terminals, is subjective and should be defined.

Section 115.214(a)(2) already allows a gasoline terminal owner/operator to use a hydrocarbon gas analyzer to meet the fugitive monitoring requirements of §§115.352-115.357 as an alternative to conducting a monthly audio/visual/olfactory (AVO) program. The individual's suggestion would mandate the use of an instrument monitoring program. During the development of the federal Gasoline Distribution NESHAP standards for gasoline terminals (Title 40 CFR Part 63, Subpart R, promulgated December 14, 1994 (59 FR 64303)), the EPA revised the requirement for control of equipment leak fugitives from a quarterly instrument monitoring program to a monthly AVO program. The EPA relaxed the requirement in response to its review of data submitted by the American Petroleum Institute (API) which showed that: 1) emission factors for gasoline terminals using an AVO monitoring program are over 99% lower than the 1980 AP-42 refinery equipment emission factors that the EPA had used for the development of the proposed NESHAP standard; and 2) gasoline terminals that implemented an AVO program achieved essentially equivalent emission reductions as those terminals that used an instrument monitoring program. Because the API data, submitted to and accepted by the EPA and used in the agency permitting guidelines, showed that AVO and instrument leak detection and repair fugitive monitoring programs achieve essentially equivalent emission reductions for gasoline terminals, the commission has made no changes in response to the comment. Regarding the phrase "reasonable effort," while the commission agrees that this phrase is subjective, this term has the meaning commonly ascribed to it in the field of air pollution control, and the commission does not believe that further definition is necessary. However, it has come to the commission's attention that the reference to §§115.352-115.357 and 115.359 in §115.214(a)(2) and (b)(2) instead should be to only §§115.352-115.357, since the compliance date in §115.359 is not pertinent to gasoline terminals opting to use this instrument leak detection program. The commission has revised §115.214(a)(2) and (b)(2) accordingly. Likewise, for marine terminals the commission has revised §115.214(a)(3)(F) to refer only to §§115.352-115.357.

Dow and TXOGA commented on the proposed §115.215(3). TXOGA stated that the rule language should make clear that all flares, and vapor combustors which the owners or operators elect to treat as flares, are sufficient to meet the gasoline terminal emission standard of 10.8 mg/l which applies in ozone nonattainment counties, while Dow stated that it should be clarified that the flare requirements also apply to marine terminals. TXOGA also expressed concern that a vapor combustor which the owner or operator elects to treat as a flare would have to comply with the contradictory requirements of §115.215 and 40 CFR 60.18, and stated that such vapor combustors should only be subject to the flare requirements. TXOGA expressed a similar concern about §115.216(1)(A)(iv) and (B).

The intent is that the owner/operator of a vapor combustor treat the unit as a direct-flame incinerator (or thermal oxidizer), but alternatively may choose to consider the unit to be a flare and meet the flare requirements specified in 40 CFR 60.18(b) and Chapter 111. As noted in §115.215(3), compliance with the flare requirements of 40 CFR 60.18(b) is considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.211 and §115.212, which include the gasoline terminal, gasoline bulk plant, land-based VOC loading, and marine terminal emission standards. The commission has revised §115.215(3) to make it clear that this presumption applies to flares as well as vapor combustors which the owner/operators have elected to treat as flares. In addition, the commission has revised §115.213 to make it clear that vapor combustors which the owner/operators have elected to treat as flares are to comply with the flare requirements as an alternative, and not in addition to, the requirements for vapor

combustors which the owner/operators have not chosen to treat as flares. Consequently, there is no contradictory requirement.

No comments were received on the proposed change to §115.216, which would have added a requirement that records must include information on how the design standard or operation of equipment meets the emission specifications and control requirements. However, the commission deleted this proposed change because it believes a more thorough analysis of the impacts on the regulated community is needed.

TXOGA commented on §115.216(1)(A)(iv) and (B) and expressed a similar concern that a vapor combustor which the owner or operator elects to treat as a flare would have to comply with the requirements for both flares and vapor combustors.

Section 115.216(1)(A)(iv), which specifies the monitoring requirements for vapor combustors, specifically states "Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph." The commission believes that it is clear from the inclusion of the word "alternatively" that a vapor combustor which the owner or operator elects to treat as a flare would only have to comply with the flare requirements. The commission has made no changes in response to the comment.

Exxon, GATX, MBRC, TXOGA, and UDS suggested the addition of an exemption to §115.217(a)(2) which would allow the uncontrolled loading of interface/transmix/off-specification product at gasoline terminals of up to 1.0% (on an annual basis) of the volume of gasoline throughput that is controlled.

The commenters did not provide any supporting documentation, such as the volume of interface/transmix/off-specification product loaded and the cost of controlling the associated emissions. Control of the occasional loading of interface/transmix/off-specification product at gasoline terminals into transport vessels could be done relatively simply by either: 1) adding a vapor return pipe to the interface/transmix/off-specification product tank so that the loading of this product is controlled by the existing vapor control device serving the gasoline loading rack; or 2) adding a product pipe from the interface/transmix/off-specification product tank to one of the loading rack bays so that the loading of this product is done at the rack where an existing vapor return pipe is available to deliver the vapors to the existing control device. In either case, the addition of only one pipe is needed to control the emissions from the loading of interface/transmix/off-specification product into transport vessels since an existing control device would be used. The cost is expected to be insignificant compared to the cost of the existing control device and associated piping.

It should also be noted that the suggested 1.0% cutoff would allow a significant volume of gasoline to be loaded uncontrolled at a gasoline terminal. In order to estimate the potential emissions associated with the suggested exemption, the commission obtained statewide gasoline throughput data from gasoline tax records. The statewide gasoline throughput was allocated to each county by the estimated vehicle miles traveled. The total gasoline throughput for the 110-county TCAS area was then assumed to be a reasonable approximation of the total volume of gasoline loaded at gasoline terminals in the TCAS area. Even if half of the interface/transmix/off-specification product is assumed to be diesel fuel, the commenters' suggested exemption would still allow up to approximately 165 tons per year of uncontrolled emissions in the 110-county TCAS area. Consequently, the commission does not believe that the suggested exemption is appropriate and has made no changes in response to the comment.

No comments were received on §115.217(a)(5), concerning marine vessel transfer exemptions. However, the commission has revised §115.217(a)(5)(A)(i) to clarify that all loading and unloading of marine vessels in ozone nonattainment areas other than the Houston/Galveston area are exempt from the entire division (concerning Loading and Unloading of VOC). The commission has also revised §115.217(a)(5)(B) to clarify that in the Houston/Galveston area, inspections required during marine vessel transfer operations which are exempt from §115.212(a)(6) do not include looking for visible fumes and significant odors since emissions from the VOC transfer are not required to be controlled under §115.212(a)(6). However, inspections required during marine vessel transfer operations which are exempt from §115.212(a)(6) include looking for and correcting liquid leaks.

Dow and Mobil commented on §115.219. Dow stated that §115.219 should include a compliance date for flares which do not meet the requirements of 40 CFR §60.18. Mobil stated that the proposed December 31, 1999 compliance date represents an aggressive schedule. Mobil stated that some small facilities may have a difficult time in complying and questioned whether the commission intends to enforce the requirements and shut down these facilities immediately.

In response to Mobil's comment, the commission has extended the compliance date in §115.219 from December 31, 1999 to April 30, 2000. For consistency, the commission has likewise extended the December 31, 1999 compliance date to April 30, 2000 in §§115.211(1)(B), 115.229(d), and 115.239(b). This revised compliance date will provide the regulated community with additional time to comply with the new requirements, but will still ensure that the emission reductions occur prior to the critical 2000 ozone season. As with all of its rules, the commission will enforce the requirements after the compliance date and take appropriate action for noncompliance situations. In response to Dow's comment, the commission has added a new subsection (h) to §115.219 which establishes a compliance date of April 30, 2000 for flares which do not currently meet the requirements of 40 CFR §60.18.

Corpus Christi opposed the implementation of the proposed Stage I revisions in Nueces and San Patricio Counties and stated that Stage I controls have been implemented voluntarily at approximately 85% of the gasoline stations in these two counties. Corpus Christi suggested that the proposed revisions are unnecessary in Nueces and San Patricio Counties.

As noted in the BACKGROUND section of this preamble, the commission staff has conducted modeling which indicates that mobile source reductions (cleaner gasoline, NLEVs, and Stage I vapor recovery) will result in ozone reductions of one to four ppb (peak eight-hour ozone averages) and up to 3.6 ppb (peak one-hour ozone average) in much of east and central Texas. While the greatest reductions are seen in the Austin, San Antonio, and Tyler/Longview areas, modeling of the mobile source strategies shows a large area, including near-nonattainment areas (such as Corpus Christi) and attainment areas, of reductions in peak one-hour and eight-hour average ozone levels. If, as Corpus Christi commented, most gasoline stations in Nueces and San Patricio Counties are already voluntarily implementing Stage I controls, then the adoption of

Stage I requirements for the largest gasoline stations (those with a monthly gasoline throughput of at least 125,000 gallons) should not be burdensome to these gasoline stations. The commission has made no changes in response to the comment.

Dow's comments regarding §115.224(2) were addressed earlier. (See the discussion regarding comments on §115.214(a)(1)(C) and (b)(1)(C)). In summary, the commission believes that for gasoline tank-truck tanks, the leak testing requirements should apply at both the loading point (i.e., gasoline terminals and gasoline bulk plants) and unloading point (i.e., gasoline bulk plants and gasoline stations). Therefore, the commission has revised §115.224(2) accordingly for consistency with the corresponding changes to §115.214(a)(1)(C) and (b)(1)(C).

No comments were received on §115.225. However, it has come to the commission's attention that the lead-in paragraph in §115.225 should refer to §115.224 in addition to §115.221 and §115.222. This is because §115.225 includes Test Method 21 for determining VOC leaks by instrument, and §115.224 requires inspections for leaks. In order to include the proper reference, the commission has revised the lead-in paragraph of §115.225 to also refer to §115.224. In addition, the commission has revised §115.225 to add titles (catchlines) to the subsections in order to identify the topics covered. The commission also combined paragraphs (2)-(4) into a single paragraph since these three paragraphs address the same topic (i.e., test methods for determining the concentration of VOC).

Mobil commented on §115.226(1), which requires that facilities maintain gasoline delivery and tank-truck leak testing records on-site. Mobil suggested that facilities be given the option of maintaining these records at an off-site location from which they can be provided to an inspector within a certain time frame, possibly one week.

Section 115.226(2)(A) and (B) already allows only the minimum records to be kept at the facility (specifically, those required by §115.226(1)), with records of testing and throughput kept, but not necessarily at the site. Therefore, the commission has made no changes to §115.226(1) in response to the comment.

Dow commented that §115.226(2)(B) should specify that the monthly gasoline throughput records should include the calendar month and year, and the total facility gasoline throughput for each calendar month, for consistency with §115.226(2)(C).

The commission agrees and has made the suggested change. In addition, the commission has revised §115.226(2)(C) by relocating the language which specifies that records must be made available to representatives of the executive director, EPA, or any local air pollution control program with jurisdiction from §115.226(2)(C) to the lead-in paragraph of §115.226. This change will make it clear that in all cases, the required records must be made available upon request by these representatives.

Dow suggested that rather than listing the sections that do not apply, the exemptions in §115.227 should instead list the sections which still apply.

The commission agrees that the exemptions in §115.227 should list the sections which apply, rather than listing the sections that do not apply, and has revised §115.227 accordingly.

Dow commented that §115.227(1) and (3), which provide exemptions for small capacity (no more than 1,000 gallons) gasoline storage tanks at gasoline stations, are not complete and should include more sections from which the owner or operator is exempt. Specifically, Dow stated that a gasoline station which is exempt based on having one or more small storage capacity tanks should also be exempt from the leak-tightness testing requirement of §115.224(2), the testing requirements of §115.225, and the gasoline delivery and tank-truck leak test recordkeeping requirements of §115.226.

The commission agrees that a gasoline station which is exempt based on having one or more small storage capacity tanks should also be exempt from the leak-tightness testing requirement of §115.224(2) and the gasoline delivery and tank-truck leak test recordkeeping requirements of §115.226(1), since the gasoline delivery is not required to utilize Stage I vapor recovery equipment. Therefore, the commission has revised §115.227 accordingly. The commission agrees that a gasoline station which is exempt based on having one or more small storage capacity tanks should also be exempt from testing requirements of §115.225. As noted earlier in the discussion of §115.225, Test Method 21 (for determining VOC leaks by instrument) is listed in §115.225, while §115.224(1) requires inspections for leaks. Although §115.224(1) applies regardless of storage tank capacity or gasoline throughput, it is necessary for §115.225 to apply because an owner or operator would use Test Method 21 to identify vapor leaks. Specifically, since the gasoline delivery is not required to utilize Stage I vapor recovery equipment, it is unnecessary to inspect for vapor leaks and significant odors. The commission believes, however, that it is reasonable to inspect for and correct liquid gasoline leaks during gasoline delivery at gasoline stations which are exempt from utilizing Stage I equipment based on having one or more small storage capacity tanks. The commission also believes that after unloading gasoline at such exempt gasoline stations, it is reasonable to require that tank-truck tanks be kept vapor-tight until the vapors in the tank-truck are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. The commission has revised §115.227(1) and (3) accordingly.

Dow commented that §115.227(2) and (4), which provide exemptions for gasoline stations based upon gasoline throughput, are not complete and should include more sections from which the owner or operator is exempt. Specifically, Dow stated that a gasoline station which is exempt based on gasoline throughput should also be exempt from the leak-tightness testing requirement of §115.224(2), the testing requirements of §115.225, and the gasoline delivery and tank-truck leak test recordkeeping requirements of §115.226.

For the reasons given in the discussion of comments on §115.227(1) and (3), the commission agrees that a gasoline station which is exempt based on gasoline throughput should also be exempt from the leak-tightness testing requirement of §115.224(2) and the gasoline delivery and tank-truck leak test recordkeeping requirements of §115.226(1). Therefore, the commission has revised §115.227 accordingly. For the reasons given in the discussion of comments on §115.227(1) and (3), the commission agrees that a gasoline station which is exempt based on gasoline throughput should also be exempt from testing requirements of §115.225, but believes, however, that it is reasonable to inspect for and correct liquid gasoline leaks during gasoline delivery at gasoline stations which are exempt from utilizing Stage I equipment based on gasoline throughput. The commission also believes that after unloading gasoline at such exempt gasoline stations, it is reasonable to require that

tank-truck tanks be kept vapor-tight until the vapors in the tank-truck are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation. The commission has revised §115.227(2) and (4) accordingly.

The EPA and Sierra Club commented on §115.227(4), which exempts gasoline stations in the covered attainment counties with a gasoline throughput of less than 125,000 gallons per month from the Stage I requirements of §115.221 and §115.222. The EPA and Sierra Club expressed the desire that gasoline stations below the 125,000 gallons per month threshold in the covered attainment counties be subject to these Stage I requirements.

The commission has estimated that the cost-effectiveness of Stage I for a small gasoline station (i.e., a station with a gasoline throughput between 10,000 and 25,000 gallons per month) is approximately $1,614 per ton of VOC reduced. By comparison, the EPA estimated the cost-effectiveness of recently promulgated motor vehicle control programs in EPA's *Tier 2 Study, EPA420-R-98-008* (July 31, 1998) as follows: 1) $6,000 per ton of VOC reduced and $1,380 to $1,800 per ton of NO_x reduced for Tier 1 standards for light-duty vehicles and light-duty trucks; 2) $457 to $552 per ton of VOC reduced and $150 to $172 per ton of NO_x reduced for supplemental federal test procedure (SFTP) standards for aggressive driving; 3) $2,050 to $2,574 per ton of NO_x reduced for SFTP standards for emissions with the air conditioner on; and 4) $1,974 per ton of VOC reduced and $1,974 per ton of NO_x reduced for on-board diagnostics requirements. The commission has made no changes in response to the comment. However, the commission agrees that Stage I controls are cost-effective for gasoline stations having gasoline throughput as low as 10,000 gallons per month, and in the future may consider a second phase of rulemaking which would implement Stage I in the covered attainment counties for gasoline stations with a gasoline throughput below 125,000 gallons per month.

The commission has revised §115.229 by extending the compliance date to April 30, 2000 in response to Mobil's comment on §115.219 that the proposed December 31, 1999 compliance date represents an aggressive schedule. The revised compliance date will provide the regulated community with additional time to comply with the new requirements, but will still ensure that the emission reductions occur prior to the critical 2000 ozone season.

The Sierra Club commented on §115.229, which establishes the Stage I compliance schedule, and stated that cities should be given the flexibility to implement Stage I regulations prior to the 1999 ozone season.

Cities have the flexibility to implement the Stage I requirements early through city ordinances or voluntary programs. In response to Sierra Club's comment, the commission has revised §115.229(d) to make it clear that the phrase "as soon as practicable, but no later than..." in §115.229(d) means that before the April 30, 2000 compliance date, gasoline stations which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery by a gasoline tank-truck which is likewise equipped for Stage I vapor recovery. Likewise, the commission has revised §115.239(b) to make it clear that the phrase "as soon as practicable, but no later than..." in §115.239(b) means that before the April 30, 2000 compliance date, gasoline tank-trucks which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery at a gasoline station which is likewise equipped for Stage I vapor recovery.

Dow commented that the description of the proposed changes to §115.235 and §115.236 in the EXPLANATION OF PROPOSED RULES section of the rule proposal preamble gave incorrect titles for these sections.

The correct titles for §115.235 and §115.236 are Approved Test Methods and Recordkeeping, respectively. The commission corrected these titles in the EXPLANATION OF ADOPTED RULES section.

Dow and TCC commented on the proposed revisions to §115.235(4), which proposed that the alternative testing option applies to tank-truck tanks not required to be equipped with vapor collection equipment (e.g., pressure tanks), and more specifically references the leakage test method of 49 CFR 180.407(h).

The commenters' specific issues regarding tank-truck leak testing and the commission's responses are as follows.

TCC stated that the commission has "instituted a significant regulatory interpretation without notice and comment" which is "not specifically addressed in this rulemaking." TCC further stated that this rulemaking is the first opportunity for the regulated community to comment on the interpretation that "for tank-trucks not equipped with vapor collection equipment, the leakage test in 49 CFR §180.407(h) (U.S. Department of Transportation leakage test) is the appropriate test for the determination of vapor tightness.... For tank-trucks equipped with vapor collection equipment, Method 27 is applicable and should be used."

TCC is referring to an interpretation made by the agency's Air RIT, and specifically to interpretation Code Number R5-234.001 (signed July 3, 1997). It should be noted that the Air RIT established a "reconsideration process" in which the regulated community or the public may submit a request for reconsideration of any interpretations issued by the Air RIT. No such request has been received for the subject interpretation. In addition, the preamble to this rule proposal specifically stated that the proposed revisions "reorganize and clarify the rules, including incorporation of a variety of interpretations made by the agency's Rule Interpretation Team" (24 TexReg 62, January 1, 1999) and that "the proposed changes to §115.235 also clarify that the alternative testing option of the existing §115.235(4) applies to tank-trucks not required to be equipped with vapor collection equipment (e.g., pressure tanks)...(24 TexReg 66)." Therefore, the commission disagrees with TCC's comments.

TCC requested clarification on the meaning of the phrase "equipped with vapor collection equipment."

Method 27 (Title 40 CFR Part 60, Appendix A) was originally promulgated to ensure that gasoline tank-trucks subject to the gasoline terminal NSPS (Title 40 CFR Part 60, Subpart XX) met the NSPS vapor-tightness standards. The definitions section of Method 27 (Definitions and Nomenclature, 2.1) defines "delivery tank vapor collection equipment" as "any piping, hoses, and devices on the delivery tank used to collect and route gasoline vapors either from the tank to a bulk terminal vapor control system or from a bulk plant or service station into the tank." In November 1993, Chapter 115 rule revisions were adopted which extended the ozone nonattainment area leak test requirements applicable to gasoline transport trucks to all tank trucks loading

or unloading VOC having a true vapor pressure greater than or equal to 0.5 psia at loading facilities affected by the Chapter 115 division relating to VOC loading and unloading. When Test Method 27 is used for leak testing of tank-trucks carrying VOCs other than gasoline, "vapor collection equipment" means "any piping, hoses, and devices on the tank-truck tank used to collect and route VOC vapors either from the tank-truck tank to a vapor control system or from a fixed roof storage tank into the tank-truck tank." The commission has deleted the reference in §115.235(a)(4) to "vapor collection equipment" in response to changes it made in §115.234 and §115.235 for the reasons discussed following the next comment.

Dow and TCC stated that 49 CFR 180.407(h) should be an acceptable alternative to EPA Test Method 27, regardless of whether the tank-truck tank is equipped with vapor collection equipment, due to their belief that: 1) out-of-state truck owners/operators which ship products to Texas are familiar with the United States Department of Transportation (DOT) requirements, but not the Chapter 115 requirements, which could result in confusion and probable noncompliance; 2) applying the Chapter 115 testing requirements to tank-truck tanks at the point of unloading could interfere with interstate commerce; 3) many Texas companies rely on the DOT leakage test in an effort to satisfy the Chapter 115 requirements, regardless of whether the tank-truck tank is equipped with vapor collection equipment; 4) Title 49 CFR 180.407(h) allows, but does not mandate, Test Method 27 in lieu of the DOT leakage test; and 5) because loading emissions are more significant than unloading emissions, there is little environmental benefit to requiring tank-truck tanks to have been leak tested using Test Method 27 at the unloading point.

Chapter 115 has required compliance with Test Method 27 leak testing for gasoline tank-trucks at both the loading point (i.e., gasoline terminals and gasoline bulk plants) and unloading point (i.e., gasoline bulk plants and gasoline stations) in ozone nonattainment counties for many years. The gasoline terminal NSPS (Title 40 CFR Part 60, Subpart XX) has also required compliance with Test Method 27 at new or modified gasoline terminals for many years. There are numerous reasons why Test Method 27 is superior to the DOT leakage test for tank-truck tanks equipped with vapor collection equipment. In 1994, the DOT revised 49 CFR §180.407(h) to allow Method 27 to be substituted for 49 CFR §180.407(h), if the cargo tank is equipped with vapor collection equipment: "Cargo tanks equipped with vapor collection equipment may be leakage tested in accordance with the EPA's Method 27, as set forth in 40 CFR Part 60, Appendix A" (49 CFR §180.407(h)(2), November 3, 1994). The previous version of 49 CFR §180.407(h) established Method 27 an acceptable alternative "where applicable" (49 CFR §180.407(h)(2), June 12, 1989). The DOT interpreted this to mean where Method 27 was required, it could be substituted for the DOT leakage test. The revision to the rule, while making Method 27 more generally substitutable for 49 CFR §180.407(h), also highlights that Method 27 is designed physically for applicability to cargo tanks with vapor recovery equipment. The test apparatus section of Method 27 includes a test cap (Apparatus, 3.7) which is inserted on the end of the vapor recovery hose, to which the manometer and pressure-vacuum supply hose are connected. The applicability section of Method 27 (Applicability and Principle, 1.1) states "This method is applicable for the determination of vapor tightness of a gasoline delivery tank which is equipped with vapor collection equipment." Since Method 27 is not applicable to cargo tanks not equipped with vapor recovery equipment, the DOT leakage test is the appropriate test for these cargo tanks.

However, for cargo tanks which are equipped with vapor recovery equipment, the commission considers Method 27 to be a better test method because it is a more sensitive test and is more effective at finding leaks than the tests in 49 CFR §180.407. The following discussion compares Method 27 to the 49 CFR §180.407 tests and provides rationale for not considering the 49 CFR §180.407 tests equivalent to Method 27 for tank-truck tanks equipped with vapor recovery equipment.

The DOT leakage test generally requires pressurization to 80% of the tank's maximum allowable working pressure. Review of this test method and comparison with Method 27 shows several notable differences. The major difference is that Method 27 requires a tank-truck tank to be tested under both pressure and vacuum conditions, while 49 CFR §180.407(h) does not require testing for leaks under vacuum conditions. The commission believes that vacuum testing is an integral part of leak testing, due to the fact that in some instances when a component is placed under pressure, the seals used in the different components can seal off, thus giving the appearance that no leak is present. These leaks would be detected with the vacuum test. The same kind of problem can exist when only vacuum testing is performed; therefore, conducting both pressure and vacuum testing is a more thorough method for locating leaks than either test by itself.

Additional support for this argument is found in the EPA response to comments received on the proposed Gasoline Distribution NESHAP (40 CFR 63, Subpart R). On Pages 7-8 of the *Background Information Document for Promulgated Standards for Gasoline Distribution Industry (Stage I)*, a comment was made that because leakage rates have declined over the years, the vapor tightness testing is unnecessary and the requirements are duplicative of current federal and state regulations. Another company commented that current DOT testing programs, with modifications if necessary, sufficiently address the leakage problem. EPA responded to these comments with the following statement: "Further, the test does not duplicate USDOT programs or Federal and State requirements. As pointed out in the BID [Background Information Document], Volume I, Section 4.1.4.2, the current USDOT leakage test does not verify the integrity of some portions of the vapor containing equipment, etc..."

Another difference between the DOT leakage test method and Method 27 is that Method 27 requires that once the required testing pressure is reached, the tank be allowed to equilibrate. Pressure readings are taken initially and after five minutes to determine pressure change. A similar test is conducted under vacuum conditions. However, the DOT leakage test does not require an equilibration period.

While both the DOT leakage test and Method 27 require that pressure be maintained for five minutes, the DOT leakage test does not specify the necessary precision of the pressure gauge used, and therefore, how much loss of pressure is acceptable due to this lack of specified precision. In contrast, Method 27 specifies that the pressure gauge (liquid manometer, or equivalent) be capable of reading up to 500 mm of water, with 2.5 mm water precision. Since the DOT test pressures are specified in units of pounds of pressure gauge, a fairly stringent interpretation of "no loss of pressure" might be less than one psig (or 700 mm water). The Method 27 test requires

that pressure loss be limited to no more than 75 mm of water. The detection of a smaller difference in pressure directly corresponds to detection of smaller leaks. Therefore, Method 27 is a more sensitive method for the detection of leaks than the DOT leakage test methods.

In addition, 49 CFR §180.407(h)(2) allows Method 27 as an acceptable alternative, but Method 27 does not allow 49 CFR §180.407(h) as an acceptable alternative. The implication is that Method 27 is the more stringent test.

While the commission believes that Test Method 27 is clearly superior to the DOT leakage test for tank-truck tanks equipped with vapor collection equipment, the commission also recognizes the inherent difficulties in requiring Test Method 27 leak testing for general VOC (i.e., non-gasoline) tank-truck tanks which originate outside Texas. Therefore, the commission has revised §115.234(a) and (b), and §115.235(a)(1) and (4), and (b)(1) such that Test Method 27 is mandatory for gasoline tank-truck tanks and an optional alternative to the 49 CFR §180.407(h) leakage test for general VOC (i.e., non-gasoline) tank-truck tanks. This change will provide maximum flexibility to the regulated community regarding leak testing of general VOC (i.e., non-gasoline) tank-truck tanks.

In addition, the commission revised §115.234(a)(1) and §115.235(a)(1) and (4) so that the leak testing requirements apply to general VOC (i.e., non-gasoline) tank-truck tanks at the loading point, but not at the unloading point. For gasoline tank-truck tanks, the commission has retained the requirement that such tanks comply with Method 27 leak testing at both the loading point (i.e., gasoline terminals and gasoline bulk plants) and unloading point (i.e., gasoline stations) in ozone nonattainment counties. This is necessary to continue to fulfill the EPA's RACT requirements for gasoline tank-trucks and also because gasoline has a relatively high volatility and is a high-volume product.

The commission has also revised §115.234(a) and (b), and §115.235(a)(1) and (b)(1) so that the tank-truck leak testing requirements only apply at facilities which are subject to §115.214(a)(1)(C), (b)(1)(C), or §115.224(2). This will ensure that the tank-truck leak testing requirements do not apply at facilities addressed by §§115.211-115.217 and 115.221-115.227 which are exempt from §115.214(a)(1)(C), (b)(1)(C), or §115.224(2) under §115.217 or §115.227.

Dow and Jenkens suggested that intermodal portable tanks ("isocontainers") be excluded from the leak testing requirements. Dow noted that such tanks can come from a multitude of world-wide shipping points. Jenkens stated that isocontainers are subject to DOT requirements of 49 CFR §173.32b (or the International Maritime Dangerous Goods (IDMG) requirements if transported outside the United States), that pressure testing conducted every five years to meet DOT or IMDG requirements is similar to the leak testing required under §§115.214(a)(1)(C) and 115.234-115.239, that only a small number of isocontainers fail the pressure testing conducted every five years to meet DOT or IMDG requirements, and that therefore more frequent testing of isocontainers will result in minimal emission reductions. Jenkens also stated that the companies who load or unload VOCs into or out of isocontainers generally do not own the isocontainers and that they are typically not dedicated for any particular product, facility, or transportation route. Jenkens commented that this made implementation of the testing requirements very difficult.

Jenkens did not provide specific data on how many isocontainers fail the DOT or IMDG pressure testing. In any case, the pressure testing identified by Jenkens is not equivalent to Test Method 27 for a variety of reasons. For example, pressure testing is intended to test structural integrity. The pressure test requires pressurization to levels according to the tank's DOT classification. These levels are generally one and one-half times the tank's design or maximum allowable working pressure. At these higher pressures, the seals used in the components of the tank can be pushed outward and can seal off any possible leaks, thus giving the appearance that no leaks are present.

Also, the use of soap bubbles does not give a precise reading regarding possible leaks. Human error involved during the application of the soap and water solution may allow a leak to go undetected (i.e., failure to cover the entire tank system, including all valves, with the soap solution). There is also the problem of not being able to observe all areas of the tank where the solution has been applied. Furthermore, the soap-solution test is not equivalent, since the test is performed only under pressure conditions and cannot be performed under vacuum conditions. Finally for insulated tanks, visual inspection of leaks is limited by the insulation coating, resulting in the potential for error with the pressure test.

Isocontainers are normally attached to a trailer (or possibly a truck or railcar) when being loaded with VOC. Any truck, trailer, or railcar which is equipped with an isocontainer having a capacity greater than 1,000 gallons will meet the definition of "transport vessel," and therefore is subject to the loading/unloading requirements of §§115.211-115.217.

While the commission believes that Test Method 27 is clearly superior to the DOT or IMDG pressure test for portable tanks, the commission also recognizes the inherent difficulties in requiring Test Method 27 leak testing for such tanks. Therefore, the commission has revised §115.237(a) by adding a new paragraph (3) which exempts portable tanks, as defined in 49 CFR 171.8, from the leak testing requirements. Section 115.214(a)(1)(C) references the requirements of §§115.234-115.237, but does not need to be revised because the new §115.237(a)(3) exempts portable tanks, as defined in 49 CFR 171.8. Therefore, the commission has made no changes to §115.214(a)(1)(C) in response to the comments.

An individual commented on §115.237(b), which exempts transport vessels other than tank-trucks from the annual vapor-tightness testing requirements. The individual opposed excluding railcars and marine vessels from the testing requirements in the covered attainment counties and suggested that the requirements of §§115.234-115.236 be applied to these sources.

The individual's suggestion is beyond the scope of this rulemaking, and therefore the commission has made no changes in response to this comment. However, the commission may reevaluate this suggestion in the future if additional VOC reductions are needed for attainment of the ozone NAAQS in the covered attainment counties.

The commission has revised §115.239 by extending the compliance date to April 30, 2000 in response to Mobil's comment on §115.219 that the proposed December 31, 1999 compliance date represents an aggressive schedule. The revised compliance date will provide the regulated community with additional time to comply with the new requirements, but will still ensure that the emission reductions occur prior to the critical 2000 ozone season.

Subchapter A. Definitions

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

§115.10. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §101.1 of this title (relating to Definitions) and §3.2 of this title (relating to Definitions).

(1) Bakery oven-An oven for baking bread or any other yeast-leavened products.

(2) Beaumont/Port Arthur area-Hardin, Jefferson, and Orange Counties.

(3) Capture efficiency-The amount of volatile organic compounds (VOC) collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC entering a capture system and delivered to a control device divided by the weight per unit time of total VOC generated by a source of VOC.

(4) Carbon adsorption system-A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

(5) Component-A piece of equipment, including, but not limited to pumps, valves, compressors, and pressure relief valves, which has the potential to leak VOC.

(6) Continuous monitoring-Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

(7) Covered attainment counties-Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Bosque, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Cherokee, Colorado, Comal, Cooke, Coryell, De Witt, Delta, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Harrison, Hays, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jackson, Jasper, Johnson, Karnes, Kaufman, Lamar, Lavaca, Lee, Leon, Limestone, Live Oak, Madison, Marion, Matagorda, McLennan, Milam, Morris, Nacogdoches, Navarro, Newton, Nueces, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Jacinto, San Patricio, San Augustine, Shelby, Smith, Somervell, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Washington, Wharton, Williamson, Wilson, Wise, and Wood Counties.

