

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** April 5, 2024

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

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

Docket No.: 2023-1456-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
VOC Rule Revisions for Ozone Nonattainment Areas
Rule Project No. 2023-116-115-AI

Background and reason(s) for the rulemaking:

Effective November 7, 2022, the U.S. Environmental Protection Agency (EPA) reclassified Bexar County, nine counties in the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise Counties), and six counties in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery Counties) from marginal to moderate for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) (87 *Federal Register* (FR) 60897). The attainment date for the Bexar County 2015 ozone NAAQS moderate nonattainment area is September 24, 2024, and the attainment date for the DFW and HGB 2015 ozone NAAQS moderate nonattainment areas is August 3, 2024. Also, effective November 7, 2022, EPA reclassified 10 counties in the DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and eight counties in the HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) from serious to severe for the 2008 eight-hour ozone NAAQS (87 FR 60926). The attainment date for the DFW and HGB 2008 ozone NAAQS severe nonattainment areas is July 20, 2027.

Nonattainment areas classified as moderate and above are required to meet the mandates of the federal Clean Air Act (FCAA) under §172(c)(1) and §182(b)(2). FCAA, §172(c)(1) requires that the State Implementation Plan (SIP) incorporate all reasonably available control measures (RACT), including reasonably available control technology (RACT), as expeditiously as practicable. FCAA, §182(b)(2) requires the state to implement RACT requirement rules for all categories of stationary sources identified by EPA in an alternative control technique (ACT) document or a control techniques guideline (CTG) document as well as any non-ACT/CTG category sources that are classified as major stationary sources of nitrogen oxides (NO_x) or volatile organic compounds (VOC). Nonattainment areas classified as moderate and above are also required to meet FCAA, §172(c)(9) requirements to provide for implementation of specific contingency measures to take effect without further action by the state if an area fails to make reasonable further progress (RFP) or to attain the NAAQS by the applicable attainment date.

This rulemaking is being adopted to add new and amend existing rules in 30 Texas Administrative Code (TAC) Chapter 115 that are required to implement moderate classification VOC RACT for the Bexar County 2015 ozone NAAQS nonattainment area and to address major source severe classification requirements for affected sources in the DFW 2008 ozone NAAQS severe nonattainment area. The adopted rulemaking also amends rules in Subchapter B, Division 7 to correct inadvertent errors identified after adoption of the June 2021 rulemaking to implement EPA's 2016 *Control Techniques Guidelines for the Oil and Natural Gas Industry* (Rule Project No. 2020-038-115-AI). Based on FCAA, §110(l), EPA cannot approve a SIP revision if it would interfere with attainment of the NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA. This adopted rulemaking addresses FCAA, §110(l) anti-backsliding requirements associated with the adopted amendments to existing rules in Division 7.

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Additionally, new VOC control requirements applicable in the DFW and HGB 2008 ozone NAAQS nonattainment areas to be implemented as SIP contingency measures if either or both nonattainment areas fail to make reasonable further progress or to attain the 2008 ozone NAAQS.

Neither this Chapter 115 rulemaking nor the concurrent rulemaking to 30 TAC Chapter 117 (2023-117-117-AI) has RACT updates affecting new sites in the HGB area. Both rule projects have RACT updates for the DFW area due to a reduced 2008 ozone NAAQS major source threshold (from 50 tons per year (tpy) down to 25 tpy). This resulted from the change from a serious to severe nonattainment classification for the 2008 ozone NAAQS. Sites in DFW with NO_x and certain VOC emissions between 25 and 50 tpy will have newly applicable major source regulations in Chapters 115 and 117. The HGB area has the same severe classification for the 2008 ozone NAAQS, but it is not new to HGB since the area was already severe for the 1997 eight-hour ozone NAAQS, and rules are already in place in HGB for the severe level.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking includes emission limits, control requirements, work practice standards and operational requirements as well as associated monitoring, testing, recordkeeping, and reporting requirements for affected sources necessary to fulfill RACT and SIP contingency measure requirements. The rulemaking also adds or updates compliance schedule requirements for both existing sources, sources that become subject to the rules after the initial compliance date, and sources that must meet SIP contingency measure requirements, if triggered. The adopted rulemaking revises existing rules and add new rules to the following parts of Chapter 115 as necessary.