(8) Dallas/Fort Worth area-Collin, Dallas, Denton, and Tarrant Counties.

(9) El Paso area-El Paso County.

(10) External floating roof-A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(11) Flare-An open combustor without enclosure or shroud which is used as a control device.

(12) Flexographic printing process-A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

(13) Fugitive emission-Any VOC entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

(14) Gasoline bulk plant-A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period. A motor vehicle fuel dispensing facility is not a gasoline bulk plant.

(15) Gasoline terminal-A gasoline loading and/or unloading facility, excluding marine terminals, having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over each consecutive 30-day period.

(16) Houston/Galveston area-Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(17) Independent small business marketer of gasoline-A person engaged in the marketing of gasoline who owns the dispensing equipment at a motor vehicle fuel dispensing facility and receives at least 50% of his annual income from the marketing of gasoline. A person is not an independent small business marketer of gasoline if such person:

(A) is a refiner; or

(B) controls (i.e., owns more than 50% of a business or corporation's stock), is controlled by, or is under common control with, a refiner; or

(C) is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person).

(18) Internal floating cover-A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell. An external floating roof storage tank which is equipped with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) shall be considered to be an internal floating roof storage tank.

(19) Leak-free marine vessel-A marine vessel whose cargo tank closures (hatch covers, expansion domes, ullage openings, butterworth covers and gauging covers) were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures shall meet the applicable rules or regulations of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves shall be operating within the range

specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

(20) Marine loading facility-The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

(21) Marine loading operation-The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

(22) Marine terminal-Any marine facility or structure constructed to load oil, gasoline, or other volatile organic liquid bulk cargo into a marine vessel. A marine terminal consists of one or more marine loading facilities.

(23) Natural gas/gasoline processing-A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the same property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

(24) Owner or operator of a motor vehicle fuel dispensing facility (as used in §§115.241-115.249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities))-Any person who owns, leases, operates, or controls the motor vehicle fuel dispensing facility.

(25) Packaging rotogravure printing-Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.

(26) Petroleum refinery-Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(27) Polymer and resin manufacturing process-A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

(28) Printing line-An operation consisting of a series of one or more printing processes and including associated drying areas.

(29) Publication rotogravure printing-Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.

(30) Rotogravure printing-The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

(31) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation-A SOCMI noncontinuous distillation operation in which a discrete quantity or batch of liquid feed is charged into a distillation unit and distilled at one time. After the initial charging of the liquid feed, no additional liquid is added during the distillation operation.

(32) Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process-Any SOCMI noncontinuous reactor process which is not characterized by steady-state conditions, and in which reactants are not added and products are not removed simultaneously.

(33) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation-A SOCMI operation separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is achieved by the redistribution of the components between the liquid and vapor-phase as they approach equilibrium within the distillation unit.

(34) Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit-A SOCMI device or vessel in which distillation operations occur, including all associated internals (including, but not limited to, trays and packing), accessories (including, but not limited to, reboilers, condensers, vacuum pumps, and steam jets), and recovery devices (such as absorbers, carbon adsorbers, and condensers) which are capable of, and used for, recovering chemicals for use, reuse, or sale.

(35) Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process-A SOCMI unit operation in which one or more chemicals, or reactants other than air, are combined or decomposed in such a way, that their molecular structures are altered and one or more new organic compounds are formed.

(36) Synthetic organic chemical manufacturing process-A process that produces, as intermediates or final products, one or more of the chemicals listed in Table I of this section.

(37) Tank-truck tank-Any storage tank having a capacity greater than 1,000 gallons, mounted on a tank-truck or trailer. Vacuum trucks used exclusively for maintenance and spill response are not considered to be tank-truck tanks.

(38) Transport vessel-Any land-based mode of transportation (truck or rail) that is equipped with a storage tank having a capacity greater than 1,000 gallons which is used primarily to transport oil, gasoline, or other volatile organic liquid bulk cargo. Vacuum trucks used exclusively for maintenance and spill response are not considered to be transport vessels.

(39) True partial pressure-The absolute aggregate partial pressure (psia) of all VOC in a gas stream.

(40) Vapor balance system-A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

(41) Vapor combustor-A partially enclosed combustion device, where the combustion flame may be partially visible, but at no time does the device operate with a fully visible flame. A vapor combustor is used to destroy VOCs to the destruction requirements defined in the applicable emission specifications and control requirements sections of this chapter by smokeless combustion without extracting energy in the form of process heat or steam. Auxiliary fuel and/or a flame air control damping system, which can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(42) Vapor control system-Any control system which utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions.

(43) Vapor recovery system-Any control system which utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions.

(44) Vapor-tight-Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the regulations.

(45) Waxy, high pour point crude oil-A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Celsius) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."
Figure: 30 TAC §115.10(45)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Volatile Organic Compound Transfer Operations

Division 1. Loading and Unloading of Volatile Organic Compounds

30 TAC §§115.211–115.217, §115.219

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

§115.211. Emission Specifications.

The owner or operator of each gasoline terminal and gasoline bulk plant in the covered attainment counties and in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall ensure that VOC emissions from gasoline transfer do not exceed the following rates:

(1) from the vapor control system vent at gasoline terminals:

(A) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, 0.09 pound per 1,000 gallons (10.8 mg/liter) of gasoline loaded into transport vessels.

(B) in the covered attainment counties, 0.17 pound per 1,000 gallons (20 mg/liter) of gasoline loaded into transport vessels. Until April 30, 2000 in Gregg, Nueces, and Victoria Counties, VOC emissions shall not exceed 0.67 pound per 1,000 gallons (80 mg/liter) of gasoline loaded into transport vessels.

(2) at gasoline bulk plants, 1.2 pounds per 1,000 gallons (140 mg/liter) of gasoline transferred into transport vessels or storage tanks.

§115.212. Control Requirements.

(a) The owner or operator of each volatile organic compound (VOC) transfer operation, transport vessel, and marine vessel in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall comply with the following control requirements.

(1) General VOC loading. At VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, vapors from the transport vessel caused by the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions must be controlled by:

(A) a vapor control system which maintains a control efficiency of at least 90%; or

(B) a vapor balance system, as defined in §115.10 of this title (relating to Definitions); or

(C) pressurized loading.

(2) Disposal of transported vapors. After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation.

(3) Leak-free requirements. All land-based loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

(i) equipped with fittings which make vapor-tight connections that close automatically when disconnected; or

(ii) equipped to permit residual VOC after transfer is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

(B) There are no VOC leaks, as defined in §101.1 of this title (relating to Definitions), when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves).

(C) All gauging and sampling devices are vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

(i) be limited in duration to the time necessary to practicably gauge and/or sample; and

(ii) not occur while VOC is being transferred.

(D) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.

(E) If VOC is loaded through the hatches of a transport vessel, then pneumatic, hydraulic, or other mechanical means shall force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which

prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

(4) Gasoline terminals. The following additional control requirements apply to the transfer of gasoline at gasoline terminals.

(A) A vapor control system must be used to control the vapors from loading each transport vessel.

(B) Vapor control systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water and vacuum does not exceed six inches of water in the gasoline tank-truck.

(C) Each gasoline terminal shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device, and to monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system.

(i) If the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

(ii) If the vapor return line is not connected during gasoline transfer, then:

(I) systems which monitor for a positive coupling of the vapor return line to the transport vessel shall automatically stop the transfer of gasoline to the transport vessel in that loading bay immediately; and

(II) systems which monitor for the presence of vapor flow shall allow no more than one minute of gasoline transfer to occur before automatically stopping the transfer of gasoline to the transport vessel in that loading bay.

(D) As an alternative to subparagraph (C) of this paragraph, the following requirements apply to gasoline terminals which have a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. Such gasoline terminals shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device, and to monitor either a positive coupling of the vapor return line to the transport vessel or the presence of vapor flow in the vapor return line between the transport vessel and the terminal's vapor collection system.

(i) If the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

(ii) If the vapor return line is not connected during gasoline transfer, then:

(I) systems which monitor for a positive coupling of the vapor return line to the transport vessel shall automatically stop the transfer of gasoline to the transport vessel in that loading bay immediately; and

(II) systems which monitor for the presence of vapor flow shall allow no more than one minute of gasoline transfer to occur before automatically stopping the transfer of gasoline to the transport vessel in that loading bay.

(E) As an alternative to subparagraphs (C) and (D) of this paragraph, gasoline terminals in the Beaumont/Port Arthur area may comply with subsection (b)(4)(C) or (D) of this section.

(5) Gasoline bulk plants. The following additional control requirements apply to transfer of gasoline at gasoline bulk plants.

(A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors.

(B) While filling a transport vessel from a storage tank:

(i) the transport vessel, if equipped for top loading, must use a submerged fill pipe; and

(ii) gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.

(6) Marine terminals. The following control requirements apply to marine terminals in the Houston/Galveston area.

(A) VOC emissions shall not exceed 0.09 pound from the vapor control system vent per 1,000 gallons (10.8 mg/liter) of VOC loaded into the marine vessel, or the vapor control system shall maintain a control efficiency of at least 90%. Alternatively, a vapor balance system or pressurized loading may be used to control the vapors.

(B) Only leak-free marine vessels, as defined in §115.10 of this title, shall be used for loading operations.

(C) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

(i) be limited in duration to the time necessary to practicably gauge and/or sample; and

(ii) not occur while VOC is being transferred.

(D) When non-dedicated loading lines are used to load VOC with a true vapor pressure less than 0.5 psia (or a flash point of 150 degrees Fahrenheit or greater) and the preceding transfer through these lines was VOC with a true vapor pressure equal to or greater than 0.5 psia, the residual VOC vapors from this preceding transfer must be controlled by the vapor control system, vapor balance system, or pressurized loading as specified in subparagraph (A) of this paragraph.

(7) Once-in-always-in. Any loading or unloading operation that becomes subject to the provisions of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.217(a) of this title; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or exemption from permitting required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Exemptions from Permitting). If an exemption from permitting is available for the project, compliance with this subsection must be maintained for

30 days after the filing of documentation of compliance with that exemption from permitting; or

(B) if authorization by permit, permit amendment, standard permit, or exemption from permitting is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

(b) The owner or operator of each land-based VOC transfer operation and transport vessel in the covered attainment counties shall comply with the following control requirements.

(1) General VOC loading in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. At VOC loading operations other than gasoline terminals and gasoline bulk plants, vapors from the transport vessel caused by the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions must be controlled by:

(A) a vapor control system which maintains a control efficiency of at least 90%;

(B) a vapor balance system, as defined in §115.10 of this title; or

(C) pressurized loading.

(2) Disposal of transported vapors. After unloading, transport vessels must be kept vapor-tight until the vapors in the transport vessel are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation.

(3) Leak-free requirements. All land-based loading and unloading of VOC shall be conducted such that:

(A) all liquid and vapor lines are:

(i) equipped with fittings which make vapor-tight connections and that close automatically when disconnected; or

(ii) equipped to permit residual VOC after transfer is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor control system or a vapor balance system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

(B) there are no VOC leaks, as defined in §101.1 of this title, when measured with a hydrocarbon gas analyzer, and no liquid or vapor leaks, as detected by sight, sound, or smell, from any potential leak source in the transport vessel and transfer system (including, but not limited to, liquid lines, vapor lines, hatch covers, pumps, and valves, including pressure relief valves);

(C) all gauging and sampling devices are vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

(i) be limited in duration to the time necessary to practicably gauge and/or sample; and

(ii) not occur while VOC is being transferred;

(D) any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel;

(E) if VOC is loaded through the hatches of a transport vessel, then pneumatic, hydraulic, or other mechanical means shall force a vapor-tight seal between the loading arm's vapor collection adapter and the hatch. A means shall be provided which prevents liquid drainage from the loading device when it is removed from the hatch of any transport vessel, or which routes all VOC emissions to a vapor control system. After VOC transfer, if necessary to empty a liquid line, the contents may be placed in a portable container, which is then closed vapor-tight and disposed of properly.

(4) Gasoline terminals. The following additional control requirements apply to gasoline transfer at gasoline terminals.

(A) A vapor control system must be used to control the vapors from loading the transport vessel.

(B) Vapor control systems and loading equipment at gasoline terminals shall be designed and operated such that gauge pressure does not exceed 18 inches of water and vacuum does not exceed six inches of water in the gasoline tank-truck.

(C) Each gasoline terminal shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

(D) As an alternative to subparagraph (C) of this paragraph, the following requirements apply to gasoline terminals which have a variable vapor space holding tank design that can process the vapors independent of transport vessel loading. Such gasoline terminals shall be equipped with sensors and other equipment designed and connected to monitor the status of the control device. If the variable vapor space holding tank serving the loading rack(s) does not have the capacity to store additional vapors for processing by the control device at a later time and the control device malfunctions or is not operational, the system shall automatically stop gasoline transfer to the transport vessel(s) immediately.

(5) Gasoline bulk plants. The following additional control requirements apply to gasoline transfer at gasoline bulk plants.

(A) A vapor balance system must be used between the storage tank and transport vessel. Alternatively, a vapor control system which maintains a control efficiency of at least 90% may be used to control the vapors.

(B) While filling a transport vessel from a storage tank:

(i) the transport vessel, if equipped for top loading, must use a submerged fill pipe; and

(ii) gauge pressure must not exceed 18 inches of water and vacuum must not exceed six inches of water in the gasoline tank-truck tank.

§115.213. Alternate Control Requirements.

(a) Alternate means of control. Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Loading and Unloading of Volatile Organic Compounds) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(b) General volatile organic compound (VOC) loading-90% overall control option in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas. As an alternative to §115.212(a)(1) of this title (relating to Control Requirements), VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading

into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure equal to or greater than 0.5 psia, but less than 11 psia, under actual storage conditions, provided that the following requirements are met.

(1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a VOC loading operation for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions will be at least 90%. Any control plan submitted after December 31, 1996, must be approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each loading rack and any associated control device at the account, the control plan shall include the emission point number (EPN), the facility identification number (FIN), the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.

(2) The owner or operator of the VOC loading operation shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions during the preceding calendar year is at least 90%. For each loading rack and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each loading rack and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.

(3) The owner or operator of the VOC loading operation shall submit an updated report no later than 30 days after the installation of an additional loading rack(s) or any change in service of a loading rack(s) from loading VOC with a true vapor pressure less than 0.5 psia to loading VOC with a true vapor pressure greater than or equal to 0.5 psia, or vice versa. The report shall be submitted to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%.

(4) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.

(5) The loading of VOC with a true vapor pressure greater than or equal to 11 psia under actual storage conditions must be controlled by:

(A) pressurized loading;

(B) a vapor control system which maintains a control efficiency of at least 90%; or

(C) a vapor balance system, as defined in §115.10 of this title (relating to Definitions).

(6) A VOC loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a transport vessel is likewise not required to comply with:

(A) §115.212(a)(3)(A) and (C) of this title; or

(B) §115.214(a)(1)(A)(ii) and (iii) and (C) of this title (relating to Inspection Requirements).

(c) General VOC loading-90% overall control option in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties. As an alternative to §115.212(b)(1) of this title, VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals may elect to achieve a 90% overall control of emissions at the account from the loading of VOC (excluding loading into marine vessels and loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure greater than or equal to 1.5 psia, but less than 11 psia, under actual storage conditions.

(1) Each VOC loading operation using this control option shall meet the requirements of subsection (b)(1)-(5) of this section, except that 1.5 psia shall be substituted for 0.5 psia in these paragraphs.

(2) A VOC loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a transport vessel is likewise not required to comply with:

(A) §115.212(b)(3)(A) and (C) of this title; or

(B) §115.214(b)(1)(A)(ii) and (iii) and (C) of this title.

(d) Marine vessel loading-90% control option. As an alternative to §115.212(a)(6)(A) of this title, marine terminals may elect to achieve a 90% overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels, provided that the following requirements are met.

(1) To qualify for the control option available under this subsection after December 31, 1996, the owner or operator of a marine terminal for which a control plan was not previously submitted shall submit a control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels will be at least 90%. Any control plan submitted after December 31, 1996 must be

approved by the executive director before the owner or operator may use the control option available under this subsection for compliance. For each marine loading facility and any associated control device at the marine terminal, the control plan shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, the controlled and uncontrolled emission rates for the preceding calendar year, and an explanation of the recordkeeping procedure and calculations which will be used to demonstrate compliance.

(2) The owner or operator of the marine terminal shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions into marine vessels during the preceding calendar year is at least 90%. For each marine loading facility and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.

(3) All representations in control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the marine terminal submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports shall demonstrate that the overall control of emissions at the marine terminal from the loading into marine vessels of VOC with a true vapor pressure greater than or equal to 0.5 psia, but less than 11 psia, under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the most recent emissions inventory.

(4) The loading of VOC with a true vapor pressure greater than 11 psia under actual storage conditions must be controlled by:

(A) pressurized loading;

(B) a vapor control system which maintains a control efficiency of at least 90%; or

(C) a vapor balance system, as defined in §115.10 of this title.

(5) A marine loading operation which, under the 90% control option of this subsection, is not required to control vapors caused by loading VOC into a marine vessel is likewise not required to comply with:

(A) §115.212(a)(6)(B)-(D) of this title; or

(B) §115.214(a)(3)(A), (B)(ii) and (iii), and (D) of this title.

§115.214. Inspection Requirements.

(a) The owner or operator of each volatile organic compound (VOC) transfer operation in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall comply with the following inspection requirements.

(1) Land-based VOC transfer.

(A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect for:

(i) visible liquid leaks;

(ii) visible fumes; and

(iii) significant odors.

(B) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(C) All tank-truck tanks being filled with or emptied of gasoline, or being filled with non-gasoline VOC having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions, shall have been leak tested within one year in accordance with the requirements of §§115.234-115.237 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels) as evidenced by prominently displayed certification affixed near the United States Department of Transportation certification plate.

(D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:

(i) a VOC transfer which is exempt from §115.211 or §115.212(a)(1) of this title (relating to Emission Specifications; and Control Requirements) under §115.217(a) of this title (relating to Exemptions); or

(ii) a VOC loading operation which, under the 90% control option in §115.213(b) of this title (relating to Alternate Control Requirements), is not required to control vapors caused by loading VOC.

(2) Gasoline terminals-additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting the requirements of §§115.352-115.357 of this title (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas). Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown.

(3) Marine terminals. For marine terminals in the Houston/Galveston area, the following inspection requirements apply.

(A) Before loading a marine vessel with a VOC which has a vapor pressure equal to or greater than 0.5 pounds per square inch absolute under actual storage conditions, the owner or operator of the marine terminal shall verify that the marine vessel has passed an annual vapor tightness test as specified in §115.215(7) of this title (relating to Approved Test Methods). If no documentation of the annual vapor tightness test is available, one of the following methods may be substituted.

(i) VOC shall be loaded into the marine vessel with the vessel product tank at negative gauge pressure.

(ii) Leak testing shall be performed during loading using Test Method 21. The testing shall be conducted during the final 20% of loading of each product tank of the marine vessel and shall be applied to any potential sources of vapor leaks on the vessel.

(iii) Documentation of leak testing conducted during the preceding 12 months as described in clause (ii) of this subparagraph shall be provided.

(B) During each VOC transfer, the owner or operator of the marine terminal or of the marine vessel shall inspect for:

(i) visible liquid leaks;

(ii) visible fumes; and

(iii) significant odors.

(C) If a liquid leak is detected during VOC transfer and cannot be repaired immediately (for example, by tightening a bolt or packing gland), then the transfer operation shall cease until the leak is repaired.

(D) If a vapor leak is detected by sight, sound, smell, or hydrocarbon gas analyzer during the VOC loading operation, then a "first attempt" shall be made to repair the leak. VOC loading operations need not be ceased if the first attempt to repair the leak, as defined in §101.1 of this title (relating to Definitions), to less than 10,000 parts per million by volume (ppmv) or 20% of the lower explosive limit, is not successful provided that the first attempt effort is documented by the owner or operator of the marine vessel as soon as practicable and a copy of the repair log made available to a representative of the marine terminal. No additional loadings shall be made into the cargo tank until a successful repair has been completed and an inspection conducted under 40 Code of Federal Regulations 61.304(f) or 63.565(c).

(E) The intentional bypassing of a vapor control device during marine loading operations is prohibited.

(F) All shore-based equipment is subject to the fugitive emissions monitoring requirements of §§115.352-115.357 of this title. For the purposes of this paragraph, shore-based equipment includes, but is not limited to, all equipment such as loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves between the marine loading facility and the vapor control system and between the marine loading facility and the associated land-based storage tanks, excluding working emissions from the storage tanks.

(G) Subparagraphs (B) and (D) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:

(i) a VOC transfer which is exempt from §115.212(a)(6)(A) of this title under §115.217(a)(5) of this title; or

(ii) a VOC loading operation which, under the 90% control option in §115.213(d) of this title, is not required to control vapors caused by loading VOC.

(b) The owner or operator of each VOC transfer operation in the covered attainment counties shall comply with the following inspection requirements.

(1) Land-based VOC transfer. At all VOC transfer operations in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, and at gasoline terminals and gasoline bulk plants in the covered attainment counties:

(A) During each VOC transfer, the owner or operator of the transfer operation or of the transport vessel shall inspect for:

(i) visible liquid leaks;

(ii) visible fumes; and

(iii) significant odors.

(B) VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(C) All tank-truck tanks being filled with or emptied of gasoline shall have been leak tested within one year in accordance with the requirements of §§115.234-115.237 of this title as evidenced by prominently displayed certification affixed near the United States Department of Transportation certification plate.

(D) Subparagraphs (A) and (B) of this paragraph do not apply to fumes from hatches or vents if the fumes result from:

(i) a VOC transfer which is exempt from §115.211 or §115.212(b)(1) of this title under §115.217(b) of this title; or

(ii) a VOC loading operation which, under the 90% control option in §115.213(b) of this title, is not required to control vapors caused by loading VOC.

(2) Gasoline terminals-additional inspection. The owner or operator of each gasoline terminal shall perform a monthly leak inspection of all equipment in gasoline service. Each piece of equipment shall be inspected during the loading of gasoline tank-trucks. For this inspection, detection methods incorporating sight, sound, and smell are acceptable. Alternatively, a hydrocarbon gas analyzer may be used for the detection of leaks, by meeting the requirements of §§115.352-115.357 of this title. Every reasonable effort shall be made to repair or replace a leaking component within 15 days after a leak is found. If the repair or replacement of a leaking component would require a unit shutdown, the repair may be delayed until the next scheduled shutdown.

§115.215. Approved Test Methods.

Compliance with the emission specifications, vapor control system efficiency, and certain control requirements, inspection requirements, and exemption criteria of §§115.211-115.214 and 115.217 of this title (relating to Loading and Unloading of Volatile Organic Compounds) shall be determined by applying one or more of the following test methods and procedures, as appropriate.

(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) are used for determining flow rates, as necessary.

(2) Concentration of volatile organic compounds (VOC).

(A) Test Method 18 (40 CFR 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.

(B) Test Method 25 (40 CFR 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.

(C) Test Methods 25A or 25B (40 CFR 60, Appendix A) are used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

(3) Performance requirements for flares and vapor combustors.

(A) For flares, the performance test requirements of 40 CFR 60.18(b) shall apply.

(B) For vapor combustors, the owner or operator may consider the unit to be a flare and meet the performance test requirements of 40 CFR 60.18(b) rather than the procedures of paragraphs (1) and (2) of this section.

(C) Compliance with the requirements of 40 CFR 60.18(b) will be considered to demonstrate compliance with the emission specifications and control efficiency requirements of §115.211 and §115.212 of this title (relating to Emission Specifications; and Control Requirements).

(4) Vapor pressure. Use standard reference texts or American Society for Testing and Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of vapor pressure.

(5) Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining VOC leaks.

(6) Gasoline terminal test procedures. Use the additional test procedures described in 40 CFR 60.503 b, c, and d, for pretest leak determination, emission specifications test for vapor control systems, and pressure limit in transport vessel, respectively.

(7) Vapor-tightness test procedures for marine vessels. Use 40 CFR 63.565(c) (effective September 19, 1995) or 40 CFR 61.304(f) (effective April 3, 1990) for determination of marine vessel vapor tightness.

(8) Flash point. Use ASTM Test Method D93 for the measurement of flash point.

(9) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

(10) Alternate test methods. Test methods other than those specified in paragraphs (1)-(8) of this section (relating to Approved Test Methods) may be used if validated by 40 CFR 63, Appendix A, Test Method 301 (effective December 29, 1992). For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.216. Monitoring and Recordkeeping Requirements.

The owner or operator of each volatile organic compound (VOC) loading or unloading operation in the covered attainment counties or in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall maintain the following information for at least two years at the plant, as defined by its air quality account number. The owner or operator shall make the information available upon request to representatives of the executive director, EPA, or any local air pollution control agency having jurisdiction in the area.

(1) Vapor control systems. For vapor control systems used to control emissions from VOC transfer operations, records of appropriate parameters to demonstrate compliance, including:

(A) continuous monitoring and recording of:

(i) the exhaust gas temperature immediately downstream of a direct-flame incinerator;

(ii) the inlet and outlet gas temperature of a chiller or catalytic incinerator;

(iii) the exhaust gas VOC concentration of a carbon adsorption system, as defined in §101.1 of this title (relating to Definitions); and

(iv) the exhaust gas temperature immediately downstream of a vapor combustor. Alternatively, the owner or operator of a vapor combustor may consider the unit to be a flare and meet the requirements of subparagraph (B) of this paragraph;

(B) the requirements specified in 40 Code of Federal Regulations 60.18(b) and Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) for flares; and

(C) for vapor control systems other than those specified in subparagraphs (A) and (B) of this paragraph, records of appropriate operating parameters.

(2) Test results. A record of the results of any testing conducted in accordance with §115.215 of this title (relating to Approved Test Methods).

(3) Land-based VOC transfer to or from transport vessels.

(A) A daily record of:

(i) the identification number of each tank-truck tank;

(ii) the quantity of VOC loaded into each transport vessel; and

(iii) the date of the last leak testing of each tank-truck tank as required by §115.214(a)(1)(C) or (b)(1)(C) of this title (relating to Inspection Requirements).

(B) A record of the type and vapor pressure of each VOC transferred (excluding gasoline).

(C) The owner or operator of any plant, as defined by its air quality account number, at which all VOC transferred has a true vapor pressure at actual storage conditions less than 0.5 psia as specified in §115.217(a)(1) of this title (relating to Exemptions) or 1.5 psia as specified in §115.217(b)(1) of this title, is not required to keep the records specified in subparagraph (A) of this paragraph.

(D) The owner or operator of any plant, as defined by its air quality account number, that is exempt under §115.217(a)(2)(A) or (B), or §115.217(b)(3)(A) or (B) of this title based upon gallons per day transferred shall maintain a daily record of the total throughput of gasoline or of VOC equal to or greater than 0.5 or 1.5 psia vapor pressure, as appropriate, loaded into transport vessels at the plant.

(E) For gasoline terminals, records of the results of the fugitive monitoring and maintenance program required by §115.214(a)(2) and (b)(2) of this title:

(i) a description of the types, identification numbers, and locations of all equipment in gasoline service;

(ii) the date of each monthly inspection;

(iii) the results of each inspection;

(iv) the location, nature, severity, and method of detection for each leak;

(v) the date each leak is repaired and explanation if repair is delayed beyond 15 days;

(vi) a list identifying those leaking components which cannot be repaired or replaced until a scheduled unit shutdown; and

(vii) the inspector's name and signature.

(4) Marine terminals. For marine terminals in the Houston/Galveston area:

(A) a daily record of all marine vessels loaded at the affected terminal, including:

(i) the name, registry of the marine vessel, and the legal owner or operator of the marine vessel;

(ii) the chemical name and amount of VOC cargo loaded; and

(iii) the conditions of the tanks prior to being loaded (i.e., cleaned, crude oil washed, gas freed, etc.) and the prior cargo carried by the marine vessel;

(B) a copy of each marine vessel's vapor tightness test documentation or records documenting compliance with the alternate methods specified in §115.214(a)(3)(A) of this title;

(C) a copy of each marine vessel's first attempt repair log required by §115.214(a)(3)(D) of this title;

(D) records of the results of the fugitive monitoring and maintenance program required by §115.214(a)(3)(F) of this title, including appropriate dates, test methods, instrument readings, repair results, and corrective action taken. Records of flange inspections are not required unless a leak is detected.

§115.217. Exemptions.

(a) The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

(1) Vapor pressure (at land-based operations). All land-based loading and unloading of volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch, absolute (psia) under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(a)(2) of this title (relating to Control Requirements);

(B) §115.214(a)(1)(A)(i) and (B) of this title (relating to Inspection Requirements);

(C) §115.215(4) of this title (relating to Approved Test Methods); and

(D) §115.216(2) and (3)(B) of this title (relating to Monitoring and Recordkeeping Requirements).

(2) Throughput.

(A) Any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(i) §115.212(a)(2) of this title;

(ii) §115.214(a)(1)(A)(i) and (B) of this title;

(iii) §115.215(4) of this title; and

(iv) §115.216(2), (3)(B), and (3)(D) of this title.

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(i) §115.212(a)(2) of this title;

(ii) §115.214(a)(1)(A)(i) and (B) of this title; and

(iii) §115.216(3)(D) of this title.

(3) Liquefied petroleum gas. All loading and unloading of liquefied petroleum gas is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(a)(2) of this title;

(B) §115.214(a)(1)(A)(i) and (B) of this title; and

(C) §115.216(3) of this title.

(4) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title (relating to Definitions), are exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds).

(5) Marine vessels. The following marine vessel transfer exemptions apply.

(A) The following marine vessel transfer operations are exempt from this division (relating to Loading and Unloading of Volatile Organic Compounds):

(i) all loading and unloading of marine vessels in ozone nonattainment areas other than the Houston/Galveston area; and

(ii) transfer of VOC from one marine vessel to another marine vessel ("lightering"), provided that the VOC transfer does not use loading arm(s), pump(s), meter(s), valve(s), or piping that are part of a marine terminal.

(B) The following marine vessel transfer operations are exempt from the requirements of §§115.212(a), 115.214(a), and 115.216 of this title, except as noted:

(i) all unloading of marine vessels, except for §115.214(a)(3)(B)(i) and (C) and §115.216(2) of this title;

(ii) marine terminals with uncontrolled marine loading VOC emissions less than 100 tons per year, except for §115.214(a)(3)(B)(i) and (C) and §115.216(2) of this title. Emissions from marine vessel loading operations which were routed to a control device that was installed as of November 15, 1993, are excluded from this calculation. Compliance with this exemption shall be demonstrated through the recordkeeping and reporting requirements of the annual emissions inventory submitted by the owner or operator of the marine terminal;

(iii) all throughput of VOC with a vapor pressure less than 0.5 psia loaded into marine vessels, except for §§115.212(a)(6)(D), 115.214(a)(3)(B)(i) and (C), and 115.216(2) of this title; and

(iv) all throughput of VOC with a flash point of 150 degrees Fahrenheit or greater loaded into marine vessels, except for §§115.212(a)(6)(D), 115.214(a)(3)(B)(i) and (C), and 115.216(2) of this title.

(b) The following exemptions apply in the covered attainment counties.

(1) General VOCs (non-gasoline). Except in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, all loading and unloading of VOC other than gasoline is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds).

(2) Vapor pressure (at land-based operations). All land-based loading and unloading of VOC with a true vapor pressure less than 1.5 psia under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(b)(2) of this title;

(B) §115.214(b)(1)(A)(i) and (B) of this title;

(C) §115.215(4) of this title; and

(D) §115.216(2) and (3)(B) of this title.

(3) Throughput.

(A) Any plant, as defined by its air quality account number, excluding gasoline bulk plants, which loads less than 20,000 gallons of VOC into transport vessels per day (averaged over each consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(i) §115.212(b)(2) of this title;

(ii) §115.214(b)(1)(A)(i) and (B) of this title;

(iii) §115.215(4) of this title; and

(iv) §115.216(2), (3)(B), and (3)(D) of this title.

(B) Gasoline bulk plants which load less than 4,000 gallons of gasoline into transport vessels per day (averaged over each consecutive 30-day period) are exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(i) §115.212(b)(2) of this title;

(ii) §115.214(b)(1)(A)(i) and (B) of this title; and

(iii) §115.216(3)(D) of this title.

(4) Crude oil, condensate, and liquefied petroleum gas. All loading and unloading of crude oil, condensate, and liquefied petroleum gas is exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds), except for:

(A) §115.212(b)(2) of this title;

(B) §115.214(b)(1)(A)(i) and (B) of this title; and

(C) §115.216(3) of this title.