- Subchapter A, Definitions
- Subchapter B, General Volatile Organic Compounds Sources
 - Division 1, Storage of Volatile Organic Compounds
 - Division 2, Vent Gas Control
 - Division 3, Water Separation
 - Division 4, Industrial Wastewater
 - Division 6, Batch Processes
 - Division 7, Oil and Natural Gas Service in Ozone Nonattainment Areas
- Subchapter C, Volatile Organic Compound Transfer Operations
 - Division 1, Loading and Unloading of Volatile Organic Compounds
 - Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities
 - Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels
- Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes
 - Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries
 - Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas
- Subchapter E, Solvent Using Processes
 - Division 1, Degreasing Processes
 - Division 2, Surface Coating Processes
 - Division 3, Flexographic and Rotogravure Printing
 - Division 4, Offset Lithographic Printing
 - Division 5, Control Requirements for Surface Coating Processes
 - Division 6, Industrial Cleaning Solvents
 - Division 7, Miscellaneous Industrial Adhesives

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- Subchapter F, Miscellaneous Industrial Sources
 - Division 1, Cutback Asphalt
 - Division 2, Pharmaceutical Manufacturing Facilities
- Subchapter J, Administrative Provisions
 - Division 1, Alternate Means of Control

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

The adopted new and amended rules affecting the Bexar County 2015 ozone NAAQS nonattainment area are required under FCAA, §172(c)(1) and §182(b)(2). To meet these requirements, the adopted rulemaking addresses RACT requirements for all categories of stationary sources of VOC identified by EPA in an ACT document or a CTG document as well as any non-ACT/CTG category sources that are classified as major stationary sources of VOC in the Bexar County 2015 ozone NAAQS nonattainment area. Adopted amendments to rules affecting the DFW 2008 ozone NAAQS nonattainment area also address FCAA, §172(c)(1) and §182(b)(2) requirements due to EPA's reclassification of the area to severe, which reduced the major source potential to emit threshold from 50 tpy to 25 tpy. No amendments were made to existing rules affecting the HGB 2008 ozone NAAQS nonattainment area to meet this FCAA requirement because the area was classified as severe nonattainment under a revoked ozone NAAQS and already meets severe area RACT requirements.

This adopted rulemaking addresses FCAA, §172(c)(9) and §182(c)(9) contingency measure requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas. Provisions are adopted for six contingency measures that will be implemented in the DFW and/or HGB areas, if triggered, to meet SIP contingency requirements for any 2008 ozone standard classification.

This adopted rulemaking also addresses FCAA, §110(l) anti-backsliding requirements associated with the adopted amendments to existing rules in Subchapter B, Division 7 and Subchapter E, Division 5.

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

Staff recommends making additional necessary technical corrections to Chapter 115, Subchapter B, Division 7 to address inadvertent errors in those rules that were discovered after their adoption in a June 2021 rulemaking (Rule Project No. 2020-038-115-AI). That rulemaking was conducted to implement RACT associated with EPA's 2016 *Control Techniques Guidelines for the Oil and Natural Gas Industry*. In addition to the adopted corrections to Division 7 rules, the adopted rulemaking also includes non-substantive revisions to Chapter 115 to remove obsolete language, use consistent terminology, and update the rule language to current *Texas Register* and Texas Commission on Environmental Quality (TCEQ) style and format requirements.

Statutory authority:

The rule amendments will be adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rules will also be adopted under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a

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general, comprehensive plan for the control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The rule amendments will also be adopted under 42 United States Code, §§7420 et seq., which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state. EPA published the final rule establishing the NAAQS for ozone in the Federal Register on March 27, 2008 (73 FR 16436).

Effect on the:

A.) Regulated community:

The rulemaking may require owners or operators of affected sources in the Bexar County, DFW, and HGB areas to install control equipment to meet the emission specifications; implement work practices; or comply with monitoring, testing, and recordkeeping requirements. Costs associated with new requirements would be incurred by the owner or operator.