(5) Motor vehicle fuel dispensing facilities. Motor vehicle fuel dispensing facilities, as defined in §101.1 of this title, are exempt from the requirements of this division (relating to Loading and Unloading of Volatile Organic Compounds).

(6) Marine vessels. All loading and unloading of marine vessels is exempt from this division (relating to Loading and Unloading of Volatile Organic Compounds).

§115.219. Counties and Compliance Schedules.

(a) The owner or operator of each volatile organic compound (VOC) transfer operation in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this division (relating to Loading and Unloading of Volatile Organic Compounds) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline bulk plant in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall comply with §§115.211(2), 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title (relating to Emission Specifications; Control Requirements; Inspection Requirements; Monitoring and Recordkeeping Requirements; and Exemptions) as soon as practicable, but no later than April 30, 2000.

(c) The owner or operator of each gasoline terminal in the covered attainment counties, as defined in §115.10 of this title (excluding Gregg, Nueces, and Victoria Counties) shall comply with §§115.211(1)(B), 115.212(b), 115.214(b), 115.216, and 115.217(b) of this title as soon as practicable, but no later than April 30, 2000.

(d) The owner or operator of each gasoline terminal in Gregg, Nueces, and Victoria Counties shall:

(1) continue to comply with the vapor control requirements specified in §115.212(b)(4)(A) and (B) of this title; and

(2) be in compliance with the following specifications as soon as practicable, but no later than April 30, 2000:

(A) the 20 mg/liter emission specification of §115.211(1)(B) of this title;

(B) the loading lockout requirements of §115.212(b)(4)(C) of this title;

(C) the gasoline tank-truck leak testing requirements of §115.214(b)(1)(C) of this title; and

(D) the monthly leak inspection requirements of §115.214(b)(2) of this title.

(e) The owner or operator of each gasoline terminal in Hardin, Jefferson, and Orange Counties shall comply with the loading lockout requirements of §115.212(a)(4)(C) of this title and the monthly leak inspection requirements of §115.214(a)(2) and §115.216(3)(E) of this title as soon as practicable, but no later than April 30, 2000.

(f) The owner or operator of each land-based VOC loading operation (excluding gasoline terminals and gasoline bulk plants) in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties shall comply with the 90% control efficiency requirement of §115.212(b)(1)(A) of this title as soon as practicable, but no later than April 30, 2000.

(g) The owner or operator of each land-based VOC loading operation (excluding gasoline terminals and gasoline bulk plants) in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties shall comply with the recordkeeping requirements of §115.216 of this title as soon as practicable, but no later than April 30, 2000.

(h) The owner or operator of each flare used to comply with the requirements of §115.211 and/or §115.212 of this title (relating to Emission Specifications; and Control Requirements) shall comply with §115.215(3) of this title as soon as practicable, but no later than April 30, 2000.

(i) The owner or operator of each marine terminal in Hardin, Jefferson, and Orange Counties shall comply with §§115.212(a)(6), 115.214(a)(3), 115.215, 115.216, and 115.217 of this title as soon as practicable but no later than three years after the earliest of the following occurs:

(1) the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for

ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9);

(2) the EPA publishes notification in the *Federal Register* of its determination to deny the petition to redesignate the Beaumont/Port Arthur ozone nonattainment area as an ozone attainment area; or

(3) the EPA publishes notification in the *Federal Register* of its determination to deny approval of the demonstration of attainment for the Beaumont/Port Arthur ozone nonattainment area based upon Urban Airshed Model modeling.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1999.

TRD-9903931
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: July 21, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 239–1966

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Division 2. Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities

30 TAC §§115.221–115.227, 115.229

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

§115.221. Emission Specifications.

No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas or in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall transfer, or allow the transfer of, gasoline from any tank-truck tank into a stationary storage container which is located at a motor vehicle fuel dispensing facility, unless the displaced vapors from the gasoline storage container are controlled by one of the following:

(1) a vapor control system which reduces the emissions of VOC to the atmosphere to not more than 0.8 pound per 1,000 gallons (93 mg/liter) of gasoline transferred; or

(2) a vapor balance system which is operated and maintained in accordance with the provisions of §115.222 of this title (relating to Control Requirements).

§115.222. Control Requirements.

A vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

(1) the container is equipped with a submerged fill pipe as defined in §101.1 of this title (relating to Definitions). The path through the submerged fill pipe to the bottom of the tank shall not be obstructed by a screen, grate, or similar device whose presence would preclude the determination of the submerged fill pipe's proximity to the tank bottom while the submerged fill tube is properly installed;

(2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;

(3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;

(4) the vapor return line's cross-sectional area is at least one-half (1/2) of the product drop line's cross-sectional area;

(5) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa) or in accordance with the facility's Stage II system as defined in the California Air Resources Board (CARB) Executive Order(s) for the facility;

(6) in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (3.4 kPa);

(7) after unloading, the tank-truck tank is kept vapor-tight until the vapors in the tank-truck are returned to a loading, cleaning, or degassing operation and discharged in accordance with the control requirements of that operation;

(8) the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(9) no leak, as defined in §101.1 of this title, exists from potential leak sources when measured with a combustible gas detector;

(10) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any storage tank installed after November 15, 1993 which is required to install Stage I control equipment shall be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to November 15, 1993 requiring excavation of the top of the storage tank shall be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections. At any facility for which a Stage II system was installed prior to November 15, 1993, the Stage I system utilized must be consistent with the relevant requirements of the CARB Executive Order for the Stage II system installed at that facility;

(11) in the covered attainment counties, any storage tank installed after December 22, 1998 which is required to install Stage I control equipment shall be equipped with a non-coaxial Stage I connection. In addition, any modification to a storage tank existing prior to December 22, 1998 requiring excavation of the top of the storage tank shall be equipped with a non-coaxial Stage I connection, even if the original installation utilized coaxial Stage I connections; and

(12) any motor vehicle fuel dispensing facility that becomes subject to the provisions of paragraphs (1)-(11) of this section by exceeding the throughput limits of §115.227 of this title

(relating to Exemptions) shall have 120 days to come into compliance and will remain subject to the provisions of this subsection, even if its gasoline throughput later falls below exemption limits. However, if gasoline throughput exceeds the exemption limit due to a natural disaster or emergency condition for a period not to exceed one month, upon written request, the executive director may grant a facility continued exempt status.

§115.224. Inspection Requirements.

In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the following inspection requirements shall apply.

(1) Inspections for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted at motor vehicle fuel dispensing facilities. Gasoline transfer shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(2) The gasoline tank-truck tank must have been inspected for leaks within one year in accordance with the requirements of §§115.234-115.237 of this title (relating to Control of Volatile Organic Compound Leaks from Transport Vessels), as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate.

§115.225. Testing Requirements.

Compliance with the emission specification and certain control requirements and inspection requirements of §§115.221, 115.222 and 115.224 of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) shall be determined by applying one or more of the following test methods, as appropriate.

(1) Flow rate. Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) are used for determining flow rate, as necessary.

(2) Concentration of volatile organic compounds.

(A) Test Method 18 (40 CFR 60, Appendix A) is used for determining gaseous organic compound emissions by gas chromatography.

(B) Test Method 25 (40 CFR 60, Appendix A) is used for determining total gaseous nonmethane organic emissions as carbon.

(C) Test Method 25A or 25B (40 CFR 60, Appendix A) is used for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis.

(3) Leak determination by instrument method. Use Test Method 21 (40 CFR 60, Appendix A) for determining volatile organic compound leaks.

(4) Minor modifications. Minor modifications to these test methods may be used, if approved by the executive director.

§115.226. Recordkeeping Requirements.

The owner or operator of each motor vehicle fuel dispensing facility in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas and in the covered attainment counties as defined in §115.10 of this title (relating to Definitions) shall maintain the following records and make them available upon request to representatives of the executive director, EPA, or any local air pollution control program with jurisdiction. The owner or operator shall:

(1) maintain a record at the facility site of the dates on which gasoline was delivered to the dispensing facility and the identification number and date of the last leak testing, required by §115.224(2) of this title (relating to Inspection Requirements), of each tank-truck tank from which gasoline was transferred to the facility. The records shall be kept for a period of two years; and

(2) maintain for a period of two years:

(A) a record of the results of any testing conducted at the motor vehicle fuel dispensing facility in accordance with the provisions specified in §115.225 of this title (relating to Testing Requirements);

(B) in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, a record of gasoline throughput for each calendar month since January 1, 1991 until such time as the facility installs a Stage II vapor recovery system as required by §§115.241-249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month; and

(C) in the covered attainment counties, a record of gasoline throughput for each calendar month beginning January 1, 1999, until the facility is in compliance with §115.221 and §115.222 of this title (relating to Emission Specifications; and Control Requirements). The records must contain the calendar month and year, and the total facility gasoline throughput for each calendar month. These records must be made available at the site during inspection by representatives of the executive director, EPA, or any local air pollution control program with jurisdiction.

§115.227. Exemptions.

The following exemptions apply:

(1) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons, at motor vehicle fuel dispensing facilities for which construction began prior to November 15, 1992, are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title (relating to Control Requirements);

(B) §115.222(3) of this title as it applies to liquid gasoline leaks; and

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks.

(2) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed no more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, and for which construction began prior to November 15, 1992, are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(B) of this title (relating to Record-keeping Requirements).

(3) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), stationary gasoline storage containers with a nominal capacity less than or equal to 1,000 gallons at motor vehicle fuel dispensing facilities are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title (relating to Control Requirements);

(B) §115.222(3) of this title as it applies to liquid gasoline leaks; and

(C) §115.224(1) of this title (relating to Inspection Requirements) as it applies to liquid gasoline leaks.

(4) In the covered attainment counties, transfers to stationary storage tanks located at a motor vehicle fuel dispensing facility which has dispensed less than 125,000 gallons of gasoline in any calendar month after January 1, 1999 are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities), except for:

(A) §115.222(7) of this title;

(B) §115.222(3) of this title as it applies to liquid gasoline leaks;

(C) §115.224(1) of this title as it applies to liquid gasoline leaks; and

(D) §115.226(2)(C) of this title (relating to Record-keeping Requirements).

(5) Transfers to the following stationary receiving containers are exempt from the requirements of this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities):

(A) containers used exclusively for the fueling of implements of agriculture; and

(B) storage tanks equipped with external floating roofs, internal floating roofs, or their equivalent.

§115.229. Counties and Compliance Schedules.

(a) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Jefferson, Liberty, Montgomery, Orange, and Waller Counties shall comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than the installation of a Stage II vapor recovery system as required by §§115.241-115.249 of this title (relating to Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities) or January 31, 1994, whichever occurs first.

(b) The owner or operator of each motor vehicle fuel dispensing facility in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties which has dispensed more than 10,000 gallons of gasoline in any calendar month after January 1, 1991, but less than 120,000 gallons of gasoline per year, and for which construction began prior to November 15, 1992 shall comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than the installation of a Stage II vapor recovery system as required by §§115.241-115.249 of this title or January 31, 1994, whichever occurs first.

(c) The owner or operator of each motor vehicle fuel dispensing facility in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties affected by §115.222(1) of this title (relating to Control Requirements), regarding the prohibition of any obstruction in the submerged fill pipe, shall comply with the prohibition on submerged fill pipe obstructions as soon as practicable, but no later than:

(1) the time of Stage II vapor recovery system installation for any facility at which the Stage II installation occurred after November 15, 1993; and

(2) November 15, 1994 for any facility which has installed Stage II controls as of November 15, 1993.

(d) The owner or operator of each motor vehicle fuel dispensing facility in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), which dispenses 125,000 gallons of gasoline or more in any calendar month after January 1, 1999 shall comply with this division (relating to Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities) as soon as practicable, but no later than April 30, 2000. The phrase "as soon as practicable, but no later than..." means that before the April 30, 2000 compliance date, motor vehicle fuel dispensing facilities which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery by a gasoline tank-truck which is likewise equipped for Stage I vapor recovery.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1999.

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Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1966

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Division 3. Control of volatile Organic Compound Leaks From Transport Vessels

30 TAC §§115.234–115.237, 115.239

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (commission) with the authority to adopt rules consistent with the policy and purposes of the TCAA; and TCAA §382.012, which requires the commission to develop plans for protection of the state's air.

§115.234. Inspection Requirements.

(a) No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, as defined in §115.10 of this title (relating to Definitions), shall allow a tank-truck tank to be filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspec-

tion Requirements), or filled with non-gasoline volatile organic compounds (VOC) having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions at any facility subject to §115.214(a)(1)(C) of this title, unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate which:

(1) shows the date the tank-truck tank last passed the leak-tight test required by §115.235 of this title (relating to Approved Test Methods); and

(2) shows the identification number of the tank-truck tank.

(b) No person in the covered attainment counties, as defined in §115.10 of this title, shall allow a gasoline tank-truck tank to be filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate which:

(1) shows the date the gasoline tank-truck tank last passed the leak-tight test required by §115.235 of this title; and

(2) shows the identification number of the tank-truck tank.

§115.235. Approved Test Methods.

(a) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following testing requirements apply.

(1) The owner or operator of any tank-truck which is filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspection Requirements), or which is filled with non-gasoline volatile organic compounds (VOC) at any facility subject to §115.214(a)(1)(C) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining vapor-tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

(4) For tank-truck tanks which are filled with non-gasoline VOC at a facility subject to §115.214(a)(1)(C) of this title, annual testing using the leakage test method described in 49 CFR 180.407(h) for specification cargo tanks is an acceptable alternative to Test Method 27 (40 CFR 60, Appendix A).

(b) In the covered attainment counties, the following testing requirements shall apply.

(1) The owner or operator of any tank-truck which is filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 CFR 60, Appendix A) for determining vapor tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

§115.237. Exemptions.

(a) The following exemptions apply in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

(1) Any tank-truck tank which is used exclusively to transport volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch absolute under actual storage conditions is exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

(2) Transport vessels other than tank-trucks are exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

(3) Any tank-truck tank that is a portable tank, as defined in 49 Code of Federal Regulations 171.8, is exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks from Transport Vessels).

(b) In the covered attainment counties, transport vessels other than tank-trucks are exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

§115.239. Counties and Compliance Schedules.

(a) The owner or operator of each tank-truck tank in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with §§115.234, 115.235, 115.236, and 115.237 of this title (relating to Inspection Requirements, Approved Test Methods, Recordkeeping Requirements, and Exemptions) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline tank-truck tank in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall comply with §§115.234, 115.235, 115.236, and 115.237 of this title as soon as practicable, but no later than April 30, 2000. The phrase "as soon as practicable, but no later than..." means that before the April 30, 2000 compliance date, gasoline tank-trucks which are equipped for Stage I vapor recovery must utilize Stage I for each gasoline delivery at a motor vehicle fuel dispensing facility which is likewise equipped for Stage I vapor recovery.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9903933
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
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For further information, please call: (512) 239–1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 504. Coastal Management Program

Subchapter A. Permitting Assistance

31 TAC §504.1

The Coastal Coordination Council (council) adopts amendments to §504.11, relating to the Permitting Assistance without changes to the proposed text as published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1310). These sections will not be republished.

The council adopts amendments to §504.1, relating to the Permitting Assistance Group; §504.10, relating to the Scope of the Permitting Assistance Program; and §504.13, relating to the Assistance Products and Services; and §504.20, relating to Initiating the Preliminary Review Process, with changes to the rule as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1310).

Changes were made to §§504.1(c), 504.10(c) and 504.13(2) and (5), and 504.20(a). These changes do not alter the substantive content of the rule but are made to clarify meaning and to correct grammatical and numbering errors.

This rule, which concerns the Coastal Management Program (CMP) Permitting Assistance Program, clarifies the roles of the Permitting Assistance Group and the Permitting Assistance Coordinator (coordinator) in resolving general differences among agencies and otherwise improve the permitting process. The rule also refines and clarifies the role of the coordinator regarding individual permit applications pending before an agency. Finally, the rule includes certain textual "cleanup" and technical revisions.

No comments were received regarding the adoption of this rule.

The General Land Office has prepared a takings impact assessment for the adoption of this rule and has determined that the rule will not result in a taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile number (512) 463-6311.

The amendments are adopted under the Texas Natural Resources Code §33.205(f) and (g), which provide the council with the authority to adopt rules regarding permitting assistance programs.

Texas Natural Resources Code §33.205(f) and (g) are affected by this rule.

§504.1. Permitting Assistance Group.

(a) The Permitting Assistance Group (PAG) has three functions.

(1) The PAG provides permitting assistance to individuals and small businesses. The purpose of the Permitting Assistance Program is to serve as an outlet for basic permit information and to give individuals and small businesses direct access to agency staff so that they can receive project-specific assistance during the preapplication phase. The PAG also serves as a forum in which agencies can discuss and resolve differences over rules, interpretations, or policies and otherwise work to improve permitting processes.

(2) The PAG conducts preliminary reviews of proposed permits submitted by individuals and small businesses. The primary purpose of preliminary reviews is to create greater predictability in permitting processes in the following ways.

(A)-(B) (No change)

(C) The preliminary review process does not supplant the regular permitting process. Because its purpose is to foster predictability and not reach a final result, preliminary reviews may produce statements that must be qualified because the information provided by the applicant is incomplete, the review time is shorter, or public comment has been minimal.

(3) The PAG provides individuals and small businesses applying for federal licenses or permits assistance in complying with CMP consistency requirements pursuant to 15 CFR §930.56.

(b) Each council member representing an agency shall appoint a representative to the PAG. Each agency's PAG representative is responsible for providing the information that his or her agency is required to provide under these rules. Council members not representing agencies may appoint a representative to the PAG.

(c) The land commissioner, with the advice of the public members of the council, shall appoint a Permitting Assistance Coordinator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1999.

TRD-9903881
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: July 19, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 305–9129

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Subchapter B. Small Business Permitting Assistance

31 TAC §§504.10, 504.11, 504.13

The amendments are adopted under the Texas Natural Resources Code §33.205(f) and (g), which provide the council with

the authority to adopt rules regarding permitting assistance programs.

Texas Natural Resources Code §33.205(f) and (g) are affected by this rule.

§504.10. Scope of the Permitting Assistance Program.

(a) The Permitting Assistance Program is intended to provide assistance to individuals and small businesses. As used in this chapter, the term small business includes cities, counties, and special districts.

(b) Assistance will be provided to individuals and small businesses for proposed activities in the coastal zone requiring either one or more agency or subdivision actions subject to the Coastal Management Program (CMP) or equivalent federal actions. These actions are listed in subsection (c) of this section.

(c) Appendix A. Individual Agency or Subdivision Actions and Equivalent Federal Actions

(1) The Land Office, the School Land Board, or a board for lease of state-owned lands shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing or approving:

(A) a mineral lease plan of operations;

(B) a geophysical or geochemical permit;

(C) a coastal easement;

(D) a miscellaneous easement;

(E) a coastal lease;

(F) a surface lease;

(G) a structure registration;

(H) a cabin permit;

(I) a navigation district lease;

(J) certification of a local government beach access or dune protection plan; or

(K) an agency or subdivision wetlands mitigation bank.

(2) The Public Utility Commission of Texas shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing a certificate of convenience and necessity.

(3) The Railroad Commission of Texas shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing:

(A) a wastewater discharge permit;

(B) a waste disposal or storage pit permit; or

(C) a certification of a federal permit for the discharge of dredge or fill material.

(4) The Texas Transportation Commission shall comply with Texas Natural Resources Code §33.205(a) and (b) when approving:

(A) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or

(B) a transportation construction project or maintenance program.

(5) The Texas Historical Commission and the Antiquities Committee shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing:

(A) a permit for destruction, alteration, or taking of a coastal historic area; or

(B) a review of a federal undertaking affecting a coastal historic area.

(6) The Texas Natural Resource Conservation Commission shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing or approving:

(A) a wastewater discharge permit;

(B) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;

(C) a permit for solid or hazardous waste treatment, storage, or disposal;

(D) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;

(E) levee improvement or flood control projects;

(F) a certification of a federal permit for the discharge of dredge or fill material;

(G) a declaration of an emergency and request for an emergency release of water;

(H) a new permit for an annual appropriation of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(I) an amendment to a water permit for an increase in an annual appropriation of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; or

(J) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(i) 5,000 or more acre-feet of water within the program boundary; or

(ii) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(7) The Parks and Wildlife Commission shall comply with Texas Natural Resources Code § 33.205(a) and (b) when issuing or approving:

(A) an oyster lease;

(B) a permit for taking, transporting, or possessing threatened or endangered species;

(C) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(D) development by a person other than the Parks and Wildlife Commission that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(8) A subdivision shall comply with Texas Natural Resources Code §33.205(a) and (b) when issuing a dune protection permit or beachfront construction certificate that authorizes:

(A) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(B) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(C) a coastal shore protection project undertaken on a gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of gulf beach; or

(D) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

(9) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that the council has certified under Texas Natural Resources Code §33.2052 and:

(A) for a wastewater discharge permit, if the action is not a major permit modification that would:

(i) increase pollutant loads to coastal waters; or

(ii) result in relocation of an outfall to a critical area;

(B) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Natural Resource Conservation Commission; or

(C) for any other action, if the action:

(i) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(ii) is not directly relevant to Texas Natural Resources Code §33.205(a) and (b).

(10) The council established a program boundary to limit the geographic area in which the requirements of Texas Natural Resources Code §33.205(a) and (b) apply. The boundary is the coastal facility designation line as defined by Appendix 1 to 31 TAC §19.2 as that appendix existed on the effective date of this section, as modified by Texas Natural Resources Code §33.203(7). Except as provided by paragraph (6)(A)-(J) of this subsection, this subchapter does not apply to an agency action authorizing an activity outside the program boundary.

(11) The following are the equivalent federal actions:

(A) Environmental Protection Agency: National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated, §1342.

(B) United States Army Corps of Engineers: Dredge and fill permits under 33 United States Code Annotated, §1344.

§504.13. Assistance Products and Services.

Upon the request of an individual or small business applicant, the permitting assistance coordinator shall provide the following:

(1) A list of permits or other approvals necessary for the proposed activity.

(A) This informs the individual and small business of what agencies or subdivisions must review and approve the proposed activity.

(B) This list may be provided through the Texas Department of Economic Development comprehensive permit application procedure.

(2) A simple, understandable statement of all permit or approval requirements.

(A) This gives the individual and small business an initial indication of how the proposed activity must be designed, carried out, or maintained to receive the approvals identified under paragraph (1) of this section.

(B) This information will be provided in the form of generic Texas Department of Economic Development materials.

(3) A coordinated schedule for each agency's or subdivision's decision on the action.

(A) This informs the individuals and small business of when and in what order the permitting agencies or subdivisions identified under paragraph (1) of this section will review the proposed activity and decide to approve or disapprove the applications for the proposed activity.

(B) This information will be provided in the form of generic Texas Department of Economic Development materials.

(4) A list of all information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete.

(A) This informs the individual and small business of the information that must be collected and included in each application before the permitting agencies or subdivisions can begin the review and approval process.

(B) This is a project-specific analysis of what information the applicant will need to supply with the applications. This analysis will, at a minimum, describe the information needed for the application to be declared administratively complete. It may also include additional information that would help expedite evaluation, processing, and action on the permit or other approval.

(5) Follow-up assistance:

(A) The purpose of follow-up assistance is to give the individual and small business the opportunity to obtain additional project-specific information from the appropriate permitting agencies and subdivisions after the individuals or small business has received the information as set forth in paragraphs (1), (2), (3), and (4) of this section. This gives the individual and small business the opportunity to describe the individual's or small business' needs more specifically and obtain explanations or clarifications about what information or data to produce and include with applications or how to complete applications.

(B) If the individual and small business needs follow-up assistance from more than one agency or subdivision, the coordinator will arrange a meeting or telephone call with the representatives of those agencies or subdivisions.

(C) Where possible, follow-up assistance will be provided at locations in the coastal zone.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1999.

TRD-9903882

Larry R. Soward

Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: July 19, 1999
Proposal publication date: February 26, 1999
For further information, please call: (512) 305–9129

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Subchapter C. Preliminary Consistency Review

31 TAC §504.20

The amendments are adopted under the Texas Natural Resources Code §33.205(f) and (g), which provide the council with the authority to adopt rules regarding permitting assistance programs.

Texas Natural Resources Code §33.205(f) and (g) are affected by this rule.

§504.20. Initiating the Preliminary Review Process.

(a) Any person seeking a permit or other proposed action listed in Appendix A of §504.10(c) of this title (relating to Scope of the Permitting Assistance Program) or an agency or subdivision proposing an action listed in Appendix A may request a preliminary review.

(b)-(d) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Larry R. Soward
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For further information, please call: (512) 305–9129

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Subchapter B. Small Business Permitting Assistance

31 TAC §504.12

The Coastal Coordination Council (council) adopts the repeal of §504.12, relating to Initial Customer Needs Assessment, without changes as published in the February 26, 1999, issue of the *Texas Register* (24 TexReg 1314). The purpose of the repeal is to refine and clarify the role of the coordinator with respect to individual permit applications pending before an agency.

The council adopts the repeal of §504.12 and simultaneously adopts an amendment to §504.11, relating to Permitting Assistance Coordinator, to clarify the coordinator's role as it relates to the information applicants must provide to agencies before a permit can be issued.

No comments were received regarding the repeal of §504.12.

The repeal is adopted under Texas Natural Resources Code, §33.205, which provides the council with the authority to adopt rules regarding permitting assistance programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Larry R. Soward
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter X. Requirements for Medicaid-Certified Facilities

40 TAC §19.2322, §19.2324

The Texas Department of Human Services (DHS) adopts amendments to §19.2322 and §19.2324 with changes to the proposed text published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3302).

Justification for the amendments is to make necessary corrections and changes to the rules adopted by the Texas Board of Human Services in April 1998. The moratorium rules comply with Senate Bill 190, passed by the 75th Legislature, by establishing procedures to control the number of Medicaid-certified nursing facility beds and the decertification and reallocation of unused Medicaid beds. These amendments add definitions for nursing facility operator, controlling person, and nursing facility chain to the current bed allocation rules. The current rule regarding the history of quality care test is expanded to add a new exception for instances where the applicant has no prior history. The department has had applicants who are involved in aspects of the bed allocation process, who have no history of running a nursing facility or who have had history in another entity. This rule will look at all controlling parties in the corporation in such instances, thus ensuring quality care while recognizing the fact that, for example, many builders of nursing facilities will not have been involved in the operation of facilities.

Another new portion of the test addresses cases of multiple ownership in which the department will take into consideration the overall record of the nursing facility chain. The department will look at multi-ownership to ensure that quality of care exists in all ownerships within the corporation by looking at the overall record of the chain.

A new provision clarifies that an Alzheimer's facility requesting an increase in beds will be approved for an increase in Medicaid beds for Alzheimer's purposes only. The intent of the Medicaid waiver was to grant a waiver for a 10% increase for Alzheimer's

beds only. The department has proposed this rule to clarify the issue.

The history of quality of care test which applies to facilities requesting "spend down" beds is now standardized to coincide with all other allocation actions for purposes of clarity and to further enhance quality of care.

The current provision regarding the loss of bed allocation due to sanctions is amended to allow for a further ground for waiver of the provision. The current rule provides that under certain circumstances a provider will lose the allocation of beds. The proposed rule gives the department broader authority to waive this requirement that enhances quality of care.

The rules clarify an ambiguity in current practices to the effect that facilities that voluntarily decertify beds must apply for new beds under the same conditions as any other new applicant. In order to avoid confusion the rules are also amended to the effect that DHS may require written approval of the owner of the physical plant before approving any action that would affect the status of the facility's Medicaid beds.

For clarity in §19.2322(h) the subsection title was changed and in §19.2322(j) an introductory phrase was added. In §19.2324(b)(2) and (c)(12) minor changes were made to departmental addresses in order to clearly identify the area of contact in Long Term Care Regulatory.

The amendments will function by establishing more efficient and fair enforcement of the rule on the distribution, allocation, and reallocation of Medicaid beds. Additional Medicaid-certified beds will be available in facilities providing a high quality of care.

The department received a comment from the Texas Health Care Association. The comment addressed department procedures for handling special commissioner waivers, and DHS staff are working on procedures for alerting the public regarding requests for special commissioner's waivers.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042, specifically §32.0213.

§19.2322. Allocation, Reallocation, and Decertification Requirements.

(a) Definitions. The words and terms defined below, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Nursing Facility Operator (NFO)–The entity that is:

(A) an applicant for licensure by the Texas Department of Human Services (DHS) under Chapter 242 of the Texas Health and Safety Code and Medicaid certification;

(B) licensed by DHS; or

(C) licensed and holds the contract to provide Medicaid services.

(2)-(3) (No change.)

(4) Controlling person–As defined in §242.0021 of the Texas Health and Safety Code.

(5) Nursing facility chain–An entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(b) Purpose. The purpose of these rules is to control the number of Medicaid beds for which DHS contracts. The allocation of certified beds represents an opportunity to contract to serve a specific number of residents. The Medicaid beds for which an NFO is certified are strictly limited to the physical plant at which they were originally certified, unless their transfer by the NFO in the county is expressly approved by DHS. The beds remain at the physical plant even if the bed allocation was obtained by or through the action of the NFO. When the NFO's business is sold, the allocation of certified beds remains at the physical address at which they were originally certified. Any transfer must meet the requirements contained in subsection (i) of this section.

(c) (No change.)

(d) Quality of care.

(1) History of quality of care. For purposes of this section, an NFO demonstrates a history of quality care if, within the two years preceding a request for additional capacity:

(A) the NFO has not received any of the following sanctions:

(i) termination of Medicaid certification;

(ii) termination of Medicaid contract;

(iii) civil penalty pursuant to §242.065 of the Texas Health and Safety Code;

(iv) Medicaid monetary penalty;

(v) denial of payment for new admissions;

(vi) denial of facility's license; or

(vii) denial of new admissions, as described in §242.012 of the Texas Health and Safety Code; and

(B) DHS does not find a clear pattern of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions.

(2) Exceptions to history of quality of care.

(A) Regardless of any sanctions imposed in subsection (d)(1)(A) of this section. DHS may grant an application in a county with four or fewer facilities, where none of the facilities would meet all of the requirements in subsection (d) of this section for increased capacity, upon finding a clear pattern of decreasing numbers of substantial or repeated licensing and Medicaid sanctions including administrative penalties, and/or other sanctions on the part of the NFO.

(B) Subsection (d)(1)(A) of this section does not apply to sanctions that are administratively withdrawn or subsequently reversed upon administrative or judicial appeal.

(C) In the case of sanctions that are appealed, either administratively or judicially, an application to DHS for an allocation of Medicaid certified beds will be suspended until the appeal has been finally resolved.

(D) Subsection (d)(1) of this section will not apply if all the following are met:

(i) The applicant NFO has changed ownership within that period;

(ii) The new owner of the NFO has demonstrated a history of quality care in that nursing facility for at least one year preceding the application for increased capacity; and

(iii) The new owner of the NFO has demonstrated to DHS's satisfaction a record of compliance in other nursing facilities it owns or operates.

(E) In instances where the NFO, waiver applicant, or other entity has no history of providing care, as outlined in subsection (d)(1) of this section, DHS will review the overall record of other facilities that the controlling person or persons owns, operates, or controls in order to determine the ability to provide quality care.

(3) Multiple ownership. Where an NFO, waiver applicant, or other entity to which subsection (d) applies is owned, operated under lease or otherwise controlled by nursing facility chain DHS will:

(A) apply the criteria as outlined in subsection (d)(A) of this section to the facility at issue; and

(B) examine the overall record of the nursing facility chain in order to determine the ability to provide quality care.

(e) Exemptions. If the NFO meets all criteria, DHS may grant the following exemptions from the policy stated in subsection (c) of this section.

(1) NFOs that change ownership. Except as otherwise provided in this section, DHS limits contracting with the new owner to no more certified Medicaid beds than the prior owner had when the ownership change occurred.

(2) NFOs whose Medicaid contracts have been terminated. DHS limits contracting to no more than the number of certified Medicaid beds on the effective date of termination. The NFO must meet certification and contract requirements within 90 days of the effective date of the termination in order to retain the allocation of Medicaid beds. The loss of the bed allocation after 90 days is dependant upon the NFO having failed two surveys within that period, so long as these surveys were requested within sufficient time for DHS to complete them within 90 days, consistent with federal requirements. Until an NFO has qualified to re-enter the Medicaid program, the allocation of beds to that facility is suspended and any sale of either the NFO or the physical plant will not transfer or convey the bed allocation to a buyer. However, DHS may make an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of the facility or for other good cause.

(3) Replacement beds. DHS limits contracting of the replacement beds to the county in which the original physical plant was located and to no more than the number of certified Medicaid beds being replaced. The replacement beds must be recertified in the replacement physical plant within 24 months from the date of the DHS letter of approval to transfer beds. Potential NFOs previously issued waivers have 18 months from the effective date of this rule to be licensed and certified. DHS may grant an extension for extenuating circumstances, at the discretion of the DHS commissioner.