B.) Public:

The public in the Bexar County, DFW, and HGB areas may benefit from ultimately meeting the applicable ozone NAAQS and the areas being redesignated to attainment.

C.) Agency programs:

The adopted rulemaking will affect certain parts of the agency. Additional Air Permits Division staff hours will be required to update Title V Operating Permits as new rules become applicable to more major sources. Additional staff hours may also be required in the Office of Compliance and Enforcement to conduct additional or expanded investigations because of new regulations in Chapter 115.

Stakeholder meetings:

TCEQ hosted virtual stakeholder meetings for Bexar County on June 8, 2022, for DFW on September 6, 2022, and September 7, 2022, and for HGB on September 7, 2022, and September 8, 2022. These meetings provided a brief overview of the areas' air quality status, plan requirements for ozone nonattainment areas, and to discuss what emission reduction strategies (primarily for VOC) are being or could be implemented by different source sectors. The meetings were open to the public, but the focus was on stationary sources. TCEQ also held Technical Information Meetings for Bexar County on August 16, 2021, and August 22, 2022, for DFW on August 24, 2022, and for HGB on July 28, 2022. The purpose of these meetings was for TCEQ to have an open, consultative forum regarding the technical work associated with upcoming ozone SIP development.

Public Involvement Plan

Yes.

Alternative Language Requirements

Yes. Spanish.

Public comment:

The public comment period opened on December 1, 2023, and closed on January 16, 2024. The commission offered three public hearings for the proposed rulemaking: in Houston on January 4, 2024; in San Antonio on January 9, 2024; and in Arlington on January 11, 2024. Notice of the public hearings was published in English in the *Dallas Morning News* newspaper, the *Houston*

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Chronicle, and the *San Antonio Express-News* newspapers on December 1, 2023. Notice of the public hearings was published in Spanish in *Al Día* newspaper and *Conexion* newspaper on December 6, 2023, and in *La Voz* newspaper on December 13, 2023. Notices in English and Spanish were also distributed to subscribers through GovDelivery and posted to TCEQ's website, and notices were published in English in the *Texas Register* on December 15, 2023 (48 TexReg 7643-7644). A plain language summary of the rulemaking was provided in both English and Spanish.

TCEQ staff were present and opened the Houston and Arlington hearings for public comment on this project as well as the concurrently proposed DFW 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-107-SIP-NR), HGB 2008 Ozone NAAQS Severe AD SIP Revision (Project No. 2023-110-SIP-NR), DFW-HGB 2008 Ozone NAAQS Severe RFP SIP Revision (Project No. 2023-108-SIP-NR) and the NO_x Rule Revisions for DFW and HGB Ozone Nonattainment Areas (Rule Project 2023-117-117-AI). Spanish language interpreters were available at the hearings, the comments were recorded, and transcripts were prepared.

TCEQ staff were present and ready to open the San Antonio hearing for public comment on this project as well as the concurrently proposed Bexar County RACT SIP Revision (Project No. 2023-132-SIP-NR); however, none of the attendees signed up to make comments on the record. Therefore, the San Antonio public hearing was not formally opened for comment and a transcript was not prepared.

During the comment period, comments concerning the rulemaking were received from Baker Botts LLP clients in the DFW ozone nonattainment area, EPA, Green Environmental Consulting, Inc., North Central Texas Council of Governments, Office of the Harris County Attorney, the Texas Pipeline Association, and 1 individual. Generally, the comments focused on the definition of pneumatic controllers, the VOC limit for industrial maintenance coatings, the effectiveness and implementation of contingency measures, and alignment of state regulations with new federal regulations.

Significant changes from proposal:

In response to comments, TCEQ made changes to the 30 TAC §115.171(9)(B) pneumatic controller definition to exempt intermittent bleed pneumatic controllers from emission standards of that section to align with CTG requirements.

TCEQ also updated the definition in §115.450(c)(3) to clarify that "Industrial Maintenance Coatings" only applies to stationary structures and does not apply to surface coating of items that meet the definition "Miscellaneous Metal Parts and Products."