(4) Low capacity. For reasons of efficiency, DHS will accept an application to contract up to 60 beds from a small facility of less than 60 licensed beds if the NFO:

(A) has a Medicaid contract to provide nursing facility services; and

(B) has not had remedies imposed, as specified in subsection (d) of this section, which have resulted in contract cancellation in the 24- month period immediately preceding the month of application.

(5) Teaching facilities. Facilities approved and contracted to operate as teaching nursing facilities from March 1, 1989, through January 1, 1993, must continue to meet their affiliation agreements.

(6) Special commissioner's waiver.

(A) The commissioner of DHS has authority to waive the restriction on contracting in subsection (c) of this section and direct DHS to enter into Medicaid contracts with NFOs that satisfy the requirements specified in this subparagraph. In a manner acceptable to DHS, each of these NFOs must:

(i) document that there is a crisis and immediate need for additional Medicaid nursing-facility beds in the NFO's community;

(ii) document that there are problems with the quality of care available in the NFO's community, and show that new Medicaid beds will remedy these problems;

(iii) demonstrate that Medicaid residents in their community do not have reasonable access to quality nursing facility care;

(iv) document strong community support for a new Medicaid nursing facility; and

(v) demonstrate a history of quality care, as specified in subsection (d) of this section. An applicant that has not owned or operated a nursing facility may apply; however, DHS will evaluate the applicant and any controlling person to determine if the applicant has the capacity to provide quality care.

(B) DHS applies the following criteria when granting special DHS commissioner's waivers:

(i) If the physical plant has not completed construction requirements, and if the NFO has not been licensed and certified within 24 months of the date on the DHS letter approving the waiver, the DHS commissioner will rescind the approvals for all such waivers granted.

(ii) DHS may grant an extension for extenuating circumstances, at the discretion of the DHS commissioner.

(7) Criminal justice and underserved minorities. The commissioner may grant a waiver of these restrictions for a contract if the commissioner determines that beds are necessary for the following circumstances:

(A) to meet the need identified and determined by the Texas Department of Criminal Justice (TDCJ) as necessary to serve persons under the supervision of TDCJ who have been released on parole, mandatory supervision, or special needs parole under the Code of Criminal Procedure, Article 42.18; or

(B) to meet the documented demand in underserved minority communities where beds are not available from existing resources. For purposes of this waiver, the term minority shall mean all persons who are black, hispanic, Asian or Pacific islander, American Indian, or Alaskan native. The facility must:

(i) be located in a county with a total population of at least 1,000,000, according to the most recent U.S. census;

(ii) serve a zip code whose minority population is greater than 50%, according to the most recent U.S. census;

(iii) document that minority residents in the zip code in which the facility is located are unable to attain Medicaid long term care services in that specific location, due to lack of such service availability; and

(iv) be the only waived facility, as defined in this paragraph, in that county.

(C) NFOs granted waivers must be licensed and certified within 24 months of the approval letter.

(D) Potential NFOs previously issued waivers have 18 months from the effective date of this rule to be licensed and certified.

(8) Alzheimer's facilities. An Alzheimer's facility, established under this waiver that seeks to increase its Medicaid bed allocation will receive an increase of Medicaid beds as Alzheimer beds only. DHS waives a restriction imposed by state law on the authority to contract under the state Medicaid program for nursing home beds based on the percentage of beds that are occupied in a geographical area if the NFO:

(A) is affiliated with a medical school operated by the state;

(B) is participating in research programs for the care and treatment of persons with Alzheimer's disease;

(C) is designed to separate and treat Alzheimer's disease by stage and functional level; and

(D) documents to DHS the need for the specific number of beds requested.

(9) Medicaid eligible residents for whom no Medicaid bed is available. Facilities may obtain certified beds to serve residents by meeting the following criteria:

(A) The resident must:

(i) have been a resident of the nursing facility for at least six consecutive months before becoming eligible for Medicaid; and

(ii) not have been eligible for Medicaid at the time of admission to the nursing facility.

(B) The NFO must:

(i) request certification of currently non-certified Medicaid beds;

(ii) meet requirements for Medicaid participation;

(iii) obtain a Medicaid contract; and

(iv) have demonstrated to DHS a satisfactory history of quality of care as specified in subsection (d) of this section.

(C) The certification of the bed is in effect until the resident's death or permanent discharge from the nursing facility or a Medicaid bed in the nursing facility becomes available.

(D) The number of Medicaid-certified beds under this paragraph may not exceed 10% of the total number of licensed beds in the nursing facility at any one time.

(f) Loss of allocation due to sanctions. An NFO whose license has been denied or revoked loses the allocation of certified beds on the effective date of the denial or revocation and may not contract with DHS at the physical plant for which those beds were allocated. No beds are transferred to the buyer when an NFO whose license has been revoked or denied is sold. If the owner of the physical plant also operates the facility, the denial of the license will result in the loss of the owner's bed allocation at that facility. If the owner of the physical plant leases to an NFO, the owner will lose the allocation of beds when, within any 42-month period, one or more NFOs has two of any of the following: license denials, license revocations, or contract terminations. However, DHS may make an affirmative finding that good cause exists to waive this requirement to facilitate a change in ownership to protect residents of a facility or to ensure access to quality care in the community.

(g) Decertification of unused beds.

(1) Six months after the effective date of the adopted rule, an NFO with an average occupancy rate for the preceding six months of less than 70% will have a specific number of its beds decertified. The number of beds to be decertified will be calculated by subtracting the preceding six-month average occupancy rate of Medicaid certified beds in the facility from 70% of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example: for a facility with 100 Medicaid-certified beds and a 50% occupancy rate, the difference between 70% (70 beds) and 50% (50 beds) is 20 beds, divided by 2, equals 10 beds to be decertified.

(2) NFO occupancy rates may be reviewed annually and if the average occupancy rate is below 70% for the previous six months, the decertification process will occur.

(3) Medicaid-certified beds in new or replacement physical plants and newly constructed wings in existing physical plants will be exempt from this decertification process until they have been certified for two years.

(4) Facilities that have had beds decertified under this subsection are also eligible to receive an increased allocation of certified beds if the requirements in subsection (d) of this section are met.

(5) Facilities that voluntarily decertify existing Medicaid beds must apply for Medicaid beds under the same conditions as any other new applicant for licensure and certification.

(h) Allocation of additional Medicaid beds. NFOs that wish to increase the number of allocated certified beds must meet the following criteria.

(1) A Medicaid-certified NFO must have an average occupancy rate of 90% of the current number of its certified beds for nine out of the previous 12 months. The request for additional beds must be no greater than 10% of the current number of certified beds in a nursing facility;

(2) An NFO's request for Medicaid-certified beds must be no greater than 10% of the current number of its licensed beds.

(3) NFOs may reapply for additional Medicaid-certified beds, having met the requirements in paragraphs (1) or (2) of this subsection, no sooner than nine months from the date of the prior allocation.

(4) To qualify for increased bed capacity the NFOs must, in addition to meeting the criteria in paragraph (1) or (2) of this subsection, demonstrate a history of quality care, as defined in subsection (d) of this section.

(i) Transfer of allocation of Medicaid beds within a county. Subject to approval by DHS, the NFO has the opportunity to contract for Medicaid-certified beds under the following conditions:

(1) Certified Medicaid beds may be transferred within a county if the owners of the physical plants involved approve the transfer in writing.

(2) DHS must expressly approve the transfer specified in paragraph (1) of this subsection. To have a transfer approved, the physical plant owners and NFOs involved in the transaction must establish a history of quality of care as defined in subsection (d) of this section.

(j) Owner authorization of Medicaid status. DHS may require written approval of the owner of the physical plant before approving any action that would affect the status of the Medicaid beds.

§19.2324. Selection and Contracting Procedures for Adding Beds in High-Occupancy Areas.

(a) Definitions. The words and terms defined below, when used in this section, will have the following meanings, unless the context clearly indicates otherwise.

(1) Nursing Facility Operator (NFO)–The entity that is:

(A) an applicant for licensure by DHS, under Chapter 242 of the Texas Health and Safety Code, and Medicaid-certification;

(B) licensed by the Texas Department of Human Services (DHS); or

(C) licensed and holds the contract to provide Medicaid services.

(2)-(6) (No change.)

(b) Primary selection process-conversion of existing licensed beds. When DHS determines that the occupancy rate in a county exceeds the threshold during any six- month period, DHS places a public notice in the *Texas Register* to announce an open solicitation period.

(1) (No change.)

(2) Potential contractors seeking to contract in an area identified in the public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements), and must make written reply to the public notice. The reply must be received by the Application and Issuance Unit, Long Term Care-Regulatory, Mail Code E- 342, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

(A)-(C) (No change.)

(3) (No change.)

(c) Secondary selection process - new construction. When there are insufficient available beds after the primary selection, potential contractors may participate in a secondary selection process. The secondary selection is for potential contractors who wish to construct a nursing facility or an addition to an existing nursing facility.

(1) (No change.)

(2) Potential contractors seeking to contract to construct a nursing facility or an addition to an existing nursing facility in a high- occupancy area must demonstrate a history of quality care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not eliminate a new potential NFO who has no history of providing care. The NFO must make written reply to the public notice. The reply must be received by Long Term Care-Regulatory, Mail Code E-342, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714- 9030, before the close of business on the published ending date of the open solicitation period. The reply must include the following information:

(A)-(C) (No change.)

(3)-(11) (No change.)

(12) Providers may request an informal review of DHS actions involving this section and §19.2322 of this title (relating to Allocation, Reallocation, and Decertification Requirements) by writing to unit manager, Application and Issuance Unit, Long Term Care-Regulatory, Mail Code E-342, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. The review must be requested within 30 days of the DHS action.

(d) (No change.)

(e) Requesting occupancy reports. DHS computes occupancy rates by using the information contained in DHS's Nursing Facility Monthly Occupancy Report form. Monthly copies of occupancy-rate information for a particular county are available on request. Requests may be sent to Long Term Care Bed-Regulatory, Mail Code E-342, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

(f) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1999.

TRD-9903890
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 1999
Proposal publication date: April 30, 1999
For further information, please call: (512) 438-3765

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Chapter 47. Primary Home Care

Subchapter D. Provider Contracts

40 TAC §47.4902

The Texas Department of Human Services (DHS) adopts an amendment to §47.4902, without changes to the proposed text published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3462).

This amendment changes the provider qualifications for the PHC program to specify the appropriate level of licensure. Currently, DHS contracts for PHC with home and community support services (HCSS) agencies that are licensed under the one of the following categories: licensed and certified home health services, licensed home health services, or personal assistance services. The requirement for these categories of licensure was implemented to facilitate coordination of PHC and Medicare services. However, currently there is no requirement for the Medicare agency to be in geographical proximity to the licensed home health agency. Due to recent federal changes in the Medicare program required by the Balanced Budget Act,

many HCSS agencies are closing their Medicare offices and voluntarily relinquishing their licensed and certified category of licensure.

The amendment assures that primary home care services will be delivered under the most appropriate category of licensure. PHC provider agencies will now be required to be licensed only under the licensed home health category or the personal assistance category. PHC providers who only have the licensed home health or the personal assistance category of licensure will be required to refer PHC clients to Medicare providers for Medicare services. According to the Texas Department of Health, PHC providers who only have the licensed and certified category of licensure may add the licensed home health services or personal assistance services category free of charge.

The amendment also specifies the requirement for a separate contract in each DHS region and that the counties included in the DHS contract must be included in the service area of the license on file at the Texas Department of Health. Additionally, the amendment clarifies that out-of-state corporations are required to be authorized to do business in the State of Texas. The requirement to specify geographical boundaries covered by the appropriate category of licensure will assure that PHC providers are qualified to deliver PHC services in the areas included in the contract with DHS.

The amendment will function by promoting consistency between licensure and contracting requirements for personal assistance services; ensuring compliance with applicable state regulations and program requirements; and ensuring that personal assistance services are delivered under the appropriate category of licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1999.

TRD-9903891
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 1999
Proposal publication date: May 7, 1999
For further information, please call: (512) 438-3765

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Chapter 79. Legal Services

Subchapter L. Fair Hearings

40 TAC §79.1101

The Texas Department of Human Services (DHS) adopts an amendment to §79.1101, without changes to the proposed text as published in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3192) and will not be republished.

The justification for the amendment is to incorporate the uniform fair hearing rules drafted by the Texas Health and Human Services Commission, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, and DHS.

The amendment will function by providing uniform hearing rules that will be used by agencies delivering Medicaid services.

No comments were received regarding adoption of the amendment.

Under section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1999.

TRD-9903953
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: August 1, 1999
Proposal publication date: April 23, 1999
For further information, please call: (512) 438–3765

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

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

Proposed Rule Reviews

Texas Commission on Human Rights

Title 40, Part XI

The Texas Commission on Human Rights has reviewed Chapters 321-333, the agency's procedural rules regarding employment, in accordance with the Appropriations Act, Article IX, Section 167. The agency proposes that these rules be readopted, as the reason the rules were originally adopted continues to exist.

Comments on this proposal may be submitted to Brooks Wm. (Bill) Conover, III, General Counsel, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711.

TRD-9903911
Brooks WM. Conover, III
General Counsel
Texas Commission on Human Rights
Filed: June 30, 1999

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Texas Department of Licensing and Regulation

Title 16, Part IV

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 62, Career Counseling Services. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature, 1997.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director of Legal Services, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail-theda.lambert@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

§62.1. Authority.

§62.10. Definitions.

§62.20. Certificate of Authority Requirements.

§62.21. Certificate of Authority Application Process.

§62.40. Security Requirements.

§62.60. Responsibilities of the Department.

§62.70. Responsibilities of the Certificate Holder.

§62.71. Responsibilities of the Certificate Holder-Consumer Complaints.

§62.80. Fees-Original Certificate of Authority.

§62.90. Sanctions-Administrative Sanctions/Penalties.

§62.91. Sanctions-Revocation, Suspension or Denial because of a Criminal Conviction.

TRD-9904042
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: July 6, 1999

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The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 63, Personnel Employment Services. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature, 1997.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the

rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director of Legal Services, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or by e-mail-theda.lambert@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

§63.1. Authority.

§63.10. Definitions.

§63.20. Certificate of Authority Requirements.

§63.21. Certificate of Authority Application Process.

§63.40. Security Requirements.

§63.60. Responsibilities of the Department.

§63.70. Responsibilities of the Certificate Holder-General.

§63.80. Fees-Original Certificate of Authority.

§63.81. Fees-Renewal Certificate of Authority.

§63.82. Fees-Duplicate Certificate of Authority.

§63.90. Sanctions-Administrative Sanctions.

§63.91. Sanctions-Revocation, Suspension or Denial because of a Criminal Conviction.

TRD-9904043
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: July 6, 1999

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Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) proposes the review of 30 TAC Chapters 39, 50, 55 and 80, concerning Public Notice, Action on Applications, Request for Contested Case Hearing; Public Comment and Contested Case Hearings. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The General Appropriations Act, Article IX, §167, requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist.

The reason for originally adopting Chapters 39, 50, 55, and 80 was to provide opportunities for public participation in the processes of the commission by providing procedures for public notice of applications for commission action, procedures for actions on applications, commenting on applications, requesting contested case hearings and conducting a contested case hearing. The commission has reviewed the rules in Chapters 39, 50, 55 and 80, has determined that the reason for the rules continues to exist, and proposes their readoption.

Concurrently with this review, the commission is proposing to amend Chapters 39, 50, 55, and 80 to implement the provisions of House Bill 801, 76th Legislature, 1999.

Comments on the commission's review of Chapters 39, 50, 55, and 80 and its proposed readoption may be mailed to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 99030- 039. Comments must be received by August 16, 1999. For further information, please contact Ray Austin, Policy and Regulations Division, at (512) 239-6814.

TRD-9903996
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 5, 1999

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Adopted Rule Reviews

Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) adopts the review of the rules in Chapter 101, General Rules. This review complies with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review was published in the January 29, 1999 edition of the *Texas Register* (24 TexReg 608).

The commission readopts the rules contained in Chapter 101, General Rules as required by the General Appropriations Act, Article IX, §167. Section 167 requires state agencies to review and consider for readoption rules adopted under the Administrative Procedure Act. The review must include, at a minimum, an assessment that the reason for the rules continues to exist. The commission has reviewed the rules in Chapter 101, and determined that the reasons for the rules continue to exist. The chapter contains rules that apply to air pollution sources statewide and includes requirements that are applicable to a variety of sources regardless of the particular air contaminant. These definitions and procedures are necessary for the continued implementation of the commission's permitting, air quality planning, and enforcement programs under the Texas Clean Air Act (TCAA). The rules apply to the following subjects: definitions, multiple air contaminant sources or properties, circumvention of pollution controls, nuisances, traffic hazards, reporting of source upsets and maintenance, sampling procedures and terminology, emission inventory compilation, exemptions from rules and regulations, use and effect of rules, variances, transfer of permits, cumulative remedies resulting from judicial procedures, severability of regulations, compliance with United States Environmental Protection Agency (EPA) regulations, effective date of the General Rules, alternate emission reductions, inspection and emission fees, fees for registration of non-permitted facilities, fuel oil surcharges, emissions banking, and conformity of state and federal actions to state implementation plans (SIPs).

The commission identified a number of definitions for deletion or amendment, as well as additional rule changes, as a result of its review of these rules. The rule changes will include: deletion of definitions duplicated in other rules of the commission; amending the definition of "incinerator" to clarify when and how specific regula-

tions concerning these devices are applied; amending the definition of "control device" to delete unnecessary and potentially confusing language; amending the definition of "nonattainment area" to reflect recent classification actions by the EPA; amendment of the definition of "volatile organic compound" (VOC) to include additional compounds that are exempted from that definition and regulatory reform measures to combine definitions and eliminate those no longer necessary; clarification of procedures for regulating multiple air contaminant sources; application of a single set of equivalent or more stringent requirements to permitted sources subject to multiple, duplicative regulatory requirements; and codification of statutory authority related to emission inventories and exemptions from rules. The commission is concurrently proposing rule amendments addressing these issues in separate rulemaking. During this review, the commission also received extensive comments on procedures concerning the reporting of upset and maintenance of air pollution sources. These issues will also be addressed in a separate rulemaking scheduled for late summer of 1999.

During the public comment period, which closed March 1, 1999, the commission received comments from the Texas Chemical Council (TCC), the Texas Industrial Project (TIP), and Bracewell and Patterson (Bracewell). A summary of those comments follow.

TCC commented that the commission should clarify the conditions, under which it is appropriate, to designate a single account number for emission fee assessment purposes and referred to an alleged incident at a major chemical plant where the commission desired separation of a single account into multiple accounts for fee purposes. TCC also suggested that sources operated by the same company be considered under common control for purposes of the definition of "account." It asked that the commission state that all properties under common control, located in the same county, and separated by five miles or less, and the facilities on all properties that are operated together as a single fully integrated plant or operation can be designated by a single account number.

Section 101.27, Emission Fees, prohibits the commission from initiating combination or separation of accounts solely for fee assessment purposes. The commission is not aware of the alleged incident concerning separation of accounts and needs more specifics to evaluate TCC's statement.

The commission would combine facilities under a single account number if the facilities are major, located on contiguous or adjacent properties, and under common ownership or control. This policy would be in accordance with the definition of "account." Minor facilities fitting the contiguous or adjacent property and ownership/control criteria of the definition could combine accounts at their discretion.

The commission bases its definitions of "account" in Chapter 101 and "site" in 30 TAC Chapter 122 on EPA's definition of "major source," and the fact that EPA views a site as an integrated permit situation. The commonality of definitions allows easy interchange of information concerning the site. This exchange of information is particularly important because the commission has been delegated authority to evaluate sites and issue federal operating permits under Title V of the Federal Clean Air Act (FCAA) Amendments. Finally, recently passed legislation allows the commission to develop the requirements for issuance of a multiple plant site permit for multiple plant sites owned or operated by the same person or persons under common control. The commission is initiating rulemaking to incorporate the requirements of this legislation.

Bracewell commented that the current definition of "particulate matter emissions" should be changed because it requires counting material caught in the impinger train of an EPA Method 5 sampling apparatus. They stated that material caught in the apparatus is comprised of gases which do not exist as particulate matter in the atmosphere. Bracewell believes that this causes an artificially high count of particulate matter for enforcement and permitting purposes and is inconsistent with EPA test methods.

Material caught in the impinger train of an EPA Method 5 apparatus includes material that is very fine particulate matter and material that is liquid at standard conditions. When testing with this method shows non-compliance, it is a common and accepted practice to conduct additional analysis on the material in the impinger train to subtract the mass of the material that would not be a solid or liquid at standard conditions. This approach is consistent with 40 Code of Federal Regulations (CFR) 51, Appendix M, Method 201. The commission would also adjust the total mass in the impinger to correct data entered into computer models used to determine compliance with particulate concentration standards in 30 TAC §111.155. Consequently, the commission chooses to retain the current definition.

The following comments relate to the reporting and recording of facility upset or maintenance. Issues related to upset and maintenance, including these comments, will be addressed in a separate rulemaking that should be proposed by late summer of calendar year 1999.

Addressing the definition of "reportable quantity" (RQ) in §101.1, TCC commented that the commission should modify its list of RQs to contain the following general compounds with an RQ of 5,000 pounds: butanes, pentanes, pentenes, heptenes, hexenes, octanes, decanes, and ethanol. It also suggested that the commission raise its default RQ from 100 pounds to 5,000 pounds. This is the highest RQ for hazardous substances on the RQ list under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The default value of 100 pounds applies to air contaminants not found on the CERCLA hazardous substance list. TIP recommended removing the 100-pound default from the rules or in the alternative, raising the default RQ to 5,000 pounds. In addition to the substances suggested by the TCC to be added to the list, TIP recommended adding the following substances with a 5,000-pound RQ: butyl acrylate, hexanes, isopropyl alcohol, methyl acrylate, mineral spirits, octenes, and unspeciated VOC. TIP also suggested that the commission solicit input from industry for additional substances.

TCC commented that the commission should delete recordkeeping requirements for non- reportable upsets. A non-reportable upset is one that results in a release of air contaminants less than a reportable quantity. It commented that the current upset/maintenance rule has been in place for over one year, and the commission has had adequate time to collect information regarding non-reportable upsets. In addition, elimination of this requirement would reduce the recordkeeping burden on industry.

TIP commented that the commission should make an exception to recordkeeping for releases only slightly above authorized amounts. It suggested that amounts that are less than a certain percentage (for example, 10%) of an RQ above an authorized emission be exempted from recordkeeping or set a non-recordkeeping level at less than one pound above authorized limits for substances with an RQ at ten pounds or higher.

TIP suggested that unauthorized emissions from flares should be treated similarly to emissions from boilers and combustion turbines. TIP stated that unauthorized emissions from flares should be reportable in terms of how long a flare smokes in excess of the time specified in a permit or rule.

TIP requested that the commission consider some mechanism to authorize routine emissions resulting from start-up, shutdown, and maintenance. It stated that while such emissions are episodic, the vast majority do not pose a threat requiring immediate response and request the opportunity to discuss this situation further with the staff. Additionally, the commission should consider exempting start-up, shutdown, and maintenance emissions in compliance with an EPA-required start-up, shutdown, and maintenance plan. TIP also requested that the commission incorporate into the upset/maintenance rules the reduced reporting obligations for continuous releases under CERCLA and the Emergency Planning and Community Right-to-Know Act (EPCRA). These are routine and predictable emissions resulting from start-up, shutdown, and maintenance. Finally, TIP pointed out what appear to be typographical errors in §101.7(b) resulting in incorrect references to "upset" when the subject of the section is start-up, shutdown, and maintenance.

The commission adopted amendments to the upset/maintenance rules in the summer of 1997. At that adoption, the commission directed the staff to further evaluate the rules after two years. The staff has initiated that review, and will consider and respond to all of these comments concerning upset/maintenance and the definition of "reportable quantity" as part of that review. That evaluation has been accelerated following discussion with the EPA concerning the conformity of the commission's upset/maintenance rules with EPA guidance on the subject. The commission will consider upset/maintenance rules for possible amendment, including administrative changes, after the evaluation is completed. Proposed rulemaking resulting from the evaluation would likely be scheduled by late summer of 1999.

TIP requested that the commission add an additional exception to the definition of "solid waste" to clarify that biomass material generated as by-products in the silvicultural, pulp/paper, and wood products industries that is used for fuel to generate process heat or steam is not solid waste. A related definition of biomass would also be required.

The commission is aware that there are process steam generators within the state that use scrap or waste wood as an exclusive fuel. Under the current definition structure, these devices would be classified as incinerators and could be subject to dual regulation as an incinerator and as a boiler. The commission has evaluated the practice of burning waste wood for process steam through the permitting process and determined that it is a safe practice, producing low levels of non-hazardous emissions. However, a change to the definition of "solid waste" would require additional amendments in the rules concerning solid waste and could lead to complications in the application of those regulations. The commission chooses instead to amend the definition of "incinerator" in Chapter 101 to exclude devices burning clean waste wood for heat recovery from that definition. This will allow wood fired boilers and process steam generators to operate under regulations concerning boilers and will eliminate the possibility of dual regulation. The commission is concurrently proposing amendments to the definition of "incinerator."

TIP suggested that §101.2, Multiple Air Contaminant Sources or Properties, be amended to allow for executive director approval of single property designations rather than requiring commission approval and that a copy of the order or other documentation to provide adequate notice of single property designation approval be filed in the real property records. It also suggested rule language requiring petitioners to include all holders of fee or leasehold property interests that operate facilities within the boundary of the site to be designated as a single property. This rule language would also require a written agreement between all property owners, lease holders, and holders of fee interest. The petition should also include evidence of the consent of an owner of a fee interest in the property to be designated as a single property that does not operate a facility on the site. It also suggested rule language be added to clarify that references to property and property lines include leasehold and fee interests. Bracewell also supported delegating authority to the executive director to approve single property designation petitions. Bracewell also commented that §101.2(b)(2), which addresses the intended use of the subsection, be deleted as it is strictly advisory in nature and does not serve a purpose related to air quality control. If deleted, the remaining paragraphs in §101.2 would still require sufficient assurance that single property designations would only be available to contiguous properties, that agreements are in place to limit public access to the respective properties, and that control of emissions is adequately defined with responsible parties clearly delineated.

The commission agrees that executive director approval of single property requests is appropriate and efficient for many cases. The commission has the authority to delegate to the executive director the authority to issue petition approvals and also has authority to place conditions on the approval of a petition to avoid a condition of air pollution or ensure compliance with state and federal regulations. In concurrent rulemaking, the commission is proposing an amendment to §101.2 delegating this authority to the executive director. However, consistent with commission policy regarding action which must be taken by the commission rather than the executive director, the executive director is prohibited from acting on the petition if new issues that require interpretation of commission policy are raised.

Typically, air permit applicants need only provide a plot plan that is sufficient to identify the property location and boundary; a legal description of the property is not usually necessary for commission purposes. Petitioners can make their own choice as to whether to include a legal description of the property with their petition that is acceptable for filing in the real property records, and then file a copy of the commission approval in the real property records. The commission does not see a need to require approvals of single property designations to be filed in the real property records.

In concurrent rulemaking, the commission is proposing to amend Chapter 101 to address the concerns of TIP and Bracewell. The amendments would require that all property owners within the property, leaseholders, and those with property or fee interests consent to and sign an agreement concerning single property designation.

The commission agrees that §101.2(b)(2) is advisory but serves the purpose of clarifying what properties are eligible for single property designation and has, therefore, decided to retain the paragraph.

TCC commented that emission inventory requirements should be modified to require inventories biennially rather than annually. TCC recognized that the emission inventory (EI) is used for compliance certification and suggested using the Title V requirements to certify compliance annually. It also recommended that agency SIP planners identify future key years and require inventory intervals based on those years. Companies should be given the option of completing annual inventories if they believe their emission fees will vary significantly from the previous year. TIP recommended that the commission delete the requirement to update the inventory annually and also recommended using a biennial inventory. TIP expressed its concern that this emission information may not be protected under the Texas Open Records Act. It suggested that §101.10, Emission Inventory Requirements, be streamlined to reflect the information the commission is authorized to collect under the TCAA. Bracewell commented that §101.10 should be amended to clarify that special inventories may be required only after emission factors, sampling,

and measurement systems have been adopted by EPA and after EPA has required the state to develop an inventory for the air pollutant under 40 CFR 52.

EPA is currently examining the frequency of EI reporting requirements. The results will be incorporated into the EPA's Consolidated Emissions Reporting Rule which will likely be proposed in the summer of 1999. Because EI requirements are closely tied to meeting state implementation plan requirements, the commission will review changes in the reporting frequency once EPA has taken final action on its proposal. Additionally, the commission assesses emission fees based on annual updates of the inventory. Where available, the commission uses Title V compliance data to help compile emission inventories. The commission is also developing methods and data links to achieve automatic sharing of data among staff divisions and to eliminate duplicate submission of data.

The amount of emissions contained in EI data is a public record. Process information that a company submits to the commission in compliance with TCAA, §382.041, Confidential Information, is maintained in confidential files and not made available for public review. If a request for this information is made under the Public Information Act (PIA), Government Code, Chapter 552, the commission is required to send the information, marked confidential, to the Texas Attorney General's Office for a determination of whether the information may be withheld from disclosure under the PIA. Companies are able to provide arguments to the Attorney General on why the specific information should be protected under the PIA. The commission recognizes the sensitive nature of process information, but such information is necessary for the commission to have a complete EI.

The commission is preparing proposed amendments to §101. 10, Emission Inventory Requirements, that provide greater detail on the type of emission related data the commission is authorized to collect, particularly from smaller sources. The commission has authority under the Texas Health and Safety Code, §382.014 to "...require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an emission inventory of air contaminants in this state." The commission uses more specific language in §101.10 to clarify which sources must report and with what frequency. In general, the commission collects EI data to develop SIPs, control strategies, and fee assessments. This requires that data be collected from large stationary sources, smaller and more numerous sources, and mobile sources. The commission is aware of the reporting requirements and the efforts required of companies to provide the data, but does not believe the information required is excessive or without merit.

Special inventories are used to analyze sources that do not have a specified EI reporting frequency or method. If available and applicable, the commission will use approved EPA systems and methods. If methods are not available, the commission would then act on its authority under the Texas Health and Safety Code, §382.014 to address specific situations. In the past, the commission has used this authority to collect sample data from small businesses to improve the accuracy of the area source inventory. Where EPA methods are available, the commission uses them to develop inventories. However, the commission wishes to retain the option to develop inventories to deal with unanticipated situations and chooses not to specifically define methods and circumstances for special inventories. If and when the commission needs to require a special inventory, the commission will work with the affected groups to ensure that only necessary information is submitted to the commission.

TCC commented that actual emissions used as a basis for fee assessments should be verifiable through equations where a key element of the equation is measurable, for example, fuel usage. It further stated that the intent of the current language in §101.27, Emission Fees, is that fees be based on measurable quantities used in calculations, but the existing language has caused some confusion. In general, TCC believes that the commission should assess fees collected under §101.27 only as needed to run the air program.

The commission requires that actual emissions be verifiable, either through direct measurement of vent gases or fuel use. The commission applies measured fuel use data through equations containing emission factors to calculate emissions not directly measured. Section 101.27 allows the use of continuously measured quantities in calculations to determine emissions from stacks and vents. Also, actual emission rates may be based on calculations for fugitive sources, flares, and storage tanks provided these calculations are supported by throughput and measurement records. TCC's comment concerning measurable quantities used in equations reflects the current practice of the commission under §101.27. The language in §101.27 is worded generally to indicate that measured quantities used in emission calculations are acceptable, provided those measurements can be verified. The commission gives examples in the rule language but cannot specify exactly which measurements will be acceptable in specific cases. Therefore, the commission believes the current language concerning measured quantities is appropriate and declines to make the changes recommended by the TCC.

Regarding TCC's comment that the commission should assess fees under §101.27 only as needed to run the air program, the Texas Health and Safety Code, §382.0621, Operating Permit Fee, requires the commission to collect an annual fee based on emissions from sources that are subject to either the federal permitting programs under Title IV or V of the FCAA. The Texas Health and Safety Code, §382.0622(c), states that fees collected under §382.0621(a) may only be appropriated to cover costs of developing and administering the Title IV and V permit programs. Section 101.27 implements the fee collection requirements for both the Title IV and V permit programs. The commission assesses fees only as required or allowed by law.