Staff inadvertently omitted some source categories and incorrectly stated multiple VOC content limits for other source categories in the industrial adhesives contingency measure of this rule proposal. This resulted in less emissions reductions available to fulfill contingency requirements in the DFW and HGB areas. The executive director intends to immediately initiate rulemaking for commission consideration to restore the missing and incorrect VOC content limits to achieve the reductions originally intended.

Potential controversial concerns and legislative interest:

The adopted rules addressing RACT requirements for the Bexar County 2015 ozone NAAQS moderate nonattainment area were due to EPA by January 1, 2023. This adopted rulemaking will be submitted to EPA by May 7, 2024. Missing the January 1, 2023, submittal deadline has led to EPA issuing a finding of failure to submit, which started clocks for sanctions and a federal implementation plan (FIP) effective November 17, 2023 (88 FR 71757). EPA is required to promulgate a FIP anytime within two years of finding TCEQ failed to make the required

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submission unless TCEQ submits, and EPA approves, a plan revision correcting the deficiency prior to promulgating the FIP. Sanctions could include transportation funding restrictions, grant withholdings, and 2-to-1 emissions offset requirements for new construction and major modifications of stationary sources in the Bexar County 2015 ozone NAAQS nonattainment area.

EPA released new draft guidance on contingency measures, published in the *Federal Register* for public comment on March 23, 2023 (88 FR 17571). The draft guidance proposed an entirely new scheme for determining the amount of emissions reductions necessary to address the contingency measures requirement. Since EPA had not issued final guidance to the states regarding the quantity of required reductions from contingency measures at the time this rulemaking was developed, the provisions in this adopted rulemaking that will address contingency measure requirements relied on the historically approved approach (3% of the 2011 RFP base year emissions) to determine the amount of emissions reductions necessary to address this requirement.

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

The rulemaking does not affect any current policies or require the development of new policies.

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

On October 18, 2023, EPA issued a finding of failure to submit required SIP revisions for the 2015 eight-hour ozone NAAQS moderate nonattainment areas, effective November 17, 2023 (88 FR 71757). On October 12, 2023, Texas Governor Greg Abbott signed and submitted a letter to EPA to reclassify the Bexar County, DFW, and HGB moderate 2015 eight-hour ozone NAAQS nonattainment areas to serious. EPA's proposal to reclassify these areas to serious in accordance with Governor Abbott's letter was published on January 26, 2024 (89 FR 5145). EPA proposes that a number of moderate classification requirements are still due, including a RACT demonstration for Bexar County. This rulemaking and the concurrent Bexar County RACT SIP revision (Project No. 2023-132-SIP-NR) satisfy the RACT demonstration portion of the outstanding moderate area classification requirements for the 2015 eight-hour ozone NAAQS. The commission could choose to not comply with the requirements to develop and submit the required moderate RACT rule elements for Bexar County to EPA. However, a 2-to-1 emissions offset sanction will apply in the Bexar County nonattainment area 18 months after the effective date of EPA's finding unless TCEQ submits, and EPA deems complete, a plan revision that resolves the deficiency. Highway funding sanctions will apply six months after the offset sanction begins if a complete plan revision has not been submitted to resolve the deficiency. In addition, EPA is required to promulgate a FIP within 24 months of the effective date of the finding of failure to submit if TCEQ does not submit, or if TCEQ submits but EPA does not approve, the required rules within the 24-month period.

The commission could also choose to not comply with requirements to develop and submit the Chapter 115 rulemaking to EPA to address requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas. However, if the rulemaking is not submitted to EPA, EPA will issue a finding of failure to submit, requiring that TCEQ submit the required submission within a specified time period, which will start the sanctions clock (18 months) and FIP clock (24 months) for the DFW and HGB 2008 ozone NAAQS nonattainment areas. EPA will impose such sanctions and implement a FIP until the state submits, and EPA approves, rules sufficient to address SIP requirements in these areas.

Key points in the adoption rulemaking schedule:

Texas Register publication date: December 15, 2023

Anticipated Texas Register adoption publication date: May 10, 2024

Anticipated effective date: May 16, 2024

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Six-month *Texas Register* filing deadline: June 15, 2024

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