TRD-9903943
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 1, 1999

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Teacher Retirement System of Texas

Title 34, Part III

The Teacher Retirement System of Texas (TRS) adopts the review of Title 34, Part III, Texas Administrative Code, Chapter 25. The review and consideration were in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

In accordance with the agency rule review plan published in the August 21, 1998, issue of the *Texas Register*, the Policy Committee of the Board of Trustees conducted an initial review of Title 34, Part III, Texas Administrative Code, Chapter 25. The review was conducted in an open meeting and included an assessment of whether the reasons for adopting the rules continued to exist. In accordance with notice published in the April 2, 1999, issue of the *Texas Register* (24TexReg2748), the full Board reviewed Chapter 25 to make a determination as to whether the reasons for adopting or readopting these rules continued to exist. No comments were received regarding

this Chapter. The final review was completed at the Board Meeting on June 25, 1999. This completes the review of all TRS rules in accordance with the General Appropriations Act, House Bill 1, 75th Legislature, Article IX, §167.

TRS finds that the reasons for adopting Chapter 25 continue to exist. As part of this review process, TRS has adopted amendments to §§ 25.1, 25.2, and 25.10 concerning service eligible for membership, §25.46 concerning unreported service, §§ 25.61, 25.64, and 25.66 concerning military service, §, 25.75 concerning veteran's service credit, §§25.82, 25.84, 25.85, and 25.87 concerning the purchase of credit for out of state service, §25.113 concerning the transfer of credit between TRS and ERS, §§25.121-25.123 concerning the verification of service, §§25.131-25.133 concerning creditable time and school year, § 25.151 concerning developmental leave, and §25.183 and §25.185 concerning installment payments to purchase service credit. Also as a result of the review process, TRS has adopted the repeal of §§25.7, 25.8, 25.51-25.55, 25.62, 25.63, 25.65, 25.83, 25.103-25.105, 25.109-25.112, 25.125, and 25.161. TRS readopted §§25.3-25.6, 25.21, 25.22, 25.25, 25.26, 25.28, 25.30-32, 25.41-25.45, 25.61, 25.64, 25.67, 25.71-25.74, 25.81, 25.86, 25.124, 25.152, 25.171, 25.172, 25.181, 25.182, 25.184, 25.186-25.190 with no changes.

TRD-9903942
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Filed: July 1, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Request for Proposals

Pursuant to the Texas Agriculture Code, Chapter 45, the Texas Department of Agriculture (the department) is requesting proposals for pilot projects for the Texas-Israel Exchange Research and Development (TIE) Grant Program.

Grant proposals will be accepted for pilot projects from higher education institutions, government research programs and private and public entities. Pilot project funding will be awarded for one year to projects addressing: irrigation; floriculture; greenhouse production, equipment and technologies; salinity and desalinization of water. Proposals submitted should be for a one year period. The total budget requested per each Texas project should not exceed $50,000. Proposals will be evaluated based on the criteria stated below, technical review, and review by the Texas-Israel Exchange Fund Board.

Each proposal must not total over 25 pages and must include the following criteria: (1) a cover page including the title, names of the principal researchers and other participating researchers, and any cooperating institution or entity accompanied by the signatures of the officers authorizing their participation; (2) a table of contents; (3) an abstract of approximately 200 words or less, on one page, including the title, definition of the research problem, specific objectives and importance of the project, the plan and methodology, and expected contribution as it pertains to agriculture; and (4) a detailed description including the title; description of project; any background or history of project; any preliminary research; objectives and importance of the project; a detailed description of the plan; a detailed description of the cooperative arrangements to be employed in conducting the work; a description of expected results; the facilities and equipment to be made available to the project; a professional biography of the principal investigators; a detailed budget, itemizing at a minimum, personnel services, operating expenses to include the categories of supplies, computer services, in-country and foreign travel, and non-expendable equipment. Applicant must provide at least 50% of the total project costs as matching contributions which may be federal, state, or private. TIE will pay no more than twenty percent of total official indirect costs as identified in the Federal Office of Management and Budget (OMB) Circular A-122.

Proposals should identify clear project outcomes that benefit citizens of Texas and Israel and must include an implementation plan for using project results. The implementation plan should include information on jobs created, marketability of the research, if applicable, and the value of the research or production to be implemented. Consortia that involve research institutions with organizations that can implement project deliverables are encouraged. Institutions that have never received TIE funding are encouraged to apply. Past performance implementing deliverables of previous TIE projects will be considered. The recipient institution or entity must agree to be responsible for all costs exceeding the grant award to comply with regular and periodic reporting requirements and to execute the project once a grant is awarded, without claims for additional financial support by the TIE funds. Projects which are in conjunction with Bi-national Agriculture Research and Development (BARD) funding requests, and identify specific funding opportunities within the BARD fund, are encouraged. Finished project summaries will be subject to disclosure under the Texas Open Records Act and shall be deemed to be the property of the Texas Department of Agriculture. Any project not in compliance with the grant agreement may be subject to termination by the Department.

Proposals should be submitted to Ms. Sheri Land, Coordinator for Funding, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Please contact Sheri Land at (512) 463-8536 with any questions you may have. Proposals must be received no later than 5:00 p.m. July 30, 1999. The announcement of grant awards will be made by no later than August 31, 1999.

TRD-9904072
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: July 7, 1999

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Office of the Attorney General

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under the Texas Clean Air Act, the State shall

permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Erath Recycling, Inc., and Ronnie Smith, Cause Number 98-06881, in the 126th District Court of Travis County, Texas

Nature of Defendant's Operations: Erath Recycling, Inc., owns an aluminum recycling facility near Stephenville. The facility is located 1.5 miles Southwest of Stephenville on Highway 377. Among the operation at the plant is the use of an aluminum reclamation furnace. The lawsuit by the State alleges that Erath violated the Texas Clean Air Act, Texas Health & Safety Code Annotated Chapter 382, by the unauthorized release of air contaminants into the atmosphere. Violations alleged included failure to operate under permit exemption restrictions, unauthorized outdoor burning, and creation of a nuisance.

Proposed Agreed Judgment: The Agreed Final Judgment calls for Erath to pay a civil penalty of $70,000 and attorney's fees of $16,000 plus court costs. Erath has chosen to cease operation of the aluminum reclamation furnace rather than install additional air pollution controls sought by the State, and rather than operate under the risk of contempt of court for future violations. If Defendants or their successors operate a reclamation furnace in the future, they would be subject to a permanent injunction ordering additional pollution controls, as well as the payment of an additional $35,500 civil penalty.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-9904030
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: July 6, 1999

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Brazos Valley Council of Governments

Brazos Valley Affordable Housing Corporation Request for Proposal for Auditing Services

DESCRIPTION:

This request for auditing services is filed under the provisions of the Government Code, Chapter 2254.

The Brazos Valley Affordable Housing Corporation, a 501c3 non-profit organization organized to assist economically disadvantaged persons for the acquisition and maintenance of affordable housing for the Brazos Valley Region, announces its request for proposal (RFP) to perform an Independent Financial Single Audit in accordance with the office of Management and Budget (OMB) Circular A-133, for the Fiscal Year 1999 (FY99), October 1, 1998 through September 30, 1999. The responsibility for financial oversight of the Brazos Valley Affordable Housing Corporation (BVAHC) is centralized in the Fiscal Department of the Brazos Valley Council of Governments (BVCOG), a regional planning commission located in Bryan, Texas. The audit must be completed by February 28, 2000. Our FY98 single audit was performed by the Thompson, Derrig, Slovacek & Craig, CPA's, of Bryan, Texas.

PERSONS TO CONTACT:

Further information may be obtained from Mr. Dean McGee, Director of Administration at the Brazos Valley Council of Governments, or Mr. Tom Wilkinson, President of the Brazos Valley Affordable Housing Corporation, 1706 East 29th Street, P.O. Drawer 4128, Bryan, Texas, 77805-4128, or by phone (409) 775-4244.

DEADLINE FOR SUBMISSION OF RESPONSE:

Proposals are due on Monday, August 2, 1999 by 5:00 p.m. at the Brazos Valley Council of Government offices located at 1706 East 29th Street in Bryan, Texas.

EVALUATION CRITERIA:

A. Demonstrated Performance/Experience

1. Demonstrated Competence/Qualifications

2. Relevant Experience of Key Staff

B. Schedule Design

1. Meets BVCOG's Goals/Objectives/Includes Quality Control Procedures

2. Provides Quality Planned Follow-up Activity

3. Degree of Proposed Technical Assistance

C. Reasonableness of Cost

1. Cost Effectiveness

2. Costs: Necessary, Reasonable, Allowable & Allocable

3. Competitiveness of Costs

4. Value of in-kind services

D. HUB Status

GENERAL INFORMATION:

BVCOG reserves the right to accept or reject any (or all) proposals submitted. BVCOG is under no legal requirement to execute a resulting contract, if any, on the basis of this advertisement and intends the material herein as a general description of the services desired by BVCOG.

The proposal should be for a period of one year although BVCOG will have the option of extending the contract for an additional two years.

FORM AND FORMAT:

Five copies of the proposal are requested and should be sent by mail, express service or delivered in person within the time frame specified in a sealed envelope marked "PROPOSAL FOR INDEPENDENT SINGLE AUDIT OF FEDERAL GRANT AWARDS", addressed to Mr. Tom Wilkinson, Jr., President, Brazos Valley Affordable Housing Corporation, P.O. Drawer 4128, Bryan, Texas, 77805-4128. The proposal should be typed, preferably double spaced–minimum of 10 point font–on 81/2 inch by 11 inch paper with all papers sequentially numbered and bound together with binder clips. Proposals should include a letter of transmittal summarizing the proposal and a table of contents.

For further information, please call (409) 775-4244.

TRD-9903920

Tom Wilkinson, Jr.
Executive Director
Brazos Valley Council of Governments
Filed: June 30, 1999

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Brazos Valley Council of Governments Request for Proposals for Auditing Services

DESCRIPTION:

This request for auditing services is filed under the provisions of the Government Code, Chapter 2254.

The Brazos Valley Council of Governments (BVCOG), a regional planning commission who, was organized under State of Texas and administers funds from local, state, federal governments, announces its request for proposal (RFP) to perform an Independent Financial Single Audit in accordance with the office of Management and Budget (OMB) Circular A-133, for the Fiscal Year 1999 (FY99), October 1, 1998 through September 30, 1999. The audit must be completed by January 15, 2000. Our FY98 single audit was performed by Bill C. Rocha, CPA, from San Antonio, Texas.

PERSONS TO CONTACT:

Further information may be obtained from Mr. Dean McGee, Director of Administration or Mr. Tom Wilkinson, Executive Director, at the Brazos Valley Council of Governments, 1706 East 29th Street, P.O. Drawer 4128, Bryan, Texas, 77805-4128, or by phone (409) 775-4244.

DEADLINE FOR SUBMISSION OF RESPONSE:

Proposals are due on Monday, August 2, 1999 by 5:00 p.m. at the Brazos Valley Council of Government offices located at 1706 East 29th Street in Bryan, Texas.

EVALUATION CRITERIA:

A. Demonstrated Performance/Experience

1. Demonstrated Competence/Qualifications

2. Relevant Experience of Key Staff

B. Schedule Design

1. Meets BVCOG's Goals/Objectives/Includes Quality Control Procedures

2. Provides Quality Planned Follow-up Activity

3. Degree of Proposed Technical Assistance

C. Reasonableness of Cost

1. Cost Effectiveness

2. Costs: Necessary, Reasonable, Allowable & Allocable

3. Competitiveness of Costs

4. Value of in-kind services

D. HUB Status

GENERAL INFORMATION:

BVCOG reserves the right to accept or reject any (or all) proposals submitted. BVCOG is under no legal requirement to execute a resulting contract, if any, on the basis of this advertisement and intends the material herein as a general description of the services desired by BVCOG.

The proposal should be for a period of one year although BVCOG will have the option of extending the contract for an additional two years.

FORM AND FORMAT:

Five copies of the proposal are requested and should be sent by mail, express service or delivered in person within the time frame specified in a sealed envelope marked "PROPOSAL FOR INDEPENDENT SINGLE AUDIT OF FEDERAL AND STATE GRANT AWARDS", addressed to Mr. Tom Wilkinson, Jr., Executive Director, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, TX 77805-4128. The proposal should be typed, preferably double spaced–minimum of 10 point font–on 81/2 inch by 11 inch paper with all papers sequentially numbered and bound together with binder clips. Proposals should include a letter of transmittal summarizing the proposal and a table of contents.

For further information, please call (409) 775-4244.

TRD-9903922
Tom Wilkinson, Jr.
Executive Director
Brazos Valley Council of Governments
Filed: July 1, 1999

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Invitation to Apply/Public Notice

The Brazos Valley Workforce Development Board, through its agent, the Brazos Valley Council of Governments, invites Educational Institutions and Training Providers to submit applications to be added to the State Certified Training Providers List under the Workforce Investment Act (WIA). We strongly encourage you to submit your applications and supporting documentation as soon as possible, as we will not be able to refer WIA adult participants to your programs until this certification process has been completed.

You may obtain electronic copies of the Application documents by accessing the Brazos Valley Workforce Center website at www.bvjobs.org in the Brazos Valley Workforce Development Board section. Requests for application materials, questions, or comments regarding the application process may be presented to Ms. Chris Cremer, Program Specialist, BVCOG (409) 775-4244 or via e-mail ccremer@bvcog.org.

One original and three copies of completed applications and supporting documentation may be submitted on an ongoing basis to:

Mr. Tom Wilkinson, Executive Director, Brazos Valley Council of Governments, P.O. Drawer 4128, Bryan, Texas 77805-4128.

TRD-9903946
Nick Gilley
BVWDB Chairman
Brazos Valley Council of Governments
Filed: July 2, 1999

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions

affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of June 23, 1999, through July 2, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Gateway Offshore Pipeline Company; Location: The project is located in the Gulf of Mexico, between High Island and Sabine Pass, adjacent to offshore State Tract 66s, in Jefferson County, Texas; CCC Project No.: 99-0230-F1; Description of Proposed Action: The applicant is requesting authorization to place 2,000 sand/cement bags over an existing 20-inch pipeline. The sand/cement bags would be placed into an area approximately 5 feet wide and 140 feet long to provide an additional 1 foot of cover over the pipeline; Type of Application: U.S.A.C.E. permit application #11433(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Huntsmen Petrochemical Corporation; Location: The project is located in the Clear Creek Channel, just west of the State Highway 146 bridge in Seabrook, Harris County, Texas; CCC Project No.: 99-0231-F1; Description of Proposed Action: The applicant is requesting authorization to place 1,000 sandbags over an existing pipeline. The sandbags would be placed into an area approximately 8 feet wide and 40 feet long, and ranging from a depth of 4 to 15 feet below mean sea level, to provide an additional 2 feet of cover over the pipeline; Type of Application: U.S.A.C.E. permit application #14464(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Texas Department of Transportation; Location: The project is located on FM 1495, at the Gulf Intercoastal Waterway (GIWW), Brazoria County, Texas; CCC Project No.: 99-0232-F1; Description of Proposed Action: The applicant proposes to construct an undivided two-lane bridge structure, bridge approaches, and a separate, undivided, two-lane access road adjacent to a proposed bridge across the GIWW. During the construction of the bridge approaches and the access road, TXDOT proposed to place approximately 8,011 cubic yards of material in approximately 1.30 acres of wetlands, within the TXDOT right-of-way; Type of Application: U.S.A.C.E. permit application #21675 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: W. Dan Vaughn; Location: The project is located on West Galveston Bay, at 9300-9500 Teichman Road, Galveston, Galveston County, Texas. The site can be located on the U.S.G.S. Virginia Point Quadrangle; CCC Project No.: 99-0233-F1; Description of Proposed Action: The applicant proposes to place fill material 2.144 acres of wetlands on a 19.0-acre tract of land; Type of Application: U.S.A.C.E. permit application #21678 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Col. Larry Curtin; Location: The project is located in the Neches River, at the Federal Project Turning Basin at Station 990+00, at the Port of Beaumont, 1225 Main Street, Beaumont, Jefferson County, Texas; CCC Project No.: 99-0234-F1; Description of Proposed Action: The applicant is seeking authorization to construct a new wharf facility with transit shed, gantry crane, and railway, including installation of a new 800-foot bulkhead with 35,000 cubic yards of fill, installation of a new 800- by 100-foot pile supported concrete dock, extension of an existing storm sewer with construction of a new outfall, and hydraulic dredging of approximately 47,000 cubic yards of material from the proposed berthing area; Type of Application: U.S.A.C.E. permit application #21688 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Union Pacific Railroad; Location: The project is located at the Union Pacific Railroad Spring Lloyd Yard at 1602 E. Cypresswood Drive, near the intersection of Cypresswood Drive and Aldine-Westfield Road, in Houston, Harris County, Texas; CCC Project No.: 99-0235-F1; Description of Proposed Action: The applicant is seeking authorization to fill 1.52 acres of isolated wetlands for the construction of Phase 2 of the Spring Lloyd Yard expansion; Type of Application: U.S.A.C.E. permit application #21700 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Michael D. Talbott, P.E.; Location: The project is located in and adjacent to Bear Creek at the western edge of the Addicks Reservoir, approximately 6 miles west of Highway 6 and approximately 1/2 mile south of Clay Road, west of Houston, Harris County, Texas; CCC Project No.: 99-0236-F1; Description of Proposed Action: The applicant is seeking authorization to place erosion protection fill in Bear Creek channel in conjunction with the construction of a 4,050-foot bypass channel. In addition the applicant proposes to stockpile 150,000 cubic yards of soil from the excavation of the bypass channel in a 500- by 750-foot pad within the Addicks reservoir, but outside of wetlands; Type of Application: U.S.A.C.E. permit application #21702 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Rutherford Oil Corporation; Location: The pipeline is located between a well in the SE/4 of State Tract 367-L and a Well No. 1 in SW/4 of State Tract 366-L, Gulf of Mexico, Brazos area near Freeport, Texas; CCC Project No.: 99-0237-F1; Description of Proposed Action: The applicant proposes to abandon in place a 4 1/2 inch O.D flowline. The pipeline is currently buried 15 feet below the mudline at a depth of 65 feet; Type of Application: U.S.A.C.E. permit application #21710 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9904049
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 7, 1999

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Notice of Public Meetings

The Texas General Land Office (GLO) will hold public meetings to gather input on the Coastal Erosion Planning and Response Act, which provides $15 million over the next two years for coastal erosion projects. It authorizes the GLO to implement a comprehensive coastal erosion response program that can include designing, funding,

building, and maintaining erosion projects alone or in partnership with other governmental and non-governmental entities.

The agenda for each meeting being held consists of the following topics:

I. Summary of Texas Coastal Erosion Legislation

II. Presentation of Coastal Erosion Rates and Status

III. Presentation on Coastal Infrastructure Threatened by Erosion

IV. Explanation of Project Funding - Local, State, and Federal

V. Process for Project Selection -Proposed Criteria, Prioritization, and Identification of Projects

VI. Questions and Answers

VII. Closing Remarks

The locations and times for the public hearings are as follows:

Tuesday, July 6, 1999:

Corpus Christi, 6-9 p.m., Texas A&M University-Corpus Christi; Oso Room - University Center; 6300 Ocean Drive.

Wednesday, July 7, 1999:

Port Aransas, 4-6 p.m., University of Texas Marine Science Institute; Visitors Center Auditorium; 750 Channel View Drive.

Rockport, 7-9 p.m., Aransas County Courthouse; District Courtroom; 301 N. Live Oak.

Thursday, July 8, 1999:

Freeport, 6-9 p.m., Freeport Community House; 1300 W. 2nd Street.

Friday, July 9, 1999:

Port Arthur ; 6-9 p.m., McKee Tower, Community Room, 3rd Floor; 4749 Twin City Highway.

Monday, July 19, 1999:

Clear Lake, 6-9 p.m., University of Houston-Clear Lake; Bayou Building, Room 1313.

Tuesday, July 20, 1999:

Baytown, 6-9 p.m., Lee College; Science Building - Room113; Corner of Lee Drive and Gulf Street.

Wednesday, July 21, 1999:

Port Lavaca, 6-9 p.m., Agriculture Building Auditorium; Calhoun County Fairgrounds; County Road 101.

Thursday, July 22, 1999:

Crystal Beach (Bolivar), 6-9 p.m., Eagle Hall; Highway 87.

Friday, July 23, 1999:

Galveston, 6-9 p.m., University of Texas Medical Branch-Galveston; Levin Hall Auditorium.

Monday, July 26, 1999:

Brownsville, 4-6 p.m., Cameron County Courthouse; Administration Building., 4th Floor; 964 E. Harrison St.

South Padre Island, 7-9 p.m., SPI Convention Centre; 7355 Padre Boulevard; 2700 Bay Area Boulevard.

For more information, please contact Dorothy Browne at the Texas General Land Office, 512-475-1468.

TRD-9904029

Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: July 6, 1999

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/12/99 - 07/18/99 is 18% for Consumer[1]/Agricultural/ Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/12/99 - 07/18/99 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9904048
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 7, 1999

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Texas Education Agency

Notice of Correction: Amendment to Funding Information

The Texas Education Agency (TEA) published Request for Proposals (RFP) #701-99-013, concerning T-STAR Digital Television Studio, Satellite Uplink, Downlink Equipment, and Transponder Services in the June 18, 1999, issue of the *Texas Register*(24 TexReg 4608). TEA is amending funding information for the RFP as follows. The project is funded from state funds for fiscal year 2000 and federal funds from fiscal year 1999-2000. The total funded by the state is $1,000,000. The federally funded total is $370,000.

Further Information. For clarifying information about the RFP, contact John Lopez, Division of Instructional Technology, Texas Education Agency, (512) 305-9199.

TRD-9904061
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: July 7, 1999

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General Land Office

Invitation for Offers of Consulting Services

The General Land Office (GLO) is a participant in the development and implementation of a comprehensive tide monitoring and gauging system known as the Texas Coastal Observation Network (TCOON). Other participants include the National Ocean Service (NOS), the Conrad Blucher Institute (CBI) of Texas A&M University at Corpus Christi (TAMU-CC), and the U.S. Army Corps of Engineers (COE).

The project is funded and administered through a cooperative effort of NOS, GLO, and COE. In previous years, the GLO contracted TAMU-CC for installation and monitoring of the system and with CBI to obtain professional and technical assistance necessary to review and analyze data received from the operation of the TCOON.

Pursuant to Texas Government Code, §2254.021, et.seq., the GLO is requesting offers of consulting services to assist with the review and analysis of tide and water level data received from the TCOON during the period beginning September 1, 1999 through August 31, 2001.

The chosen consultant will be responsible for the coordination of all gauge installation, leveling, and operational reporting with the other participants in this project. These activities will be the subject of regular reports to the GLO. The chosen consultant will also be responsible for continuation of the process of automating the data collection, analysis, leveling, station stability monitoring and data computation that has been initiated earlier CBI.

The requested consultant services will require an understanding of ocean tide gauging systems and the ability to continue the assistance previously provided by CBI under the provisions of the GLO-CBI interagency cooperative agreement. It is the GLO's intent to award this contract to a person, or entity, familiar with TCOON and the earlier phases of the project in order to obtain maximum benefit of the prior work.

The consultant selected must demonstrate extensive knowledge of the Texas Coastal Ocean Observation Network and have knowledge and experience working with other federal and state agencies. The GLO reserves the right to evaluate qualifications and experience of all responders, to reject and and/or all responses to negotiate specific terms of agreement that are in the best interest of the state.

The closing date for the receipt of offers of these consulting services is 5:00 p.m., August 16, 1999. Further information may be obtained by contacting LaNell Aston, General Land Office, 1700 North Congress, Room 837, Austin, Texas, 78701-1495, phone (512)936-1921.

TRD-9904050
Larry R. Soward
Chief Clerk
General Land Office
Filed: July 7, 1999

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Texas Department of Health

Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Northwest Airlines, DFW Airport, R16311; Pilgrim's Pride Corporation, Pittsburg, R22266; Morgan Consulting, Inc., Houston, R22238; Mid-Cities Pulmonary Associates, Bedford, R16376; Dependable X-Ray, Inc., Antioch, Illinois, R16392; Luke Underhill, D.D.S., Corpus Christi, R17837; Sportsmed Rehabilitation Clinic, Bedford, R18005; Mobile Diagnostic Services, Brownsville, R21540; Procare Chiropractic Center, San Antonio, R22311; Houston Pain Management and Rehabilitation, Houston, R23035; Southwest Chiropractic and Rehabilitation Center, Houston, R23072; Comprehensive Podiatric Care, Houston, R23683; Thomas H. Barney II, D.C., P.C., Grand Prairie, R23684; Grapevine Chiropractic, Grapevine, R23717; Michael B. Hayes, D.C., Irving, R23734.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9903923
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 1, 1999

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Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code §289.205, the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Paragon Wireline, Inc., Bryan, L03436; Alpha Technical Services, Inc., Channelview, L04505.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9903924
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: July 1, 1999

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Notice of Request for Proposals for the Texas Diabetes Prevention and Control Initiative

INTRODUCTION:

The Texas Department of Health (department) requests proposals for the Texas Diabetes Prevention and Control Initiative for the project period October 1, 1999, through September 31, 1999. The department is seeking to select providers of services to target high priority populations as described in the project. Proposals will be reviewed and awarded on a competitive basis.

PURPOSE

The Texas Diabetes Prevention and Control Initiative's mission is to improve the health status of Texans who have, or who are at high-risk for developing Type 2 Diabetes. This will be accomplished by educating health care providers about Diabetes and its newest treatment options, educating and screening Diabetes high-risk populations and assisting them with obtaining quality health care in their communities, and increasing the general awareness of Diabetes in Texas through a Diabetes media campaign.

ELIGIBLE APPLICANTS

Eligible applicants include local health departments, community health centers, public or private universities, not-for-profit and for-profit organizations. Individuals are not eligible to apply.

Eligible applicants will be geographically restricted to those proposing to serve one of the three settings: (1) high-risk areas along the Texas-Mexico border; (2) large multiethnic, metropolitan settings with populations greater than 1 million; and (3) one or more rural areas in Texas with populations no greater than 50,000.

AVAILABLE FUNDS

Approximately $700,000 is expected to be available to fund at least three projects with a 12-month budget. The specific dollar amount to be awarded to each applicant will depend upon the merit and scope of the proposed project.

Funding recipients are required to contribute a percentage of their total project budget as match, in-kind contributions, or a combination of the two. The amount contributed will be applicant determined, and will be a criterion used when judging proposals.

DEADLINE

The original and six copies of the application must be received by Nancy Stancic, Program Specialist, Texas Diabetes Program/Council, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., Central Daylight Saving Time, on August 17, 1999. No facsimiles will be accepted.

REVIEW AND AWARD CRITERIA

Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to the quality of the application. Target populations and interventions must be planned in compliance with Texas Diabetes Prevention and Control Initiative outline. The department reserves the right to make funding decisions based on the need to provide Diabetes prevention services across geographic areas and to allocate resources based on an analysis of current resources already available in a particular community in order to avoid the duplication of services.

FOR INFORMATION

For a copy of the RFP, and other information, contact Ms. Nancy Stancic, Texas Diabetes Program/Council, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7490 or at E-mail: nancy.stancic@tdh.state.tx.us. No copies of the RFP will be released prior to July 19, 1999.

TRD-9904059
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 7, 1999

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Health and Human Services Commission

Requests for Proposals

The Health and Human Services Commission (HHSC) announces the issuance of 3 requests for proposals (RFPs) for services to support the implementation and administration of the Children's Health Insurance Program (CHIP), as authorized by Title XXI of the Social Security Act. HHSC requests written proposals from interested and qualified organizations for the following services in response to the 3 RFPs: (1) production and direction of a statewide multimedia campaign to publicize the availability of health insurance to families of uninsured children through television, radio, and print for the CHIP (the Marketing RFP); (2) delivery of comprehensive health insurance services for the CHIP (the Health Insurance RFP); (3) delivery of comprehensive administrative services for the CHIP (the Administrative Services RFP). A prospective vendor is not required to respond to all of the RFPs in order to be considered for an award.

The 3 RFPs will be available for downloading from the HHSC website at http://www.hhsc.state.tx.us beginning July 19, 1999. Notice of the 3 RFPs will also be posted on the State Electronic Business Daily. Interested parties may also obtain copies of any or all of the 3 RFPs at the offices of HHSC, 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas, 78751.

Proposals must be submitted in accordance with the requirements of the RFPs. Proposals in response to the Marketing RFP and Administrative Services RFP must be submitted no later than 5:00 p.m., Central Time, September 3, 1999. Proposals in response to the Health Insurance RFP must be submitted no later than 5:00 p.m., Central Time, September 8, 1999. Proposals must be submitted to HHSC to the attention of Suzanne VanderPoel, Children's Health Insurance Program, HHSC, 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas, 78751, 512-424-6568, FAX: 512-424-6585, or e-mail to the following address: suzanne.vanderpoel@hhsc.state.tx.us.

TRD-9904079
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services Commission
Filed: July 7, 1999

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Texas Department of Housing and Community Affairs

Notice of Administrative Hearing

Manufactured Housing Division

Tuesday, July 20, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Danny and Mary Ann Stewart dba Express Mobile Home Service aka Express Transporting & Services aka Express Mobile Home Transporting & Services to hear alleged violations of Section 7(d) of the Act and Section 80.125(e) of the Rules, regarding obtaining, maintaining or possessing a valid installer's license. SOAH 332-99-1253. Department MHD1997002870D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-9904071
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 7, 1999

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of VALUE BEHAVIORAL HEALTH OF TEXAS, INC. to VALUEOPTIONS OF TEXAS, INC., a domestic limited health care service. The home office is in Irving, Texas.

Application to change the name of X.L. INSURANCE COMPANY OF AMERICA, INC. to XL INSURANCE COMPANY OF NEW YORK, INC., a foreign fire and casualty company. The home office is in New York, New York.

Application for incorporation to the State of Texas by LEGACY INSURANCE SERVICES, INC., a domestic non-profit group hospital service company. The home office is in San Angelo, Texas.

Application for incorporation to the State of Texas by AMTRUST LLOYDS INSURANCE COMPANY, a domestic lloyds company. The home office is in Wichita Falls, Texas.

Application for admission to the State of Texas by FIRST COLONIAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Jacksonville, Florida.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9904060
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 7, 1999

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Texas Juvenile Probation Commission

Request for Proposal for the Dan Kubiak Buffalo Soldier At-Risk Youth Program

Internet Posting - Texas Juvenile Probation Commission's Website at: www.tjpc.state.tx.us/publications.htm

Bid Opening Date: 06-22-99, 4:00 p.m. Central Daylight Standard Time

Bid Closing Date: August 2, 1999

Date goods or services will be needed: 09-01-99 / 08-31-2000

Title: Dan Kubiak Buffalo Soldier At-Risk program - Request for Proposals (Bexar, Dallas, Tom Green, Tarrant, and Washington Counties)

Description: The Texas Juvenile Probation Commission is releasing a Request for Proposals (RFP) to solicit proposals for service contracts to be awarded under the Texas Department of Protective and Regulatory Services, Dan Kubiak Buffalo Soldier At-Risk program. The designated service areas are Bexar, Dallas, Tom Green, Tarrant, and Washington Counties.

The goals of the Dan Kubiak Buffalo Soldier At-Risk program are to reduce and prevent risky behavior (i.e. experimentation with drugs and/or intoxicating substances), truancy, and juvenile delinquency in youth 10 - 17 years of age. Additionally the program's goals strives to increase youth involvement in volunteer work, community service, leadership, cultural activities, and to improve the self-image and pride of eligible youth. The program is designed to prevent or reduce the involvement of at-risk youth in the juvenile justice system. The entire RFP can be accessed via the internet on the Texas Juvenile Probation Commissions website under "publications" - www.tjpc.state.tx.us/publications.htm

Eligible Clients: The Dan Kubiak Buffalo Soldiers At-Risk program targets a minimum of 30 minority and at-risk males between the ages of 10 and 17, each six months cycle. These youth have either been referred to the local juvenile probation department one time for a minor offense or are at-risk of being referred for a minor offense. Referrals are received from juvenile probation departments, schools, churches, and/or community organizations that have identified appropriate at-risk youth.

At-Risk Youth - Youth aged 10-16 who meet one of the following criteria:

* Youth experimenting with alcohol or intoxicating substances

* Truant youth

* Youth exhibiting a low sense of self-pride and esteem

* Minority males

Delinquent Youth

* Youth aged 10-16 who have allegedly committed a misdemeanor or state jail felony and who have not been adjudicated delinquent by the court; a pre-adjudicated or deferred adjudicated youth is eligible for services

Required programming components include: Mentoring; Tutoring; Buffalo Soldier History classes (structured); character development; self-esteem and life skills training; community work/service only as a positive component; half day, full day, and weekend field trips to Texas State Parks; and a two day or longer encampment to be held at the end of each program cycle, at or near one of the original Texas Forts that garrisoned Buffalo Soldiers.

Eligible applicants: Offerors must propose to provide services in one of the five counties that follows: Bexar, Dallas, Tom Green, Tarrant, or Washington. Strong consideration will be given to applicants experienced with developing programs that provide direct services to youth. Preference will be given to local non-profit community based programs that have an established organizational structure, and experience in serving the Buffalo Soldier program target population.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department. Each award will be granted a maximum of $50,000.00 to fund one year of the contracted services with an option to renew the existing contract, by both parties, at the end of year one. The second year will be funded for an additional $50,000.00 contingent on the contract renewal. At the Department's option, the contract(s) awarded under this RFP may be renewed annually for a period not to exceed three additional years without being subject to further competition. Should successful offers exceed available funds, the Department will negotiate to achieve parity.

Terms: The effective dates of any contract awarded under this RFP would be September 1, 1999, through August 31, 2000. The second year of the contracted period will be contingent on its mutual renewal after year one, between the Texas Department of Protective and Regulatory Services and the contractor.

Deadline: An original and five copies of the proposal must be received on or before 4:00 p.m. Central Daylight Standard Time, August 2, 1999. Modifications to the original proposal are also due that date. Mailed proposals should be posted with sufficient time to arrive before the deadline, and be addressed to TJPC, P.O. Box 13547, Austin, Texas, 78711-3547. Copies may be delivered personally to 4900 North Lamar, Austin, Texas 78751.

Evaluation and Selection: A State Interagency Review Committee, that may include representatives from the Texas Youth Commission, Texas Education Agency, Texas Department of Protective and Regulatory Services, Texas Parks and Wildlife, and the Texas Juvenile Probation Commission, will score and rank the proposals. The evaluation criteria and method will be specified in the RFP packet. Considerations are need, cost, comprehensive program services, and community collaboration.

Contact Information: Potential offerors may obtain the RFP package beginning June 29,1999. Please submit requests in writing by mail or fax to:

Maribeth Powers, Director of Field Services -or-

Demetrius Lewis, Program Specialist

Texas Juvenile Probation Commission

P.O. Box 13547, Austin, Texas 78711-3547

Tele: (512) 424-6700 Fax: (512) 424-6717

The complete RFP may be downloaded from the TJPC's website: www.tjpc.state.tx.us/publications.htm

TRD-9903939
Vicki Spriggs
Executive Director
Texas Juvenile Probation Commission
Filed: July 1, 1999

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Texas Department of Licensing and Regulation

Vacancies on Architectural Barriers Advisory Committee

The Texas Commission of Licensing and Regulation announces vacancies on the Architectural Barriers Advisory Committee established by Texas Civil Statutes, Article 9102, Architectural Barriers. The pertinent rules may be found in 16 TAC §68.65. The Committee periodically reviews rules relating to the architectural barriers program and recommend changes in the rules to the commission and the commissioner.

The Committee is appointed by the Texas Commission of Licensing and Regulation and is composed of building professionals such as architects, engineers, interior designers and landscape architects, and persons with disabilities who are familiar with architectural barrier problems and solutions. This announcement is for the positions of one (1) building professional and two (2) consumers with a disability.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-7348 or (512) 463-7357, FAX (512) 475-2872 or Email caroline@license.state.tx.us. Applications must be returned to the Department of Licensing and Regulation no later than August 1, 1999.

Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense. Issued in Austin, Texas on June 30, 1999. Rachelle A. Martin Executive Director Texas Department of Licensing and Regulation

TRD-9903935
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 1999

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Texas Lottery Commission

Public Hearings

Notice is hereby given that a public hearing will be held on July 21, 1999 at 10:00 a.m. in the first floor auditorium of the Texas Lottery Commission, 611 E. 6th Street, Austin, Texas 78701, to receive comments regarding a proposed new section 16 TAC 402.572, relating to Temporary Capital Equipment Acquisition.

TRD-9903918
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 30, 1999

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Notice is hereby given that a public hearing will be held on July 22, 1999 at 10:00 a.m. in the first floor auditorium of the Texas Lottery Commission, 611 E. 6th Street, Austin, Texas 78701, to receive comments regarding proposed amendments to 16 TAC 401.309, relating to assignment of lottery installment prize payments.

TRD-9903919
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 30, 1999

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Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 16, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 16, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: Bayou, Incorporated; DOCKET NUMBER: 1998-0560-PST-E; TNRCC IDENTIFICATION NUMBER: 27224; LOCATION: San Leon, Galveston County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §115.242(3)(C) and (J) by failing to replace or repair torn nozzle boots with tears greater than 1/2 inch and inoperative pressure/vacuum relief valves or dry breaks; and 30 TAC §115.246(7)(A) by failing to maintain records on site to be made available upon request for inspection; PENALTY: $5,000; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9904077
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **August 16, l999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 16, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Amerada Hess Corporation; DOCKET NUMBER: 1998-0580-MLM-E; TNRCC IDENTIFICATION (ID) NUMBER: 39003; LOCATION: 1802 Poth Lane, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: refining/storage; RULES VIOLATED: 30 TAC §335.4 and the Code, §26.121 by causing, suffering, allowing, or permitting the unauthorized discharge of industrial waste into or adjacent to water in the state of Texas, resulting in soil and groundwater contamination at the facility and adjacent properties; 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to perform hazardous waste determinations for one roll-off box of tank bottom sludge generated during the cleaning of tank 144; 30 TAC §335.2(a), §335.431, and 40 CFR §268.38, by failing to obtain permit authority prior to disposing of hazardous waste into an unauthorized concrete lined tank; the Code, §26.121 by failing to maintain total organic carbon daily maximum permit levels in wastewater discharges at or below permitted levels, by applying wastewater which contained benzene to plant property, and by failing to maintain oil and grease daily maximum permit limits; 30 TAC §305.125(1) and §335.4 by failing to obtain authorization for application of wastewater to plant property; and 30 TAC §319.7(a) by failing to accurately report the total organic carbon daily maximums when it originally submitted the monthly effluent report of its effluent water at its marine terminal facility; PENALTY: $278,063; STAFF ATTORNEY: Paul C. Sarahan, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2)COMPANY: City of Aransas Pass; DOCKET NUMBER: 1998-0917-PST-E; TNRCC ID NUMBER: 0058642; LOCATION: 235 East Wilson, Aransas Pass, San Patricio County, Texas; TYPE OF FACILITY: fleet refueling; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide a method, or combination of methods, of release detection from underground storage tank (UST)

systems which contains regulated substances; 30 TAC §334.51(b)(2) by failing to equip a tank with a tight-fill fitting, adapter, or similar device, to provide a liquid-tight seal during the transfer of regulated substances into the tank, equip the fill tube of the tanks with an attached spill container or catchment basin, or to ensure that the fill tube is enclosed in a liquid-tight manway, riser, or sump, and equip the tank with a valve or other appropriate device designed to either automatically shut off the flow of regulated substances to restrict the flow of regulated substances into the tank or emit an audible and visible alarm capable of alerting the person responsible for the delivery when the liquid level in the tank reaches a preset level; PENALTY: $5,000; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3)COMPANY: Dwayne Barker; DOCKET NUMBER: 1996-0702-LII-E; TNRCC ID NUMBER: 4443; LOCATION: 27002 O'Kent, San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: 30 TAC §344.77(a)(1) by failing to meet manufacturer's minimum spacing requirements for sprinkler heads installation; 30 TAC §344.63 by failing to affix the mandatory seal of a licensed irrigator to documents provided to irrigation system customers; 30 TAC §344.93(a) and (b) by failing to display landscape irrigator license fleet trucks and by failing to include landscape irrigator license number on published advertisements; and 30 TAC §344.94(b), formerly 30 TAC §344.505(b), by failing to include mandatory language on contracts and other documents provided to irrigation system customers; PENALTY: $3,000; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239- 2029; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4)COMPANY: Broadway Shrimp and Oysters, Incorporated; DOCKET NUMBER: 1998-0484- IWD-E; TNRCC ID NUMBER: 12457; LOCATION: northwest corner of the Port Lavaca City Harbor on the west by State Highway 238, Port Lavaca, Calhoun County, Texas; TYPE OF FACILITY: shrimp processing plant; RULES VIOLATED: the Code, §26.121 by allowing an unauthorized discharging into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state at an unpermitted site; PENALTY: $3,000; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5)COMPANY: W.R. Coffey, dba C and L Land Development and Athens Land Company, and C and L Investment Company, Incorporated; DOCKET NUMBER: 1998-0009-MLM-E; TNRCC ID NUMBER: 1070235; LOCATION: State Highway 175 and County Road 3913, Henderson County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §285.58(a)(6), Texas Health and Safety Code (THSC), §366.004, and the Code, §26.121 by discharging raw sewage from an on-site sewage facility via an open pipe into a ditch and allowing the raw sewage to flow onto adjacent property and into a stock pond, areas which were accessible to children; 30 TAC §290.106 and THSC, §341.033(d) by failing to submit water samples from the facility for bacteriological analysis to a laboratory; 30 TAC §290.106(a)(1) by failing to have a written sample siting plan for the collection of routine bacteriological samples from representative service connections throughout the distribution system; 30 TAC §290.112(1) by failing to retain on the facility premises or at a convenient location near the premises records of bacteriological analyses, records of action taken by the facility to correct any violations, and copies of written reports relating to sanitary surveys of the facility; 30 TAC §290.42(e) and paragraph (8) by failing to provide continuous disinfection of all water and by failing to house and lock up the hypochlorination solution containers and pumps in order to protect them from adverse weather conditions and vandalism and to completely cover the hypochlorination solution containers in order to prevent dust, insects, and other contaminants from tainting the solution; 30 TAC §290.46(f)(1)(A) and (2)(B) by failing to maintain a minimum free chlorine residual of 0.2 milligrams per liter (mgl) in the far reaches of the distribution system at all times, to perform chlorine residual tests at least once every seven days from various locations within the distribution system, and to maintain records of these tests for a minimum of three years; 30 TAC §290.46(e) and (h) by failing to have a certified water works operator supervise the facility operations and by failing to keep a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 30 TAC §290.41(c)(3)(A), (K), (M), (N), and (O) by failing to provide to the TNRCC well completion data regarding the facility wells prior to placing the wells into service, to seal the well heads with gaskets or with pliable crack-resistant caulk, to keep accurate information pertaining to the wells for future reference including a log of the ground formations encountered, casing records, material settings, and water levels, to provide a suitable sampling tap on the discharge pipe of each well pump to facilitate the collection of samples for chemical and bacteriological analysis directly from the well, to install flow measuring devices on each well to measure production yields and provide for the accumulation of water production data, and to protect the well sites by erecting intruder-resistant fences or in the alternative by locating the wells in locked, ventilated well houses in order to prevent possible contamination or damage to the facilities by trespassers; 30 TAC §290.41(c)(1)(E) by failing to report to the commission all known abandoned or inoperative wells and the existing or potential pollution hazards which may affect ground water quality; 30 TAC §290.44(d)(4) by failing to provide accurate metering devices at each service connection for the accumulation of water usage data; 30 TAC §290.46(k) and (n) by failing to obtain approval from the executive director, to show that the other water supply is a safe, sanitary quality prior to interconnecting with another water system, and to maintain an up-to-date map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.46(j)(2) by failing to inspect and/or provide service inspection certifications prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connections or other unacceptable plumbing practices exist, or after any material improvement, correction, or addition to the private plumbing facilities; 30 TAC §291.93(a) by failing to plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses; 30 TAC §291.101(a) and the Code, §13.244 by supplying retail water service to the public without first having obtained from the commission a certificate that the present or future public convenience and necessity requires or will require the installation, operation, or extension of the retail water service; and 30 TAC §290.120(b) and (c) by failing to provide the TNRCC with a sample site selection form, to set forth a pool of tap sampling sites from which water samples may be taken in order to analyze the water for lead and copper content, and to submit water samples for lead and copper content analysis; PENALTY: $9,840; STAFF ATTORNEY: Mary Risner, Litigation Division, MC 175, (512) 239-6224 REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6)COMPANY: Chevron U.S.A., Incorporated; DOCKET NUMBER: 1998-0854-AIR-E; TNRCC ID NUMBER: EE-0015-H; LOCATION: 6501 Trowbridge, El Paso, El Paso County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(2), 40 CFR §61.355(a), and the Code, §382.085(b) by failing to accurately conduct the determination for the total annual benzene quantity generated at the plant; and 30 TAC §101.20(2), 40 CFR §61.342(b), and THSC, §382.085(b) by failing to install the required benzene waste control equipment; PENALTY: $200,000; STAFF ATTORNEY: Mary R. Risner, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(7)COMPANY: Chevron Products Company; DOCKET NUMBERS: 1998-0555-IWD-E and 1998-0556-IWD-E; TNRCC ID NUMBERS: L-91463 and L-93787; LOCATION: 6027 Kirby Street and 7050 Telephone Road, Houston, Harris County, Texas; TYPE OF FACILITY: petroleum storage tank groundwater remediation sites; RULES VIOLATED: 30 TAC §321.133(c)(2)(A) and the Code, §26.121 by discharging wastewater from two sites that exceeded the required limitations of 50 parts per billion (ppb) for benzene and 500 ppb for total benzene, toluene, ethylbenzene, and xylene; PENALTY: $1,950; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8)COMPANY: CITGO Refining and Chemicals Company, L.P.; DOCKET NUMBERS: 1997- 0151-IHW-E and 1998-0579-IHW-E; TNRCC ID NUMBERS: NE0027V, 30532, 32501; LOCATION: 1801 Nueces Bay Boulevard and Cantwell Lane, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refineries; RULES VIOLATED: 30 TAC §335.2 and §335.43 by storing, processing, and disposing of hazardous waste in a surface impoundment without a permit or other authorization; 30 TAC §101.4, §112.31, and THSC, §382.085 by discharging one or more air contaminants including unauthorized emissions of hydrogen fluoride and volatile organic compounds, ground level concentrations of hydrogen sulfide greater than 0.08 parts per million over a period of 30 minutes, and nuisance odors; 30 TAC §116.115 by failing to install, calibrate, test, and maintain certification of nitrogen oxide analyzer on the boiler within 180 days after their initial start-up, to conduct performance testing, and to submit a complete compliance report on boiler within 180 days after initial start-up; and 30 TAC §335.4 and the Code, §26.121 by causing, suffering, allowing, or permitting the unauthorized discharge of industrial waste into or adjacent to the water in the state of Texas; PENALTY: $650,000; STAFF ATTORNEY: Paul C. Sarahan, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9)COMPANY: Curiel Construction, Incorporated and Curiel Trucking, Incorporated; DOCKET NUMBER: 1998-1400-AIR-E; TNRCC ID NUMBER: EE-0739-E; LOCATION: 266 Horizon Boulevard, El Paso, El Paso County, Texas; TYPE OF FACILITY: construction material site; RULES VIOLATED: 30 TAC §111.143(3)(B) and THSC, § 382.085(b) by causing, suffering, allowing, or permitting material to be handled, transported, or stored without complete covering so as to achieve maximum control of dust emissions; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b) by constructing or modifying an existing facility without obtaining a permit; and 30 TAC §106.142 by not satisfying the conditions of exemptions from permitting; PENALTY: $3,750; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925- 5633, (915) 778-9634.

(10)COMPANY: Dean Lumber Company; DOCKET NUMBER: 1998-0506-SWR-E; TNRCC ID NUMBER: 32629; LOCATION: 1215 South Montgomery Street, Gilmer, Upshur County, Texas; TYPE OF FACILITY: pine sawmill wood treating operation; RULES VIOLATED: 30 TAC §335.2 by storing and disposing hazardous waste in waste pile unit 007 without a hazardous waste permit; 30 TAC §335.152(a)(5), incorporating 40 CFR §264.112, by failing to have an approved written closure plan for waste pile unit 007; and 30 TAC §335.152(a)(10), incorporating 40 CFR §264.251, by failing to meet the hazardous waste pile design standards for hazardous waste pile unit 007; PENALTY: $12,000; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535- 5100.

(11)COMPANY: Felix Escobedo dba Felix and Sons Body Shop; DOCKET NUMBER: 1997- 0220-AIR-E; TNRCC ID NUMBER: 10025; LOCATION: 12423 Market Street, Houston, Harris County, Texas; TYPE OF FACILITY: vehicle repair and refinishing operation; RULES VIOLATED: 30 TAC §116.110(a), §115.426, and THSC, §382.085(b) by failing to have a filter system with at least 90% control efficiency in the paint booth area and by failing to maintain on site and have readily available material data safety sheets for paints and solvents systems used during the previous consecutive 24-month period or currently in use and records of the registration or identification numbers for each waste generator; PENALTY: $500; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12)COMPANY: Fast Lube Incorporated; DOCKET NUMBER: 1998-1172-AIR-E; TNRCC ID NUMBER: EE-0880-C; LOCATION: 7849 North Loop Road, El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULES VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b) by transferring gasoline from a storage vessel which may ultimately be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure greater than 7.0 pounds per square inch absolute; PENALTY: $1,000; STAFF ATTORNEY: John Sumner, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(13)COMPANY: Vicki Seyer dba Greenvilla Mobile Home Park; DOCKET NUMBER: 1998- 0485-PWS-E; TNRCC ID NUMBER: 0840067; LOCATION: Farm to Market Roads 3436 and 517, Dickinson, Galveston County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: 30 TAC §290.106(a), §290.105(e), and the Code, §341.033(d) by failing to submit monthly water samples for bacteriological analysis and by failing to provide public notice of the failure to submit samples; and 30 TAC §290.51 and the Code, §341.041 by failing to pay the required public health service fees; PENALTY: $2,500; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14)COMPANY: Ubaldo Gomez dba JLG Trucking; DOCKET NUMBER: 1997-0743-AIR-E; TNRCC ID NUMBER: EE-0466-Q; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: trucking company; RULES VIOLATED: 30 TAC §111.143 by failing to cover trucks which were hauling materials and releasing airborne particulate matter; PENALTY: $4,000; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(15)COMPANY: Nuclear Sources and Services, Incorporated; DOCKET NUMBER: 1998-0735- IHW-E; TNRCC ID NUMBER: 50269; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: commercial hazardous and industrial solid waste storage; RULE VIOLATED: 30 TAC §335.431(c), incorporating 40 CFR §268.50(c), by storing containers of hazardous waste at the facility for more than one year; 30 TAC §335.152(a)(4), incorporating 40 CFR §264.73(b)(1) and (2), by failing to maintain adequate tracking inventories for hazardous wastes and failing to maintain records of locations and quantity of each hazardous waste; 30 TAC §335.6(b) by failing to update or correct items on its notice of registration; 30 TAC §335.10(b)(22) by failing to include a TNRCC waste stream number on manifest number 1586727; 30 TAC §335.431(c), incorporating 40 CFR §268.50(a)(2)(i), by failing to mark hazardous waste containers stored at the facility with hazardous waste labels; 30 TAC §335.152(a)(7), incorporating 40 CFR §264.171, by storing three containers in advanced conditions of corrosion; 30 TAC §335.152(a)(3), incorporating 40 CFR §264.52(d), by failing to list the correct names and telephone numbers of the emergency coordinators in the contingency plan; 30 TAC §335.474 by failing to prepare a source reduction and waste minimization plan; 30 TAC §335.152(a)(2), incorporating 40 CFR §264.31, by storing several drums of hazardous waste in an unregistered site; 30 TAC §335.431(c), incorporating 40 CFR §268.50(a)(2)(i), by failing to clearly mark accumulation period start dates on containers of hazardous waste stored at the facility; and 30 TAC §335.152(a)(7), incorporating 40 CFR §264.177, by storing reactive and ignitable wastes and incompatible wastes without separation by dike, berm, wall, or other device; PENALTY: $85,250; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16)COMPANY: Yogesh Gandhi dba The Party Keg; DOCKET NUMBER: 1998-0550-PST-E; TNRCC ID NUMBER: 0006788; LOCATION: 6101 Gulfway Drive, Groves, Jefferson County, Texas; TYPE OF FACILITY: petroleum retail; RULES VIOLATED: 30 TAC §115.242(3) and (4) by failing to maintain the Stage II vapor recovery system (VRS) in proper working order and by failing to remove defective Stage II VRS from service; 30 TAC §115.248 and THSC, §382.085(b) by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II VRS by successfully completing a training course approved by the TNRCC; 30 TAC §115.244(1)(3) and THSC, §382.085(b) by failing to conduct daily inspections of Stage II vapor recovery equipment and by failing to maintain inspection records, the California Air Resources Board Executive Order, and all other Stage II vapor recovery records at the facility for a period of two years; and 30 TAC §115.244(1)(2) and THSC, §382.085(b) by failing to properly test equipment within 30 days following installation and by failing to conduct the annual pressure decay testing; PENALTY: $16,250; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(17)COMPANY: R and R Remediation Services, Incorporated; DOCKET NUMBER: 1999- 0112-MLM-E; TNRCC ID NUMBER: 81073; LOCATION: 12025 Highway 16 South, San Antonio, Bexar County, Texas; TYPE OF FACILITY: waste management; RULES VIOLATED: 30 TAC §335.2 and §335.43 by failing to obtain a permit or other authorization prior to the receipt and storage of hazardous wastes; 30 TAC §335.6(h) by failing to submit in writing the types of industrial solid waste that were recycled, the method of storage prior to recycling, and the nature of the recycling activity; 30 TAC §335.112(a)(8), incorporating 40 CFR §265.173(a), by failing to ensure that four 55-gallon drums of hazardous waste remained closed except when wastes were being added or removed; 30 TAC §335.12(a)(1) by accepting the delivery of a hazardous or class I industrial solid waste, that was designated by the waste manifest for delivery to another facility; 30 TAC §334.502 by failing to have a stockpile or land surface treatment unit with an appropriate means of preventing discharge or release of petroleum substance waste or petroleum substance waste constituents into any media; 30 TAC §335.484(e) by failing to provide written notice of any changes or additional information concerning the information submitted or activities authorized in any registration within 15 days of the change or from the date the additional information was acquired; and 30 TAC §335.5 by failing to record, in the county deed records, the disposal of arsenic contaminated soil around the asphalt plant; PENALTY: $13,370; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(18)COMPANY: Bob Smith dba Windfern Mobile Home Park; DOCKET NUMBER: 1998- 0494-MWD-E; TNRCC ID NUMBER: 13509-001; LOCATION: 9401 Windfern Road, Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.125 and the Code, §26.121(a)(1) by failing to properly discharge sewage and waste from facility, to comply with his permitted daily average grab sample limit of 35 mgl for five-day carbonaceous biochemical oxygen demand and 65 mgl for total suspended solids, and to adequately maintain the facility's lift station, backup pump, piping, and structural condition; PENALTY: $18,750; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19)COMPANY: SVI Corporation dba Stockham Valves and Fittings, Incorporated; DOCKET NUMBER: 1998-1115-MWD-E; TNRCC ID NUMBER: 12456-001; LOCATION: 9.8 miles west of Conroe, Montgomery County, Texas; TYPE OF FACILITY: valve and pipe fitting manufacturing; RULES VIOLATED: 30 TAC §319.7(d) by failing to submit an monthly effluent reports each month by the 20th day of the following month for each discharge; PENALTY: $2,500; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20)COMPANY: COMPANY: Craig Penfold dba Village Oaks Mobile Home Community; DOCKET NUMBER: 97-0637-MWD-E; TNRCC ID NUMBER: 12667-001; LOCATION: approximately 500 feet east of FM Road 2499 and 1000 feet north of the Denton-Tarrant County boundary, Denton County, Texas; TYPE OF FACILITY: domestic wastewater treatment (package plant); RULES VIOLATED: This is an amendment to an AO issued by the commission on August 31, 1998 which resolved an enforcement action against Craig Penfold dba Village Oaks Mobile Home Community (Village Oaks) for violations of the Code, §26.121 and Permit Number 12667-001. The amendment would allow Village Oaks to implement a supplemental environmental project to offset a portion of the remaining owed amount of the administrative penalty; PENALTY: $23,760; STAFF ATTORNEY: Cecily Small Gooch, Litigation Division, MC 175, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9904078

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: July 7, 1999

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Notices of Public Hearings

The Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapters 39, 50, 55, 80, 106, 116, 122, 305, and 321 and to the State Implementation Plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs. The revisions to Chapters 39, 55, and 116 constitute revisions to the SIP. The changes revise the commission's procedural rules for notice, comment and hearings.

The commission proposes to amend and clarify existing procedural rules, implementing the requirements of House Bill (HB) 801, HB 1479, Senate Bill (SB) 7, SB 211, SB 766, and SB 1308 (Texas Legislature 76th Session). This includes changes to requirements for contested case hearings.

A public hearing on this proposal will be held August 10, 1999, at 2:00 p.m. in Room 201S of Texas Natural Resource Conservation Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Written comments may be submitted by mail to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239- 4808. All comments must be received by August 16, 1999, and should reference Rule Log No. 99030- 039-AD. Comments received by 5:00 p.m. on that date will be considered by the commission before any final action on the proposal. For further information, please contact Ray Henry Austin at (512) 239-6814.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9904063
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 101, concerning General Rules, and the SIP.

The commission proposes amendments to §§101.1, 101.2, 101.10, and 101.30, and new 101.28. The amendments to §101.1 remove definitions duplicated in other chapters of 30 TAC, add definitions that are used in multiple chapters, and amend certain definitions; the amendments to §101.2 authorize the executive director to act on petitions for single property designation; the amendments to §101.10 clarify the existing statutory authority of the commission under Texas Health and Safety Code, §382.014, concerning Emission Inventory; and the amendments to §101.30 relocate certain definitions to §101.1 because the definitions are used in multiple chapters. The new §101.28 allows compliance with a single set of equivalent or more stringent monitoring and testing requirements for holders of federal operating permits with multiple requirements. The proposed amendments to §§101.1, 101.10, and 101.30, and the new §101.28 are amendments to the SIP.

A public hearing on the proposal will be held August 12, 1999, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion 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.

Comments may be submitted to Casey Vise, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 16, 1999, and should reference Rule Log Number 99017-101-AI. For further information, please contact Beecher Cameron, of the Policy and Regulations Division, at (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9904062
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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Notice of Water Rights Application

CHARCO CATTLE COMPANY, L.L.C., c/o Austin E. Brown, II, 1740 Milam Building, 115 East Travis, San Antonio, Texas, 78205-1644, applicant, seeks an amendment pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Permit Number 5465, with a priority date of December 4, 1993, authorizes permittee to divert and use not to exceed 30 acre-feet of water per annum from 2 points on a natural pool on Aqua Dulce Creek, a tributary of Petronila Creek, tributary of Cayo del Mazon, tributary of Cayo del Hinoso, tributary of Alazan Bay, tributary to Baffin Bay, tributary of Laguna Madre. The permittee is authorized to divert water at a maximum rate of 1.8 cfs to irrigate a maximum of 50 acres out of 3063.09 acres of land in Nueces County approximately 27 miles West of Corpus Christi, Texas. It also allows use of the bed and banks of Agua Dulce Creek to convey groundwater for subsequent irrigation use; diversion and use of this water from the creek anywhere within the property boundary of the 3063.09 acre tract; and a requirement that the amount of this water diverted in any 24-hr period not exceed 95% of the amount of groundwater discharged into the creek during the previous 24-hr period. The applicant seeks to amend water use Permit Number 5465, as amended, to 1) allow diversion of surface water and stored groundwater from the perimeter of 3 existing reservoirs;

a proposed reservoir on Agua Dulce Creek, and an existing reservoir on Quinta Creek, tributary of Agua Dolce Creek, 2) increase existing appropriation of surface water diverted per year from 30 ac-ft to 250 ac-ft. 3) increase maximum diversion rate from 800 g.p.m. to 2000 g.p.m.; 4) allow surface water or any discharged ground water to be diverted anywhere between applicant's upstream property boundaries on Agua Dulce & Quinta Creeks and the downstream property boundary on Agua Dulce Creek; 5) allow discharge of ground water into Quinta Creek as well as Agua Dulce Creek, using bed & banks conveyance to points of diversion; 6) remove the 24-hour requirement for replenishment of diverted water described in the amended permit ; and 7) increase irrigated acreage from 50 to 1200 acres within the originally authorized 3063.09 acre tract. All of the dams & reservoirs are on-channel, and will be located in the Casa Blanca Grant, Abstract 221, Nueces County; approximately 27 miles in a westerly direction from Corpus Christi and approximately 5.5 miles in a northeasterly direction from Agua Dulce (a nearby town). The midpoint on the centerline of the new dam (Reservoir No. 2) will be located at N 76° 30 minutes West, 27,680 feet from the Southeast corner of the aforesaid grant on Agua Dulce Creek; approximately at Latitude 27.981° North, Longitude 97.908° West. The reservoir will have a capacity of 23 ac-ft and will have a surface area of 9.04 acres. Construction of the dam will begin within 2 years and be completed within 3 years of issuing this amendment. The applicant requests authorization to allow ground water to be discharged into either Agua Dulce or Quinta Creeks anywhere on the 3063.09 acre tract. The most upstream point of Agua Dulce Creek on the applicant's property is Diversion Point 1, at Latitude 27.981° N, Longitude 98.008° W, also bearing N 78° W, 32,900 feet from the Southeast corner of said grant. The most upstream point of Quinta Creek on the applicant's property (Diversion Point 2) is at Latitude 27.972° N, Longitude 97.889° W, also bearing N 60.75° W, 28,800 feet from the Southeast corner of said grant. The most downstream point of Agua Dulce Creek on the applicant's property (Diversion Point 3), is at Latitude 27.972° N, Longitude 97.886° W, also bearing N 67° W, 20,033 feet from the Southeast corner of said grant. The Applicant has indicated that they will measure all ground water discharged into either Agua Dulce or Quinta Creeks and will measure all waters diverted directly from the streams or from the perimeter of the 5 reservoirs. They have also indicated that, during any calendar year, they will not divert more than 250 ac-ft of surface water plus 95% of all ground water discharged into the 2 creeks. Quinta Creek, tributary of Agua Dulce Creek, tributary of Petronila Creek, tributary of Cayo del Mazon, tributary of Cayo del Hinoso, tributary of Alazan Bay, tributary to Baffin Bay, tributary of Laguna Madre, Nueces-Rio Grande Coastal Basin, Nueces County.

CITY OF CONVERSE, 403 South Seguin, P.O. Box 36, Converse, Texas, 78109-0036, applicant, seeks a permit to appropriate public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The applicant seeks authorization to divert not to exceed 48.61 acre-feet of water per annum from Salitrillo Creek, a tributary of Martinez Creek, tributary of Cibolo Creek, tributary of the San Antonio River, for industrial use and not to exceed 748.36 acre-feet of water per annum from the creek for irrigation use within the City of Converse's Certificate of Convenience and Necessity area in Bexar County. Irrigation water will be supplied to individual customers for their lawns and to city parks, recreational playgrounds and sport fields. The amount of land to be irrigated per annum will not exceed 426 acres. Applicant would retain sole ownership of the water rights granted within this appropriation, and it will not be appurtenant to the land areas irrigated. The location of the diversion point is Latitude 30.733° North, Longitude 98.43° West, bearing North 45° West 100 feet from the Southeast corner of the Richard Mockett Survey No. 316, Abstract No. 497, approximately 1.5 miles southeast of Converse. The total maximum diversion rate will be 3.34 cfs (1500 gpm). The proposed diversion site is on land currently not owned by the City of Converse. The applicant has indicated that the primary source of the water requested is wastewater discharged into the creek by the San Antonio River Authority. Salitrillo Creek, a tributary of Martinez Creek, tributary of Cibolo Creek, tributary of the San Antonio River, Bexar County.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the requested permit amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit amendment and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas, 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9904031
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 6, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of June 25, 1999 through July 2, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or

requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUE DATE OF THE NOTICE.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ABB VETCO GRAY, INC. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11651-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located at 12221 North Houston-Rosslyn Road, approximately 1.0 mile south of Farm-to-Market Road 149 in Harris County, Texas.

AREA DEVELOPMENT, INC., 8632 South Highway 287, Corsicana, Texas, 75110, has applied for a renewal of TNRCC Permit Number 13528-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The plant site is located on a county road approximately 1.3 miles south of the intersection of the county road and a point on U.S. Highway 287 approximately 0.9 mile east of the eastern abutment of the U.S. Highway 287 bridge over Richland Chambers Reservoir in Navarro County, Texas.

AZTEC COVE PROPERTY OWNERS ASSOCIATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11831-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located approximately seven miles east of the City of Trinity on the north side of Farm-to-Market Road 356, approximately 2,000 feet west of the bridge over the White Rock Creek Arm of Lake Livingston in Trinity County, Texas.

BAYER CORPORATION AND TEXAS PETROCHEMICALS CORPORATION have applied for a major amendment to TNRCC Permit Number 00587 to authorize the removal of effluent limitations and/or reduction in monitoring frequencies for cyanide (weak acid dissociable), phenolic compounds (total recoverable), total zinc, total silver, and total chromium at Outfall 002. The current permit authorizes the discharge of raw water treatment wastewaters and non-process area storm water at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001 which will remain the same; treated process wastewaters, chromate and non-chromate cooling tower blowdown, boiler blowdown, and storm water at a daily average flow not to exceed 5,500,000 gallons per day via Outfall 002 which will remain the same; and rainfall runoff from non-process areas on an intermittent and flow variable basis via Outfall 003 which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0004961 issued on July 15, 1994 and TNRCC Permit Number 00587 issued on July 30, 1993. Bayer Corporation formerly operated polychloroprene rubber and organic chemical manufacturing facilities, and Texas Petrochemicals Corporation will continue to operate an organic chemical manufacturing facility. The plant site is located at 8701 Park Place Boulevard, approximately 1.5 miles south-southwest of the intersection of Goodyear Drive and State Highway 225 in the City of Houston, Harris County, Texas.

BROWNSVILLE NAVIGATION DISTRICT has applied for a renewal of TNRCC Permit Number 02817, which authorizes the discharge of treated domestic wastewater, treated shrimp processing wastewater, shrimp boat bilge water, and stormwater at a daily average flow not to exceed 250,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0100242 issued on November 22, 1996 and TNRCC Permit Number 02817 issued January 7, 1993. The applicant operates the Fishing Harbor Wastewater Plant, a facility which receives and treats domestic wastewater, bilge water, and wastewater from shrimp processing facilities. The plant site is located on the south side of State Highway 48 approximately 5.4 miles east of the intersection of State Highway 48 and Farm-to-Market Road 511, northeast of the City of Brownsville, Cameron County, Texas.

LARRY R. BUCK has applied for a renewal of TNRCC Permit Number 12909-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located north of the intersection of Bud Cross Drive and McRee Street, approximately 1.7 miles northwest of the intersection of Farm-to-Market Road 1220 (Morris-Ditto-Newark Road) and East Peden Road in Tarrant County, Texas.

CALLISBURG INDEPENDENT SCHOOL DISTRICT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13393-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located approximately 0.7 mile east-southeast of the intersection of Farm-to-Market Roads 678 and 3164 in Cooke County, Texas.

CENTRAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12214-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day. The plant site is located south of and adjacent to U.S. Highway 69, approximately 0.4 mile northwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 843 in Angelina County, Texas.

CHAMP'S WATER COMPANY has applied for a renewal of TNRCC Permit Number 11005-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The plant site is located southwest of the intersection of Bonazzi Boulevard and Stallings Drive, approximately 3,750 feet west of West Montgomery Road, 11 miles northwest of the City of Houston central business district and 2.9 miles west of Interstate Highway 45 in Harris County, Texas.

CHAMP'S WATER COMPANY, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0090506 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12571-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 3/4 of a mile south of the intersection of Atascocita Road and Wilson Road in northern Harris County, Texas.

CHEVRON U.S.A., Inc., 2202 Oil Center Court, Houston, Texas, 77073, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 03822, which authorizes the discharge of process water and stormwater on an intermittent, flow variable basis via Outfall 001. The applicant operates an oil and gas production research facility. The plant site

is located at 2202 Oil Center Court, approximately 1.4 miles north of the intersection of Farrell Road and Hardy Road in the City of Houston, Harris County, Texas. The effluent is discharged through a 24-inch diameter pipe to Turkey Creek; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The unclassified receiving waters uses are no significant aquatic life use for Turkey Creek. The designated uses for Segment No. 1009 are high quality aquatic life use, contact recreation, and public water supply.

CITY OF COLLEGE STATION has applied for a minor amendment to Permit Number 10024-006 to authorize Marketing and Distribution of Class A sludge. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,500,000 gallons per day, which will remain unchanged. The plant site is located adjacent to the west side of Carters Creek, approximately 0.75 mile east of State Highway 6, and approximately 4,000 feet north and 1,800 feet east of the intersection of State Highway 6 East and Texas Avenue in Brazos County, Texas.

CITY OF COMO has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11313-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located on the west side of Carroll Creek, approximately 2400 feet west of the intersection of Farm-to-Market Road 69 and State Highway 11 in Hopkins County, Texas.

CORSICANA TECHNOLOGIES, INC., has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0028011 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01667. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates an organic chemical manufacturing plant. The plant site is located on the south side of State Highway 31 approximately 1.2 miles east of the intersection of State Highway 31 and Interstate Highway 45 in the City of Corsicana in Navarro County, Texas.

CITY OF COTULLA has applied for a renewal of TNRCC Permit Number 10153-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located Approximately 1.1 miles south of the intersection of State Highway 97 and State Highway 624 and 1.1 miles southeast of the intersection of U.S. Highway-Business 81 and State Highway 97 in La Salle County, Texas County, Texas.

COUNTRY CLUB PARK ESTATES UTILITY TRUST has applied for a renewal of TNRCC Permit Number 11107-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 52,000 gallons per day. The plant site is located on Taylors Cove in the Country Club Park Estates Subdivision, approximately 2 miles north of State Highway 73 and 6 miles west of the City of Port Arthur, in Jefferson County, Texas.

CZECH CATHOLIC HOME FOR THE AGED has applied for a renewal of TNRCC Permit Number 10935-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located approximately 1,000 feet northwest of the intersection of U.S. Highway 59 and Farm-to- Market Road 441 (adjacent to Farm-to-Market Road 441) in Wharton County, Texas.

CITY OF EMORY, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10082-002. The draft permit authorizes the discharge of filter backwash at a daily average flow not to exceed 44,000 gallons per day. The plant site is located at Freebridge Road, approximately 2,000 feet west of Freebridge Road and one mile south of Farm-to-Market Road and one mile south of Farm-to-Market Road 35 in the City of East Tawakoni in Rains County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 50 has applied for a renewal of TNRCC Permit Number 13228-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located at 22122 Bellaire Boulevard, approximately 4,600 southeast of the intersection of Farm-to- Market Road 1093 and Grand Parkway in Fort Bend County, Texas.

GE PACKAGE POWER, INC. has applied for a renewal of TNRCC Permit Number 13365-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located at 16415 Jacintoport Boulevard in Harris County, Texas.

CITY OF GALVESTON has applied for a renewal of TNRCC Permit Number 10688-006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The draft permit authorizes a daily average flow not to exceed 150,000 gallons per day. The plant site is located approximately 4200 feet northeast of the San Luis Pass Toll Bridge, approximately 2000 feet north-northwest of Farm-to-Market Road 3005 (Termini-San Luis Pass Road), approximately 23.5 miles southwest of the City of Galveston in Galveston County, Texas.

CITY OF GANADO has applied for a renewal of TNRCC Permit Number 10010, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located approximately 800 feet southwest of the City of Ganado limits and approximately 1,900 feet west of the intersection of Baker Street and State Highway 172, at the end of Baker Street in Jackson County, Texas.

THE GEORGE FOUNDATION has applied for a renewal of TNRCC Permit Number 12603-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The plant site is located approximately 1,500 feet west of the crossing of Farm-to-Market Road 762 and Dry Creek in Fort Bend County, Texas.

WALTER MADISON GRAY, SR. has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11449-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located at 5601 FM 565 South in the City of Baytown in Chambers County, Texas.

GUADALUPE-BLANCO RIVER AUTHORITY has applied for a renewal of TNRCC Permit Number 11378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The plant site is located one mile east of Farm-to-Market Road 725 and 3.1 miles southeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 725 in Guadalupe County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 89 has applied for a major amendment to TNRCC

Permit Number 12939-001 to authorize a decrease in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to a daily average flow not to exceed 250,000 gallons per day and to authorize to move the wastewater treatment facility approximately 250 feet north of the current site. The plant site is located north of Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and Farm-to-Market Road 518 (Cullen Boulevard) in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 278 has applied for a renewal of TNRCC Permit Number 13037-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located on the east bank of Williams Gully approximately 400 feet north of Will Clayton Parkway in Harris County, Texas.

CITY OF HASKELL has applied for a renewal of TNRCC Permit Number 10728-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located approximately one mile south and 0.25 miles east of the intersection of U.S. Highway 277 and State Highway 24 in Haskell County, Texas

HOUSHANG SOLHJOU has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12261-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located at 415 Carby approximately 2,400 feet east-northeast of the intersection of Airline Drive and Carby, north of the City of Houston in Harris County, Texas.

HOUSTON COMMERCE BANK has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0095770 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12935-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 3.2 miles north-northwest of the intersection of State Highway 6 and State Highway 35, adjacent to Brazoria County Road 144 to the west and to the east of Atchison, Topeka and Santa Fe Railroad tracks in Brazoria County, Texas.

CITY OF JACKSBORO has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10994-002. The draft permit authorizes the discharge of filter backwash effluent at a daily average flow not to exceed 24,000 gallons per day. The plant site is located northwest of the intersection of Oakwood Avenue and North Bowie Street (State Highway 59) in The City of Jacksboro in Jack County, Texas.

WAYNE ROBERT JOHNSON has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0069981 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 00516. The draft permit authorizes the discharge of process wastewater at a daily average flow not to exceed 38,000 gallons per day via Outfall 001. The applicant operates a cottonseed delinting plant. The plant site is located at 410 Freidman Street in the Community of Fabens in El Paso County, Texas.

KAW TRANSPORT COMPANY, 2727 Vista Road, La Porte, Texas, 77571, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03317. The draft permit authorizes the discharge of treated internal tank cleaning wastewater and treated external tractor/trailer washwater at a daily average flow not to exceed 2,100 gallons per day via Outfall 001. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03317 will replace the existing TNRCC Permit Number 03317.

KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, P.O. Box 745, Comfort, Texas, 78013, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 10414-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 100,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day and to change the way of disposal from irrigation to direct discharge with the option to irrigate an additional 100,000 gallons per day. The current permit authorizes the irrigation of treated domestic wastewater via irrigation on 37 acres.

CITY OF KENDLETON has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10996-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located approximately 1,500 feet east of the intersection of Farm-to-Market Road 2219 and U.S. Highway 59; and 1,000 feet south of U.S. Highway 59 in Fort Bend County, Texas.

LAVACA-NAVIDAD RIVER AUTHORITY has applied for a renewal of TNRCC Permit Number 12084-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located at the Brackenridge Plantation Campgrounds, approximately 3200 feet south of State Highway 111 and approximately 7.0 miles east of the City of Edna in Jackson County, Texas.

CITY OF MANVEL has applied for a major amendment to TNRCC Permit Number 13872-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 28,000 gallons per day to a daily average flow not to exceed 100,000 gallons per day. The plant site is located approximately 0.8 mile northwest of the intersection of State Highway 6 and Farm-to-Market Road 1128 in Brazoria County, Texas.

MILLSAP INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13537-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The plant site is located approximately 1,700 feet northeast of the intersection of Farm-to-Market Road 3028 and Farm-to-Market Road 113 in Parker County, Texas.

MOSCOW WATER SUPPLY CORPORATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11139-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The plant site is located approximately 600 feet southeast of the intersection of U.S. Highway 59 and Loop 177 in the City of Moscow in Polk County, Texas.

CITY OF MOULTON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0053287

and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10227-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 121,000 gallons per day. The plant site is located at 106 East South First Street, approximately three blocks south of the intersection of East First Street and Moore Avenue in the City of Moulton in Lavaca County, Texas.

CITY OF MOUNT CALM has applied for a renewal of TNRCC Permit Number 11464-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 36,000 gallons per day. The plant site is located southeast of the City of Mount Calm, south of Farm-to Market Road 339, approximately one mile east of the intersection of State Highway 31 and Farm-to-Market Road 339 in Hill County, Texas

MOUNTAIN MAN, INC., has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12670-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The plant site is located approximately 2,100 feet north of Farm-to-Market Road 1097 and 1.9 miles east-northeast of the City of Willis in Montgomery County, Texas.

NOR-SHAM, INC has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10980-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 2,600 feet west of the intersection of U.S. Highway 59 and Jetero Boulevard in Harris County, Texas.

NORTHAMPTON MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10910-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The plant site is located at 24235 Gosling Road, on the north bank of Willow Creek approximately 1,200 feet upstream of the Gosling Road crossing of Willow Creek in Harris County, Texas.

NORTHEAST WASHINGTON COUNTY WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14065-001, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 2,250 gallons per day. The plant site is located approximately 13,600 feet east-northeast of the intersection of State Highway 105 and Farm- to-Market Road 50 in Washington County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11991-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 155,000 gallons per day. The plant site is located approximately 2 miles south of Freeman Road (FM 529), one mile north of Clay Road and 1/4 mile west of Fry Road in Harris County, Texas.

OKLAHOMA METAL PROCESSING COMPANY, INC.; D.B.A. PRO-METAL PROCESSING COMPANY, P.O. Box 15617, Houston, Texas, 77220, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03532. The draft permit authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 03532 will replace the existing TNRCC Permit Number 03532. The applicant operates a metals reclamation and shredding plant.

OWENS CORNING has applied for a renewal of TNRCC Permit Number 01178, which authorizes the discharge of storm water runoff commingled with cooling tower and boiler blowdown on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0065749 issued on June 19, 1987 and TNRCC Permit Number 01178, issued on October 11, 1996. The applicant operates a fiberglass wool insulation products manufacturing plant. The plant site is located adjacent to the east side of Interstate Highway 35E, approximately one (1) mile north of the intersection of Interstate Highway 35E and U.S. Highway 287, north of the City of Waxahachie, Ellis County, Texas.

CRAIG PENFOLD has applied for a renewal of TNRCC Permit Number 12667-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day. The plant site is located approximately 1,000 feet north of the Denton-Tarrant County Boundary and 2,500 feet west of Farm-to-Market Road 2499 in Denton County, Texas.

PINEWOOD PLACE, INCORPORATED has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12643-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The plant site is located at 9601 Dowdell Road, approximately 1/4 mile northeast from the intersection of Dowdell Road with Farm-to-Market Road 2920 in Harris County, Texas.

PIONEER CONCRETE OF TEXAS, INC., 8505 Freeport Parkway, Suite 200, Irving, Texas, 75063, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment with renewal to Permit Number 01406 to authorize the removal of the daily average flow limit of 6,000,000 gallons per day at Outfall 001. The proposed permit authorizes the intermittent, flow variable discharge of washwater and stormwater via Outfall 001. The current permit authorizes intermittent, flow variable discharges of stormwater via Outfalls 002, 003, and 004, which will remain the same. The applicant operates the Bridgeport Quarry, a limestone crushing and washing plant.

CITY OF PORT ARTHUR has applied for a renewal of TNRCC Permit Number 10364-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,750,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,750,000 gallons per day. The plant site is located immediately northeast of the intersection of Farm-to-Market Road 365 and Rhodair Gully, approximately 6,000 feet west-southwest of the intersection of Farm-to-Market Road 365 and Port Arthur Road in Jefferson County, Texas.

PRIDE COMPANIES, L.P., P.O. Box 3237, Abilene, Texas, 79604-3237, has applied to the Texas Natural Resource Conservation Commission for a renewal of Permit Number 03490, which authorizes the discharge of treated tankage wastewaters, stormwater and other

wastewaters via Outfall 001 at a daily average dry-weather flow not to exceed 150 gallons per day. The applicant operates a bulk fuel terminahandling jet fuel, gasoline and other refinery products.

CITY OF ROSEBUD has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10731-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 0.9 mile west of the intersection of U.S. Highway 77 and Farm-to-Market Road 53, approximately 1000 feet south of Farm-to-Market Road 53 in Falls County, Texas.

CITY OF SCHULENBURG has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10115-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 500 feet west of the intersection of Babylon Lane and Williams Avenue in the City of Schulenburg in Fayette County, Texas.

SHELDON ROAD MUNICIPAL UTILITY DISTRICT has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10541-002. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day. The plant site is located approximately 0.25 mile northwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County, Texas.

SOLVAY INTEROX, INC., has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02544. The draft permit authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfall 001. The plant site is located at 1230 Battleground Road (State Highway 134) in the City of Deer Park in Harris County, Texas.

CITY OF SOUR LAKE has applied for a renewal of TNRCC Permit Number 10703-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The plant site is located approximately 1/2 mile southwest of the City of Sour Lake, approximately 3/4 mile west of State Highway 326 in Hardin County, Texas.

TEXAS A & M UNIVERSITY AT GALVESTON has applied for a renewal of TNRCC Permit Number 11085-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The plant site is located at Texas A & M University Galveston (Mitchel Campus) on the east side of Seawolf Parkway near the north end of Pelican Island Causeway in the City of Galveston in Galveston County, Texas.

THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION has applied for a renewal of TNRCC Permit Number 10717-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The plant site is located approximately one mile west of the intersection of State Highway 171 and Farm-to-Market Road 2838, three miles northwest of the City of Mexia in Limestone County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12009-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located within the right of way of U.S. Highway 59 approximately six and 1/2 miles northeast of the City of Linden in Cass County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12952-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located on the southbound right-of-way of Interstate Highway 35W, at a point approximately 3.9 miles south of Burleson in Johnson County, Texas.

TEXAS-NEW MEXICO POWER COMPANY, P.O. Box 2943, Fort Worth, Texas, 76113, has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0101168 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02877. The draft permit authorizes the discharge of coal pile runoff on an intermittent and flow variable basis via Outfall 001, cooling tower blowdown and stormwater runoff at a daily maximun dry weather flow rate of 1,500,000 gallons per day via Outfall 002, and stormwater runoff on an intermittent and flow variable basis via Outfall 003. The applicant operates a lignite fired steam electric station. The plant site is located approximately one mile east of the Town of Hammond and approximately eight miles north (via State Highway 6) of the City of Calvert in Robertson County, Texas.

CITY OF THROCKMORTON has applied for a renewal of TNRCC Permit Number 10469-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located approximately 1500 feet east of U.S. Highway 183 and 2500 feet south of U.S. Highway 380 in Throckmorton County, Texas.

CITY OF TOM BEAN has applied for a renewal of TNRCC Permit Number 10057-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The plant site is located approximately 1/2 mile southeast of the intersection of State Highway 11 and Farm-to-Market Road 2729 in Grayson County, Texas.

TURKEY CREEK FARMS, INC., has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03076. The draft permit authorizes the discharge of excess water from a recycle irrigation system on an intermittent and flow variable basis via Outfall 001 and 002. The plant site is located at the intersection of Broze Road and Farm-to-Market Road 1960, approximately 5.5 miles east of Interstate Highway 45 in Harris County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of Permit Number 12088-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day via evaporation and when needed by irrigation of 0.5 acre of grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located on the south side of Somerville Lake in Rocky Creek Park at a point approximately 400 feet southwest of the intersection of Road A and Road B within Rocky Creek Park in Washington County, Texas.

U.S. DEPARTMENT OF THE NAVY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of

TNRCC Permit Number 12035-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located west of San Fernando Creek, on the east side of the Kingsville Naval Air Station in Kleberg County, Texas.

UNITED STATES DEPARTMENT OF THE ARMY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12096-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located south of 16th Street at North Fort Hood in Coryell County, Texas.

CITY OF WEATHERFORD has applied for a minor amendment to NPDES Permit Number TX0047724 to authorize a change in the means of disinfection from chlorination to ultraviolet light. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,500,000 gallons per day. The proposed permit will not change any other permit parameters or limits or increase the authorized flow. The plant site is located at 1327 Eureka Street; approximately 4,000 feet north-northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 2552 in Parker County, Texas.

WHITE ROCK ESTATES PROPERTY OWNERS CIVIC ASSOCIATION, Route 3, Box 133-A-41, Trinity, Texas, 75862, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13354-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The plant site is located approximately 2,000 feet west of the bridge over the White Rock Creek Arm of Lake Livingston, approximately seven miles east of the City of Trinity on the south side of Farm-to-Market Road 356 in Trinity County, Texas.

THE CITY OF WHITNEY has applied for a renewal of TNRCC Permit Number 11408-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located approximately 1 mile west of the intersection of Farm-to-Market Road 1244 and Farm-to-Market Road 933 in Hill County, Texas.

Notice of Water Quality Applications (CAFO)

The following notices were issued during the period of June 25, 1999 through July 2, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

NORTEX FEEDLOT, CO., P.O. Box 1428, Dalhart, Texas, 79022, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit Number 01524 to renew and replace a state permit to authorize the applicant to operate an existing beef cattle feedlot facility at a maximum capacity of 36,000 head in Dallam County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

JELLE, OLKE, WIEPIE AND TAY JONGSMA, d.b.a. AMELIA DAIRY, Route 1, Box 10195, Winnsboro, Texas, 75494, have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit Number 03128 to authorize the applicant to amend and renew a state permit to operate an existing dairy facility at a maximum capacity of 990 head in Wood County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

LONNIE HAMMONDS, Route 1, Box 474, Hico, Texas, 76757, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit Number 03132 to amend an existing permit, and authorize the applicant to operate a dairy facility at a maximum capacity of 1,900 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

MC6 CATTLE FEEDERS INC., P.O. Box 310, Hereford, Texas, 79045, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit 03196 to authorize the applicant to expand an existing beef cattle operation from 35,000 to a maximum capacity of 55,000 head in Deaf Smith County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.

J. M. SLEGERS, Route 4, Box 192, Dublin, Texas, 76446, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit Number 03301 to authorize the applicant to operate an existing dairy operation at a maximum capacity of 990 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

BILL O'DOWD, 9518 CR 913, Godley, Texas, 76044, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit Number 03612 to amend an existing permit, and authorize the applicant to operate a dairy facility at a maximum capacity of 999 head in Johnson County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

OWEN BEAN, Route 1, Box 300, Blanket, Texas, 76432, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for an amendment to Permit Number 03629 to authorize the applicant to expand an existing dairy operation from a maximum capacity of 350 head to 450 head in Comanche County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.

JAN PIETER DEVRIES, Route 1 Box 90, Dublin, Texas, 76446, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 03679 to authorize the applicant to operate an existing dairy operation at a maximum capacity of 1,500 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

CARSON & MARK LOVING, Route 4 Box 214, Dublin, Texas, 76446, have applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of Permit Number 03692 to authorize the applicant to operate an existing dairy operation at a maximum capacity of 450 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

STANLEY JACKSON, 9400 County Road 1016, Burleson, Texas, 76028, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04057 to authorize the applicant to operate a dairy facility at a maximum capacity of 750 head in Johnson County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land

GERARD VAN KOOTEN, P.O. Box 190, Comanche, Texas, 76442, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04067 to authorize the applicant to operate a dairy facility at a maximum capacity of 600 head in Comanche County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.

JOHANNES DEGOEDE, Route 8 Box 84799, Winnsboro, Texas, 79494, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES Permit Number 04088 to authorize the applicant to operate an existing dairy facility at a maximum capacity of 750 head in Wood County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land.

DARREN TURLEY, Route 4 Box 176B, Dublin, Texas, 76446, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04090 to authorize the applicant to operate a new dairy operation at a maximum capacity of 450 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

GARY NUTT, Route 1 Box 41 A, Dimmit, Texas, 79027, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04101 to authorize the applicant to operate a new beef cattle operation at a maximum capacity of 10,000 head in Castro County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

RODEN DAIRY, INC., 9500 CR 1006, Godley, Texas, 76044, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04104 to authorize the applicant to operate a new dairy facility at a maximum capacity of 1800 milking head and a total of 2000 head in Gray County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

BAUKE MULDER, Route 3, Box 142E, Hico, Texas, 76457, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new Permit Number 04108 to authorize the applicant to operate a dairy facility at a maximum capacity of 690 head in Hamilton County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

LLOYD VAN ZANDT, 5543 Farm-to-Market Road 916, Grandview, Texas, 76050, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new State Permit Number 04109 to authorize the applicant to operate a dairy facility at a maximum capacity of 350 head in Johnson County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land.

TRD-9904032
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: July 6, 1999

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Public Hearing Notice

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102, of the United States Environmental Protection Agency (EPA), regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to the SIP, concerning the Houston/Galveston (HGA) Ozone Nonattainment Area.

The purpose of this proposal is to provide the reader with a broad overview context of the SIP revisions that have been submitted to the EPA by the State of Texas. Some sections may be obsolete or superseded by new revisions but have been retained for the sake of historical completeness. The reader is referred to the body of the SIP for details on the current SIP revision.

This SIP revision consists of modeling of specific control strategies that will show attainment of the one-hour ozone standard in the HGA area by 2007. No rules are being proposed for the present SIP revisions. Any needed rules will be developed for the next SIP revision due by December 31, 2000. Eight specific modeling scenarios have been identified for the agency's contractor to model. These scenarios reflect mandated federal controls for such sources as on road motor vehicles, small utility engines, heavy-duty diesel engines, and locomotives. In addition, the scenarios include state-initiated nitrogen oxides controls for point sources, as well as, local measures primarily transportation-related identified by HGA stakeholder groups.

A public hearing on this proposal will be held in Houston, Texas on August 2, 1999, at 7:00 p.m. at the City of Houston Pollution Control Building Auditorium located at 7411 Park Place Boulevard. 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 will answer questions before and after the hearing.

Written comments may be mailed to Ms. Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 9, 1999. For further information on this proposal, please contact Mr. Mike Magee, Strategic Assessment Section, SIP Development, at (512) 239-1511.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9904069
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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The executive director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the determination of proposed non-residential future land use for the **Aztec Ceramics State Superfund Site,** located at 4735 Emil Road, San Antonio, Bexar County, Texas.

Determination of future land use will impact the remedial action proposed for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use before selecting any remedial action for the site. The public meeting will be held at the Barbara Jordan Center located at 2803 East Commerce, San Antonio, Texas on Tuesday, August 17, 1999, beginning at 7:00 P.M. This public meeting will not be a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). After the land use determination has been finalized, TNRCC will continue with the evaluation of remedial action alternatives for cleanup of the site. The TNRCC will then propose a remedial action and hold another public meeting, planned in September 1999, pursuant to the Texas Health and Safety Code, Chapter 361.187.

The Aztec Ceramics site was originally placed on the state Superfund list on April 11, 1995, as announced in that issue of the *Texas Register* (20 TexReg 2733).

The facility manufactured ceramic tile products for approximately 50 years prior to ceasing operation in 1988. Solid wastes generated by this process were fired and unfired tile rejects as well as glaze waste. Heavy metal pigments were used as the coloring agents in the glaze mixture. During the spring and summer of 1997, a Phase 1 remedial investigation was conducted at the site. The Phase 1 investigation confirmed that surface and subsurface soils are contaminated with metals and that groundwater has not been impacted by this contamination. In February 1998 TNRCC conducted a removal of approximately 200 drums of waste from the site. Then in January and February 1999, the property owners paid for the demolition and removal of all buildings and contaminated debris on site except for the glaze waste-filled impoundment and contaminated soils. In February and March 1999, TNRCC conducted a Phase 2 remedial investigation to better define the volume of contaminated soils and glaze waste. During May 1999, TNRCC began a study to evaluate remedies for cleanup of the site. Because the Aztec Ceramics property has historically been used as an industrial site, and because the properties immediately adjacent to Aztec are being used for non-residential purposes, the TNRCC is proposing a non-residential land use for the Aztec Ceramics Site.

All persons desiring to make comments regarding the proposed land use may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Glenda Champagne, TNRCC Project Manager, Remediation Division, MC-143, P.O. Box 13087, Austin, Texas 78711-3087. A portion of the records for this site are available for public review during regular business hours at the Carver Branch Library , 3350 E. Commerce, San Antonio, Texas 78220, (210) 225-7801, or at the TNRCC 12100 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a copying fees. For further information, please call (800) 633-9363 (within Texas calls only).

TRD-9904064
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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The executive director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the proposed commercial/industrial future land use for the Old Lufkin Creosoting State Superfund Site, located in the City of Lufkin at 1411 E. Lufkin Avenue.

Determination of future land use will subsequently impact the remedial investigation and remedial action for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use and take comments on the facility before completing the remedial investigation and evaluating remedial actions for the site. The TNRCC is proposing a commercial/industrial future land use for consideration in implementing the human health risk assessment, ecological risk assessment and feasibility study. The public meeting will be held in Council Chambers of Lufkin City Hall located at 300 East Shepherd in Lufkin, Texas on Tuesday, August 24, 1999, beginning at 7:00 p.m. This public meeting will not be a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). After the subject meeting is held and future land use has been determined, a human health risk assessment, ecological risk assessment, and a feasibility study, or similar study, will be performed to evaluate various remedial action proposals. The TNRCC will then propose a selected remedy and hold another public meeting pursuant to the Texas Health and Safety Code, Chapter 361.187.

In accordance with Chapter 361.1855 of the Texas Health and Safety Code, the TNRCC shall publish notice of the public meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 31 days before the date of the public meeting.

The Old Lufkin Creosoting Site was originally proposed for listing on the state registry of Superfund Sites in the September 25, 1990 *Texas Register* (15 TexReg 5623-5624). The site was a creosoting facility which operated from 1946 to 1978 and released hazardous substances including creosote constituents.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Mr. Rob Conti, Remediation Division, MC-143, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. A portion of the records for this site are available for public review during regular business hours at the Kurth Memorial Library, 101 N. Cotton Square, Lufkin, Texas, or at the TNRCC, 12100 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee. For further information, please call 1-800-633-9363 (within Texas only) or 512/239-2141.

TRD-9904065
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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The Texas Natural Resource Conservation Commission (TNRCC or the commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the "Act"), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing

of these sites was published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4303-4305).

Pursuant to §361.184 (a), the commission must publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list a facility on the state registry of state Superfund sites. This is a notice of a facility or area that the executive director of the TNRCC has determined eligible for listing, and which the executive director proposes to list on the state registry. Also specified is the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. The notice of intent to list this facility will also be published in the Orange Leader on July 16, 1999.

The site being proposed to the state Superfund registry is the Spector Salvage Yard facility located at Tenth and Jackson Streets, Orange, Texas. The property is bordered on the north and east sides by railroad tracks. The City of Orange sewage treatment plan is located west of the property. The Evergreen Cemetery is located south of the site. Tenth Street divides the property into two parts approximately four acres in total size. A chain-link fence with warning signs restricts access to the property by the public. The lots contain several warehouse buildings as well as vehicles, mechanical parts and scrap metal. Spector Salvage Yard conducted general salvage operations at the site before ceasing operations in 1971.

The TNRCC inspected the site and noted several unmarked drums, used oil drums, and assorted solid waste material stockpiled on the property. Several drums at the site appeared to be leaking and piles of burned materials, including insulated electrical wire, were noted on the ground. Soil samples collected on both lots indicated elevated levels of barium, cadmium, chromium and lead. During subsequent inspections, soil and sediment samples from suspected source areas on site and adjacent ditches detected heavy metals, polychlorinated biphenyls (PCB's), pesticides, and volatile and semi-volatile organic compounds. These substances in the amounts detected at the site may constitute an imminent and substantial endangerment to public health and safety or the environment.

The executive director is also issuing a notice of a proposed commercial/industrial land use designation for the site. Determination of future land use will impact the remedial investigation and remedial action for the site. In accordance with Chapter 361.1855 of the Texas Health and Safety Code, the TNRCC shall hold a public meeting to obtain comments on the proposed future land use.

The public meeting will be held on Thursday, August 19, 1999 at 7:00 p.m. at the Library Council Chambers of the Orange Public Library, 220 North Fifth Street in Orange, Texas. The public meeting will be legislative in nature and not a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). This public meeting is for the executive director to receive information regarding the proposed listing of the site, including information regarding the facility and identification of potentially responsible parties (PRP's), and comments regarding the appropriate use of the land.

Persons desiring to comment on the proposed listing, identification of PRP's and future land use determination of the Spector Salvage Yard site may do so in the context of the public meeting either orally or in writing. Written comments may also be submitted to the attention of Mr. Mike Garrigan, TNRCC, Remediation Division, MC-143, P.O. Box 13087, Austin, Texas 78711-3087; telephone (800) 633-9363 (within Texas only) or (512) 239-2493.

The executive director has prepared a brief summary of the commission's records regarding this site. A portion of the records for this site, including documents pertinent to the executive director's determination of eligibility, is available for review, during regular business hours, at the Orange Public Library, 220 North Fifth Street in Orange, Texas. Copies of the complete public record file may be obtained during regular business hours at the TNRCC, Central Records Center, Building D, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone (800) 633-9363 (within Texas only) or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9904066
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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The executive director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the determination of the proposed non-residential future land use for the **Materials Recovery Enterprises, Inc. (MRE) facility,** located approximately 0.25 mile north of FM 604 and 0.5 mile east of US 83 about 4 miles southwest of Ovalo, Taylor County, Texas. The TNRCC is proposing a non-residential (industrial) future land use determination for consideration in implementing the human health risk assessment, ecological risk assessment and feasibility study.

Determination of future land use will impact the remedial action proposed for the site. Consequently, the TNRCC will hold a public meeting to obtain comments on the proposed future land use before evaluating remedial actions for the site. The public meeting will be held at the Tuscola Community Center, 702 Graham Street, Tuscola, Texas on Thursday, August 26, 1999, beginning at 7:00 p.m. This public meeting will not be a contested case hearing under the Administrative Procedure Act (Texas Government Code, Chapter 2001). After the subject meeting is held and future land use has been determined, a Phase 2 Remedial Investigation, Baseline Risk Assessment and Feasibility Study may be performed to evaluate various remedial action proposals. The TNRCC will then propose a selected remedy and hold another public meeting pursuant to the Texas Health and Safety Code, Chapter 361.187.

In accordance with 30 Texas Administrative Code (TAC) §§361.1855 of the Texas Health and Safety Code, the TNRCC shall publish notice of a public meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 31 days before the date of the public meeting.

The MRE Site was originally proposed to the state Superfund registry on July 25, 1997 as announced in that issue of the *Texas Register* (22 TexReg 6970-6971). The company received a permit in 1978 from the Department of Water Resources to use a former Atlas missile silo to operate a class I industrial solid waste management facility. MRE received waste from 1978 to 1982. A Phase I Remedial Investigation draft report was submitted to the TNRCC for review on June 4, 1999.

All persons desiring to make comments regarding appropriate future land use may do so prior to or at the public meeting. All comments submitted prior to the public meeting should be sent in writing to Mr. Jeffrey E. Patterson, TNRCC Project Manager, Superfund Investigation Section, MC- 143, P.O. Box 13087, Austin, Texas 78711-3087. A portion of the records for this site are available for public review during regular business hours at the Abilene Public Library, 202 Cedar Street, Abilene, Texas 79601, 915/677-2474, Tuscola City Hall, Mayor's Office, 418 Graham Street, Tuscola,

Texas 79562, 915/554-7766, or at the TNRCC 12100 Park 35 Circle, Building D, Austin, Texas 78753, (512) 239-2920. Copying of file information is subject to payment of a fee. For further information, please call 1-800-633-9363 (within Texas calls only) or 512-239-0341.

TRD-9904067
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of intent to delete (delist) a facility from the state registry *(Texas Superfund Registry)* of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site proposed for deletion is the Double R Plating State Superfund site that was originally proposed for listing on the *Texas Superfund Registry* in the September 10, 1991, issue of the *Texas Register* (16 Tex Reg 4989).

The Double R Plating State Superfund site, including all land, structures, appurtenances, and other improvements, is a 15-acre site located on County Road 3544, approximately three miles northwest of Queen City in Cass County, Texas. In addition, the site includes any areas outside the site property boundary where hazardous substance(s) came to be located as a result, either directly or indirectly, of releases of hazardous substance(s) from the site property.

The site was used for filter cleaning and metal cutting operations in the early 1970's and for electroplating operations from the late 1970's to 1987. The site included an electroplating building, large and small storage sheds, two protective sheds housing the on-site water wells, a waste-water treatment facility, and various areas of scattered debris. As part of the waste-water treatment facility, four connected concrete settling tanks were located just behind (to the west) of the electroplating building.

The eastern half of the site is relatively clear of trees, while the reminder is fairly densely vegetated. Land use in the vicinity of the site is both residential and agricultural, with agricultural land consisting primarily of pasture used for grazing.

Various operations have been conducted at the site since the 1970's. Early in the 1970's, the land was first used for cattle grazing, a lint filter cleaning operation using high-pressure steam cleaners, storage, cutting, and selling of scrap metal. In the mid

to late 1970's, the site was used as an electroplating operation, known as BBC Plating. BBC Plating used hydroxide and hydrochloric acid-based metal cleaners, zinc chloride solution, and chromate solution to plate metal parts. In 1985, the electroplating operation was sold and renamed Double R Plating or R&R Plating. Electroplating operations at this time consisted of zinc/chromate conversion process to plate metal parts and resulted in the generation of electroplating waste-water and sludge containing zinc and chromium. Metal plating operations continued at the site until 1987.

In 1986, Double R Plating applied to the TNRCC (formerly the Texas Water Commission) for a waste-water discharge permit, which included the design and construction of a waste-water treatment facility at the site. The TNRCC did not approve the discharge permit, although the treatment facility was constructed in late 1986 and operated for a short while. In April of 1987, the facility was bought and renamed Best Texas Plating. In October of 1987, the facility was found to be abandoned by a TNRCC inspector. After a series of foreclosures by Atlanta National Bank, the property was bought by the current owners in April of 1989.

During the operations of the facility, untreated electroplating sludge containing zinc, chromium, and other metals was discharged onto a hillside behind the electroplating building and adjacent to an unnamed creek. Between 1984 and 1987, the TNRCC's Tyler Regional office inspected the site, found many violations, and filed several enforcement actions against the operators of the site. During this time, both the TNRCC and the Texas Department of Health collected groundwater samples from local domestic wells. In 1987, the TNRCC found the site abandoned. In 1989 and 1990, the U. S. Environmental Protection Agency (EPA) performed a Preliminary Assessment and Site Inspection at the site. As a result of these investigations, the EPA determined that the site was not eligible for listing on the National Priorities List (Federal Superfund Program).

The site was referred to the Texas State Superfund Program and proposed for listing on the State Registry in 1991. In 1992, the TNRCC performed a Removal Action to stabilize the site. From 1994 to 1996, the TNRCC performed a Remedial Investigation/Baseline Risk Assessment. From 1996 to 1997, the TNRCC performed a Supplementary Remedial Investigation. In March of 1997, the TNRCC completed the Presumptive Remedy Report. A public meeting regarding the selection of the remedy was held on May 20, 1997 at the Queen City City Hall. The were no changes to the proposed remedy during the public comment period. The remedial action was conducted from mid- 1997 to the end of 1998.

The remedial action included the removal of over 210 cubic yards of chromium contaminated soil; cleaning of the electroplating building; removal of 183 drums (containing both sludge waste and investigative derived waste); removal of 16 small containers; and the plugging and abandonment of the on-site industrial (shallow) well and five monitoring wells.

No post-closure care or engineered control is required and no continued monitoring is required by the remediation plan. Future use of the property is considered appropriate for residential use according to risk reduction standards applicable at the time of this filing.

The executive director has determined that this site no longer presents an imminent and substantial endangerment to public health and safety and the environment and is therefore eligible for deletion from the list of sites proposed for the state Superfund registry in accordance with 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the TNRCC shall, upon a request filed with or initiated by the executive director, hold a public meeting to receive comment on this intended deletion. This meeting is not considered a contested case hearing within the meaning of Texas Government Code, Chapter 2001. Requests for a public meeting must be filed with the executive director before 5:00 p.m., August 16, 1999. At least 30 days prior to the date set for the meeting, notice shall be provided by first class mail to all Potentially Responsible Parties and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of the publication of the notice. The executive director does not intend to initiate a public meeting.

If a public meeting challenging this determination of eligibility for deletion by the executive director is not requested by a Potentially Responsible Party or any

Interested person(s) before the designated date, the Double R Plating State Superfund site will be deleted from the state Superfund registry.

All inquiries regarding the Double R Plating State Superfund site or requests for a public meeting should be directed to Ms. Diane Poteet, Project Manager, TNRCC, Remediation Division. MC-143, P.O. Box 13087, Austin, Texas 78711-3087; telephone 1-800- 633-9363 (within Texas only) or (512) 239-2502. A portion of the record for this site, including documents pertinent to the executive director's determination, is available for review during regular business hours at the Atlanta Public Library, 101 West Hiram, Atlanta, Texas 75551, telephone (903) 796-2112. The complete public file may be obtained during regular business hours at the TNRCC, Central Records, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633- 9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9904068
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: July 7, 1999

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North Central Texas Council of Governments

Request for Proposals for a System-Wide Boarding and Alighting Study for the Fort Worth Transportation Authority

CONSULTANT PROPOSAL REQUEST:

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to conduct a system-wide boarding and alighting study for the Fort Worth Transportation Authority (the T). The consultant effort will be a survey of all fixed, flexible, crosstown, express, and rider request route trips provided by the T and will be used to plan future levels of bus service. Trip specific, stop specific, and time-point specific data will be collected to analyze existing service and establish a more effective delivery of services.

DUE DATE:

Proposals must be submitted **no later than 5 p.m. Central Time on Friday, August 6, 1999,** to Julie Dunbar, P.E., Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Julie Dunbar, (817) 695-9260.

CONTRACT AWARD PROCEDURES:

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

REGULATIONS:

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award. Issued in Arlington, Texas on June 30, 1999. Mike Eastland, Executive Director North Central Texas Council of Governments

TRD-9903921
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 30, 1999

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Request for Proposals to Evaluate Demonstration of Attainment Control Strategies for the Fort-Worth Transportation

CONSULTANT PROPOSAL REQUEST:

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to assist with the selection of locally approved control strategies in support of an attainment demonstration for the Dallas-Fort Worth State Implementation Plan (SIP). This process will require analysis and evaluation of emission benefits and costs of various emission control measures to be implemented in the four-county Dallas-Fort Worth nonattainment area. Nitrogen Oxide (NOx) reduction strategies will be the primary focus of this effort.

DUE DATE:

Proposals must be submitted **no later than 5 p.m. Central Time on Monday, July 19, 1999,** to Chris Klaus, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Chris Klaus, (817) 695-9286.

CONTRACT AWARD PROCEDURES:

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

REGULATIONS:

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-9903952

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: July 2, 1999

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Texas Public Finance Authority

Invitation for Bid for Insurance Policy (Buildings Covered by Bond Issues)

The Texas Public Finance Authority (the "Authority") is requesting invitations to bid for insurance coverage with no coinsurance penalty, in the amount of 100% of the replacement value of each insurable building project on which bond issues are outstanding and business interruption (loss of rents) insurance as set forth in the Invitation to Bid. The deadline for Bid submission is noon, August 10, 1999.

The Authority's selection will be based upon lowest cost for a two year period provided that all criteria and specifications are met or exceeded. The Authority reserves the right to negotiate individual elements of the bidders' proposal and to reject any and all bid proposals.

Copies of the Invitation to Bid may be obtained by calling or writing Marce Snyder, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-9904047
Judith Porras
General Counsel
Texas Public Finance Authority
Filed: July 6, 1999

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Requests for Proposals for Bond Counsel

The Texas Public Finance Authority (the "Authority") is requesting proposals for bond counsel services. The deadline for proposal submission is 5:00 p.m., July 28, 1999.

The Authority's Board of Directors (the "Board") will make its selection based upon demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee for the services to be rendered. Firms responding to the Request For Proposal must maintain a Texas office staffed with personnel who are responsible for providing bond counsel services to the Authority. All things being equal, the Board will give first consideration to firms whose principal place of business is located in Texas. By the Request for Proposal, however, the Board has not committed itself to employ bond counsel nor does the suggested scope of service or term of agreement therein require that the bond counsel be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained by calling or writing Marce Snyder or Jeanine Barron, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463- 5544.

TRD-9904045
Judith Porras
General Counsel
Texas Public Finance Authority
Filed: July 6, 1999

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Request for Proposals for Financial Advisor

The Texas Public Finance Authority (the "Authority") is requesting proposals for financial advisory services. The deadline for proposal submission is 5:00 p.m., July 28, 1999.

The Board will make its selection based upon demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee for the services to be rendered. All things being equal, the Board will give first consideration to firms whose principal place of business is located in Texas. By the Request for Proposal, however, the Board has not committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement therein require that the financial advisor be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of proposals and the Board's decision on these matters is final. The Authority reserves the right to negotiate individual elements of the firm's proposal and to reject any and all proposals.

Copies of the Request for Proposal may be obtained by calling or writing Marce Snyder or Jeanine Barron, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

TRD-9904046
Judith Porras
General Counsel
Texas Public Finance Authority
Filed: July 6, 1999

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Public Utility Commission of Texas

Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 30, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Actel Integrated Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21050 before the Public Utility Commission of Texas.

Applicant intends to provide resold local exchange and long distance services primarily to business customers. The Applicant will not offer prepaid residential service.

Applicant's requested SPCOA geographic area includes the cities of Houston, Dallas, San Antonio and Austin.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than July 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904021
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 30, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of BlueStar Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21053 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based and resold local exchange, exchange access and interexchange telecommunications services. The Applicant will provide Internet-protocol based telecommunications services using digital subscriber line technology.

Applicant's requested SPCOA geographic area includes the entire state of Texas served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than July 21, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904022
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 5, 1999

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Notices of Application Pursuant to P.U.C. Substantive Rule §23.94

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 22, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval of a revised General Exchange Tariff.

Tariff Title and Number: Application of Dell Telephone Cooperative, Inc. for Approval of a Revised General Exchange Tariff Pursuant to P.U.C. Substantive Rule §23.94. Tariff Control Number 21024.

The Application: Dell Telephone Cooperative, Inc. (Dell or the company) seeks approval to replace the General Exchange Tariff currently on file with the commission with a revised General Exchange Tariff. It is necessary to replace the current tariff because it is a patchwork of revisions, which makes it burdensome to use, and it contains numerous obsolete rules, regulation, definitions, descriptions, and references. The revised General Exchange Tariff will more completely describe and clarify the terms and conditions under which the company provides services to its customers. The revised General Exchange Tariff will not contain any changes in the rates or services currently offered by the company under its existing General Exchange Tariff. Dell proposes an effective date of October 1, 1999, for all exchanges served by the company.

Subscribers of Dell have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5%, or 35 affected local service customers, and must be received by the commission no later than August 30, 1999.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before August 30, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21024.

TRD-9903941
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 22, 1999, pursuant to P.U.C. Substantive Rule §23.94 for approval of a revised General Exchange Tariff.

Tariff Title and Number: Application of La Ward Telephone Exchange, Inc. for Approval of a Revised General Exchange Tariff Pursuant to P.U.C. Substantive Rule §23.94. Tariff Control Number 21025.

The Application: La Ward Telephone Exchange, Inc. (La Ward or the company) seeks approval to replace the General Exchange Tariff currently on file with the commission with a revised General Exchange Tariff. It is necessary to replace the current tariff because it is a patchwork of revisions, which makes it burdensome to use, and it contains numerous obsolete rules, regulation, definitions, descriptions, and references. The revised General Exchange Tariff will more completely describe and clarify the terms and conditions under which the company provides services to its customers. The revised General Exchange Tariff will not contain any changes in the rates or services currently offered by the company under its existing General Exchange Tariff. La Ward proposes an effective date of October 1, 1999, for all exchanges served by the company.

Subscribers of La Ward have a right to petition the commission for review of this application by filing a protest with the commission. The protest must be signed by a minimum of 5%, or 57 affected local service customers, and must be received by the commission no later than August 30, 1999.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before August 30, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. Please reference Tariff Control Number 21025.

TRD-9903940
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1999

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Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 28, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company to Amend a Certificate of Convenience and Necessity for a Proposed Relocation of a Transmission Line within Harrison County, Docket Number 21038 before the Public Utility Commission of Texas.

The Application: Southwestern Electric Power Company (SWEPCO) requests approval to relocate approximately 1,300 feet of 69-kV transmission line in Marshall, Texas within Harrison County. The Texas Department of Transportation (TxDOT) is requesting the relocation of the transmission line in order to construct a new overpass along State Highway 154. Typically, this type of matter would be processed under P.U.C. Substantive rule §25.101(c)(2)(C), however because of TxDOT's construction plans and location of the new overpass, the relocation of the 69-kV transmission line is more than the 200 feet permitted under the exemption in Section 25.101(c)(2)(C)(v). Therefore, SWEPCO filed the amendment to its CCN.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than July 28, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903927
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 30, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Central Power and Light Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Hidalgo County, Docket Number 21057 before the Public Utility Commission of Texas.

The Application: Central Power and Light Company (CPL) requests approval to construct approximately 0.6 miles of 138-kV Double-circuit line near Lull, Texas within Hidalgo County. The proposed project is necessary to interconnect Duke Energy, an independent power producer, who is currently constructing a 510 megawatt (MW) gas turbine power plant, just east of the community of Lull, Texas in Hidalgo County. The power plant is scheduled for operation during the summer of 2000.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904027
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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Notices of Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §26.212

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 29, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Pricing Flexibility for Long Distance Message Telecommunications Service Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21049.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting tariff provisions allowing customer-specific pricing for intraLATA Long Distance Message Telecommunications Service. SWBT requests an effective date of August 1, 1999. SWBT has provided notification of this LDMTS tariff revision to the Local Service Providers.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by July 23, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904073
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 1, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company to Introduce Prepaid Home Service as a New Service Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21063.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is initiating a new service called Prepaid Home Service[sm](PHS). This service is being offered to meet customer demands for prepaid local service. PHS provides residence customers one month of access to the public switched network upon acknowledged receipt of cash payment at an authorized payment agency. SWBT's PHS gives customers another choice alternative to traditional local telephone service. Prepaid services, such as, prepaid long distance, cellular service and local service are common in today's telecommunications marketplace and are readily available to customers. PHS is different from the commission developed Prepaid Local Telephone Service (PLTS) in numerous ways. PLTS addresses the needs of a specific group of customers. PHS is a broad offering to all residential customers. PHS is designed and priced to provide customer flexibility and value under SWBT's umbrella of service and quality. SWBT has provided notification of this new Prepaid Home Service[sm] to the Local Service Providers. This service is available for resale at the wholesale discount rate. SWBT requests an effective date of August 2, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at PO Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by July 23, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904075
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 1, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company to Modify the "Digital Plus" Promotion Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21064.

The Application: Southwestern Bell Telephone Company has notified the Public Utility Commission of Texas that it is modifying the terms for the promotional rates for the current "Digital Plus" promotion that runs through December 31, 1999. The promotion currently offers discounted rates for the Extended Area Calling Service plans marketed as "Local Plus^{R}" for customers that also purchase either Smart Trunk or Digital Loop Service and commit to a 24- or 36-month contract for this service combination. This filing adds Super Trunk as one of the available service combinations. Local Plus^{R} must also be purchased on all trunk equivalents capable of originating outgoing messages, with a minimum of ten trunks. Customers who choose this option must also purchase Dynamic Channel Allocation feature. The percentage discounts have also been revised on the Digital Loop portion of the promotion. Notification of this application has been provided to the Competitive Local Exchange Companies.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by July 23, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904076
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 1, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Introduction of a Volume Pricing Plan for Frame Relay Digital Service in Texas Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21058.

The Application: Southwestern Bell Telephone Company has notified the Public Utility Commission of Texas that it is introducing a Volume Pricing Plan for Frame Relay Service in Texas. Each customer's contract may contain certain conditions and rates specific to that customer's needs; however, the discounted rates will be set within the range of the Long Run Incremental Cost and the price ceiling for the service. The price ceiling will be the currently approved rates for Frame Relay Service.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by July 23, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9904074
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 7, 1999

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Public Notices of Amendments to Interconnection Agreements

On July 1, 1999, Southwestern Bell Telephone Company and Southwestern Bell Wireless, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21060. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21060. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 3, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings

concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21060.

TRD-9904036
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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On July 1, 1999, Southwestern Bell Telephone Company and Southside Communications, L.L.C., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21065. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21065. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 3, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21065.

TRD-9904039
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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Public Notices of Interconnection Agreements

On June 28, 1999, NOS Communications, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21044. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21044. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 3, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21044.

TRD-9904034
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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On June 28, 1999, Time Warner Telecom of Texas, L.P. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21045. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21045. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 3, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21045.

TRD-9904035
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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On July 1, 1999, Southwestern Bell Telephone Company and Affinity Network, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21061. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21061. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 3, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21061.

TRD-9904037
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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On July 1, 1999, Southwestern Bell Telephone Company and STPCS Joint Venture, LLC doing business as SOL Communications, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21062. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21062. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by August 11, 1999, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21062.

TRD-9904038
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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Public Notice of Workshop on Distributed Generation and Standard Performance Contracting for Energy Efficiency

The Public Utility Commission of Texas (commission) will hold a workshop regarding distributed generation and standard performance contracting for energy efficiency on Wednesday, July 21, 1999, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 20363, *Investigation into Distributed Resources in Texas*, has been established for this proceeding.

The workshop participants will address matters currently under investigation in Project Number 20363. The Standard Performance Contracting Task Force will continue its work on a standard performance contracting approach for Texas. Topics will include the standard offer, market transformation programs, low-income programs, program equity and eligibility criteria, and funding of the statewide goal for energy efficiency. A second task force, the Distributed Generation Interconnection Task Force, will continue work on technical standards for interconnection, a standard interconnection agreement, tariff issues, and utility reporting of requests for interconnection.

This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Two days prior to the workshop the commission shall make available in Central Records under Project Number 20363 an agenda for the format of the workshop. The workshop agenda will also be posted to the commission's Internet home page and e-mailed to interested persons. You may add your e-mail address to the list of interested persons by contacting staff member Nat Treadway, Office of Policy Development, (512) 936-7236 or . Questions concerning the workshop, this notice, or either task force should be referred to Nat Treadway. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9904040
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 1999

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Research and Oversight Council on Workers' Compensation

Request for Proposals

The Research and Oversight Council on Workers' Compensation invites proposals from qualified and experienced firms and institutions for the purpose of administering a survey which provides data on the experiences of Texas employers regarding their salary continuation programs for workers' compensation claimants. This notice constitutes the entire Request for Proposal and contains all requirements necessary for an appropriate response.

Description of Services. Under this request the Research and Oversight Council plans to procure the services of a qualified firm or institution to perform the following duties: 1) the administration and completion of 1,000 telephone surveys of Texas employers; 2) the completion of those surveys using five "call-backs" when necessary; 3) the drafting of a brief (maximum of five pages) report which describes the general methodology used and any major problems encountered in the administration of the survey, along with any caveats or other observations about the use of the data gathered from the survey.

Descriptions of Provisions. The Research and Oversight Council will provide a random sample of Texas employers drawn from the population of all Texas employers with work-related injuries in 1998. It should be noted that past experience has shown that approximately 20 percent of employer phone numbers may be missing and/or out of service. Thus, a methodology for locating such employers when needed should be included in the proposal.

The Research and Oversight Council will also provide a pre-tested survey instrument consisting of approximately 45-50 questions which will be used in the administration of the survey described in this proposal. No single respondent to this survey, however, will have to answer all 45-50 of those questions.

Specification for Deliverables. The Research and Oversight Council will have review and approval authority over all deliverables. All information generated will become the property of the Research and Oversight Council. To protect the state's interest, all deliverables as well as databases, become the property of the Research and Oversight Council. The proposal submitted must demonstrate that the applicant is capable of performing, and willing to provide all deliverables.

Project deliverables, at a minimum, will include:

a) Data generated from the completed surveys delivered on computer disk;

b) Response frequencies on all questionnaire items;

c) A brief (maximum of five pages) technical report detailing the methodology used and any major problems encountered in the administration of the survey. This might include any caveats or other relevant observations about the reliability of the data gathered from the survey.

All project deliverables are due on or before the end of the contract period.

Proposal Requirements. Respondents must submit a typewritten proposal on 8 1/2 by 11 inch plain white paper. All proposals and their accompanying attachments become the property of the Research and Oversight Council upon submission. Materials submitted will not be returned. Only attachments essential to the proposal should be submitted. To be considered, the following items must be included in the proposal:

a) an identification page listing the full legal name, the mailing and street address if different, title, and telephone number for the representative authorized to sign the contract and the same for the contact person;

b) a summary (maximum of seven pages) describing how the contractor proposes to provide the services described and requested in the previous sections of this proposal request entitled "Description of Services" and "Specification of Deliverables," including who will be responsible for carrying out each part of the project, the proposed approach (describing the methodology, activities and/or procedures to be used in administering the survey, including a brief description of any survey administration software used, automatic dialing capacity, number of interviewing stations, number of interviewers, survey lab hours, bilingual capacity, and interviewer training guidelines, if any), and the general timelines within which the proposed project will be accomplished;

c) a detailed budget of all costs;

d) a description of the services, if any, that the contractor may require from the Research and Oversight Council and other state agencies;

e) the names of key staff to be used in this contract, their function and a complete resume; and

f) references, including client contact information from similar contracts and copies of similar work products, if available, that demonstrate experience and knowledge with project management and data collection.

Closing Date. The written proposal must be received by the Research and Oversight Council by 2:00 p.m. on July 26, 1999. Send proposals to Amy Lee, Policy Research Coordinator, Research and Oversight Council on Workers' Compensation, 105 West Riverside Drive, Suite 100, Austin, Texas 78704. Proposals can be sent facsimile to 512/469-7481. Hand-delivered proposals will be accepted daily between 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays, and holidays at the same address. Proposals received after the deadline will not be eligible for consideration. Proposers may be requested to make oral presentations of their proposals at their own expense.

Terms and Amount. The following terms and conditions must be accepted by all respondents. The Research and Oversight Council reserves the right to reject any and all proposals, or portions of proposals, and to cancel this request for proposal if it is deemed in the best interest of the Research and Oversight Council. All information generated is the exclusive property of the Research and Oversight Council. At the conclusion of the project, an itemized expenditure report is due.

The Research and Oversight Council reserves the right to negotiate with one or more respondents. The Research and Oversight Council reserves the right to reasonably modify and reschedule proposed activities throughout the life of the contract.

Issuance of this request for proposal creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

It is anticipated that the contract period will be from July 28, 1999 through August 20, 1999. The amount award will be commensurate with services provided.

Evaluation and Selection. The proposal demonstrating the highest quality of proposed services deliverable within the established time frame offering the greatest expertise and qualifications at the most cost-effective price will be awarded the contract.

Contact Point. Any questions regarding this request for proposals should be directed to Amy Lee, Policy Research Coordinator, at 512/469-7811.

TRD-9904033

Amy E. Lee

Policy Research Coordinator

Research and Oversight Council on Workers' Compensation

Filed: July 6, 1999

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Texas Department of Transportation

Public Notice

In accordance with 43 TAC §15.8(d), the Texas Department of Transportation (TxDOT) will hold a public hearing on Tuesday, July 27, 1999, starting at 10:00 a.m. at 200 East Riverside Drive, Room 101, in Austin, to receive public comments on the Statewide Transportation Improvement Program (STIP) for FY 2000-2002. The STIP reflects the new FY 2000-2002 Transportation Improvement Programs (TIP) for each Metropolitan Planning Organization (MPO) in the state with the exception of the Dallas-Fort Worth Metropolitan Area TIP. The Dallas-Fort Worth Metropolitan Area TIP is the extension of its current FY 1998-2000 TIP and is valid until October 10, 2000 (three years from the Joint Federal Highway Administration (FHWA)/Federal Transit Administration approval date). The STIP also contains information on projects in those areas of the state that are not included in any MPO area, and other statewide programs.

Title 23, United States Code, §134 and §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the Twenty-first (21st) Century (TEA-21), require each designated MPO and the state, respectively, to develop a TIP as a condition to securing federal funds for the next three years for transportation projects under Title 23 or the Federal Transit Act (49 USC 5301, et seq.).

Section 134(h) requires an MPO: to develop its TIP in cooperation with the state and affected transit operators; to provide citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed TIP; and further requires the TIP to be updated at least once every two years and to be approved by the MPO and the Governor. Section 135(f) requires the state to develop a STIP for all areas of the state in cooperation with those designated MPO's, and further requires the Governor to provide citizens, affected public agencies, representatives of transportation agency employees, other affected transportation employee representatives, private providers of transportation, and other interested parties with reasonable opportunity to comment on the proposed STIP.

By letters dated May 23, 1995, addressed to the Chairman of the Texas Transportation Commission, the Executive Director of TxDOT and to federal transportation officials, the Honorable George W. Bush, Governor of Texas, delegated to the Texas Transportation Commission those powers and responsibilities granted to him by the ISTEA and TEA-21, save and except the Recreational Trails Program.

Pursuant to the above delegated authority, a public hearing will be held to secure public comment on the STIP. A file copy of the FY 2000-2002 STIP will be available for review on and after July 18, 1999 at TxDOT central Austin office of the Transportation Planning and Programming Division, Building 118, second floor, 118 East Riverside Drive, Austin, Texas, and in each TxDOT district office throughout the state. Persons wishing to review the STIP may secure the address and telephone number of the nearest district office from the Transportation Planning and Programming Division at (512) 486-5038.

Persons wishing to speak may register in advance of the hearing by notifying Mr. Paul L. Tiley, Transportation Planning and Programming Division, at (512) 486-5037 not later than Friday, July 23, 1999, or they may register at the hearing location between 9:00 a.m. and 10:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing: however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact Ms. Eloise Lundgren, Public Information Office, at 125 East 11th Street, Austin,

Texas 78701-2483, (512) 305-9137. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Further information on the FY 2000-2002 STIP may be obtained from Mr. Paul L. Tiley of the Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas, 78704, (512) 486-5037. Interested parties who are unable to attend the hearing may submit comments to Alvin R. Luedecke, Jr., P.E., Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas, 78714-9217. In order to be considered all written comments must be received at the Transportation Planning and Programming office at 118 East Riverside Drive no later than August 10, 1999, at 4:00 p.m.

TRD-9904070
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 7, 1999

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Veterans Land Board

Request for Proposal

The Texas Veterans Land Board (Board) is extending invitations to submit proposals for the purpose of retaining a firm(s) to act as Bond Counsel for its Land and/or Housing Assistance Programs on all items of financing necessary to the day-to-day operations of the programs and, from time to time, other programs the Board deems necessary and appropriate.

Each firm will be evaluated on several factors, including but not limited to: experience in providing relevant services; expertise of participating personnel; organizational size, structure, and location; and reasonableness of cost.

For a copy of the request for proposals package call or write Rusty Martin, Director of Funds Management, Texas Veterans Land Board, 1700 North Congress, Room 890, Austin, Texas 78701-1495, (512) 463-5120.

Seven copies of the proposal must be submitted in a sealed envelope and clearly marked in the lower left corner: "Sealed Proposal-Bond Counsel Services." Deadline for receipt of all proposals is no later than 5:00 p.m., Monday, August, 16, 1999.

TRD-9904081
Larry R. Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: July 7, 1999

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Chisholm Trail Special Utility District, P.O. Box 249, Florence, Texas, 76527, received June 1, 1999, application for financial assistance in the amount of $4,470,000 from the Texas Water Development Funds.

City of Deport, 201 Main Street, Deport, Texas, 75435, received June 2, 1999, application for financial assistance in the amount of $350,000 from the Drinking Water State Revolving Fund.

Greater Texoma Utility Authority, on behalf of City of Anna, 5100 Airport Drive, Denison, Texas, 75020, received June 4, 1999, application for financial assistance in the amount of $600,000 from the Texas Water Development Funds.

Greater Texoma Utility Authority, on behalf of Van Alstyne, 5100 Airport Drive, Denison, Texas, 75020, received June 4, 1999, application for financial assistance in the total amount of $2,500,000 from the Clean Water State Revolving Fund and the Texas Water Development Funds.

Harris County Water Control and Improvement District - Fondren Road, P. O. Box 426, Missouri City, Texas, 77459, received June 10, 1999, application for financial assistance in the amount of $1,670,000 from the Texas Water Development Funds.

City of Lufkin, 300 East Shepherd, P.O. Drawer 190, Lufkin, Texas, 75902-0190, received June 1, 1999, application for financial assistance in the amount of $16,000,000 from the Drinking Water State Revolving Fund.

Orange County Water Control and Improvement District No. 2, P. O. Box 546, Orange, Texas, 77630, received June 3, 1999, application for financial assistance in the amount of $1,365,000 from the Drinking Water State Revolving Fund.

City of Palmer, P.O. Box 489, Palmer, Texas, 75152-0489, received June 1, 1999, application for financial assistance in the amount of $1,415,000 from the Drinking Water State Revolving Fund.

Terrell County Water Control and Improvement District No. 1, P.O. Box 569, Sanderson, Texas, 79848, received May 28, 1999, application for additional grant/loan assistance in the total amount of $686,500 from the Economically Distressed Areas Program.

Webb County, 1000 Houston Street, Laredo, Texas, 78040, received May 3, 1999, application for grant/loan assistance in the total amount of $23,164,400 from the Texas Water Development Funds and the Economically Distressed Areas Program.

City of El Paso, Public Service Board, P.O. Box 511, El Paso, Texas, 79961-0001, received June 1, 1999, application for financial assistance in the amount of $15,190,000 from the Drinking Water State Revolving Fund.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

TRD-9903912
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: June 30, 1999

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Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at: 10:00 a.m., August 30, 1999, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711, on the proposed Fiscal Year 2000 Intended Use Plan ("IUP") for the Clean Water State Revolving Fund ("CWSRF"). The Intended Use Plan contains a listing of treatment works projects in prioritized order which will be considered for funding in FY 2000

through the CWSRF program. The proposed IUP has been prepared pursuant to rules for the CWSRF as adopted by the Texas Water Development Board in 31 TAC Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed IUP. In addition, persons may participate in the hearing by mailing written comments before the above date to Helen Dean, Manager, Grants Administration and Special Reporting, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711. Copies of the proposed FY 2000 IUP will be sent to all communities which have projects on the list on or about July 16, 1999. Additional copies will be available in Room 543 of the Stephen F. Austin Building or may be obtained from the Engineering Division, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711, on that date.

The hearing is being conducted pursuant to 31 TAC Section 375.11 and 40 Code of Federal Regulation, Section 25.5.

TRD-9904023
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: July 5, 1999

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