first control period for which the CAIR NO_x allowance allocation is requested and after the date that the CAIR NO_x unit commences commercial operation.

(3) In a CAIR NO_x allowance allocation request under paragraph (2) of this subsection, the amount of CAIR NO_x allowances requested for a control period must not exceed the CAIR NO_x unit's total tons of NO_x emissions reported to EPA for the calendar year immediately preceding such control period.

(4) The executive director shall review each CAIR NO_x allowance allocation request submitted in accordance with this subsection and shall allocate CAIR NO_x allowances for each control period as follows.

(A) The executive director shall accept a CAIR NO_x allowance allocation request only if the request meets, or is adjusted as necessary to meet, the requirements of this subsection.

(B) On or after May 1 of the control period, the executive director shall determine the sum of all accepted CAIR NO_x allowance allocation requests for the control period.

(C) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under subparagraph (B) of this paragraph, then the executive director shall allocate the full amount of CAIR NO_x allowances requested to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request that was accepted by the executive director.

(D) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under subparagraph (B) of this paragraph, then the executive director shall allocate CAIR NO_x allowances to each CAIR NO_x unit covered under a CAIR NO_x allowance allocation request accepted by the executive director according to the equation in the following figure.
Figure: 30 TAC §101.506(d)(4)(D) (No change.)

(E) The executive director shall notify each CAIR designated representative who submitted a CAIR NO_x allowance allocation request of the amount of CAIR NO_x allowances, if any, allocated for the control period to the CAIR NO_x unit covered under the request.

(e) If, after completion of the procedures under subsection (d) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the executive director shall allocate to each CAIR NO_x unit receiving an allocation under subsection (c) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under subsection (c) of this section, divided by 90.5% of the NO_x trading budget identified in §101.503(a) of this title, and rounded to the nearest whole allowance as appropriate.

(f) A unit's control period heat input, and a unit's status as coal-fired or natural gas-fired, for a calendar year under subsection (a) of this section, and a unit's total tons of NO_x emissions during a calendar year under subsection (d) of this section, must be determined in accordance with 40 Code of Federal Regulations (CFR) Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or must be based on the best available data reported to the executive director for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.

(g) On or before the latter of May 1, 2011, or May 1 of the control period immediately following a unit's fifth consecutive year of commercial operation, the CAIR designated representative of a unit establishing a baseline heat input in accordance with subsection (b)(2) or (3) of this section shall submit, on a form specified by the executive director, written certification of the gross electrical output of the generator or generators served by the unit and the total heat energy of any steam produced by the unit during the first five years of commercial operation.

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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DIVISION 8. CLEAN AIR MERCURY RULE

30 TAC §101.601, §101.602

The Texas Commission on Environmental Quality (commission) adopts the repeal of §101.601 and §101.602 as published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6607) *without changes* and the text will not be republished.

The commission will submit a request to the United States Environmental Protection Agency (EPA) to withdraw from consideration the Texas State Plan for the Control of Designated Facilities and Pollutants, Plan for Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units, Clean Air Mercury Rule (CAMR).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

On May 18, 2005, the EPA finalized CAMR to permanently cap and reduce mercury (Hg) emissions from new and existing coal-fired electric generating units (EGU) nationwide. The EPA provided states with two compliance options for meeting the reduction requirements under CAMR: 1) meet the state's emission budget by requiring new and existing coal-fired EGUs to participate in an EPA-administered cap and trade system; or 2) meet an individual state emissions budget through measures of the state's choosing.

The CAMR model trading rule, under 40 Code of Federal Regulations (CFR) Part 60, Subpart HHHH, was a market-based cap and trade system designed to reduce the costs of complying with the new Hg reduction requirements. The Mercury Budget Trading Program capped nationwide annual Hg emissions by providing each state with an annual emissions budget to be applied to all coal-fired boilers and turbines serving an electrical generator with a nameplate capacity greater than 25 megawatts of electricity (MWe) and producing electricity for sale. The trading rule provided flexibility in complying with the Hg reduction requirements through unrestricted banking of excess allowances and the trading of allowances between EGUs nationwide. States participating in the interstate trading program therefore were not subject to individual state caps. Under the model rule, states were provided flexibility in the allocation methodology used to determine Hg allowance allocations for each Hg budget unit. States were

then responsible for submitting the allowance allocations to the EPA. Under the CAMR model rule, the EPA established Hg compliance accounts for each Hg budget source and maintained an allowance tracking system to record the deposit, transfer, and deduction for compliance of all Hg allowances. The Hg budget sources were required, under the model rule, to demonstrate compliance through the installation and operation of continuous emissions monitoring systems as required under 40 CFR Part 75. Also, the model rule required all elements of the Mercury Budget Trading Program to be federally enforceable through the issuance of an Hg budget permit as a complete and separable portion of each Hg budget source's Title V permit.

The 79th Legislature, 2005, enacted House Bill (HB) 2481 amending Texas Health and Safety Code (THSC), Chapter 382 by adding §382.0173, requiring Texas to participate in the EPA-administered interstate cap and trade programs through the incorporation by reference of 40 CFR Part 96, Subparts AA - II and Subparts AAA - III (regarding Clean Air Interstate Rule (CAIR)), and Part 60, Subpart HHHH (regarding CAMR).

THSC, §382.0173(d) provided that its provisions applied ". . . only while the federal rules cited in this section are enforceable . . ." and that the provisions of HB 2481 do ". . . not limit the authority of the commission to implement more stringent emissions control requirements." The commission interpreted the language of THSC, §382.0173(d) as not restricting existing authority to require further emissions control requirements, but not to interfere with, or change, the requirements of CAIR nitrogen oxides and sulfur dioxide, or the CAMR Hg emission trading programs. The legislature expressed clear intent that the commission implements the CAIR and CAMR emission trading programs by requiring the incorporation by reference of the CAIR and CAMR program rules as promulgated by the EPA and requiring the use of EPA-specified allocation methodology, with some exceptions for CAIR nitrogen oxides allowances.

On June 9, 2006, the EPA finalized revisions to the CAMR rule reducing the Phase I Texas Hg budget from 4.657 to 4.656 tons of Hg per year, or a reduction of two pounds of Hg per year from the Phase I Texas Hg budget. The revisions also included clarification to the applicability of CAMR to municipal waste combusters and certain industrial boilers. New source performance standards were also clarified in this revision. For additional information regarding these revisions, please see the EPA final rule, published in the June 9, 2006, issue of the *Federal Register* (71 FR 33388), available online at *www.epa.gov/fedrgstr/*.

On July 12, 2006, the commission adopted Chapter 101, General Air Quality Rules, Subchapter H, Emissions Banking and Trading, Division 8, Clean Air Mercury Rule. The adoption of this rule required all EGUs meeting the applicability requirements of 40 CFR §60.4104 to be part of the CAMR trading program. The allocation methodology stated in 40 CFR §60.4142 (issued on May 12, 2005) was used to determine the Hg allowance allocations. From 2010 through 2014 (Phase I), the Texas Hg budget was 4.657 tons of Hg per year, then reduced starting in 2015 and thereafter (Phase II) to 1.838 tons of Hg per year.

The 80th Legislature, 2007, enacted Senate Bill (SB) 1672 amending THSC, Chapter 382. SB 1672 omitted the reference dates specified by HB 2481 enabling the commission to make subsequent changes as dictated by federal rule changes to CAMR.

On October 11, 2007, the EPA finalized additional revisions to the CAIR and CAMR rule, updating the definition of a cogeneration unit, technical corrections, and included other minor revisions. For additional information regarding these revisions, please see the EPA final rule, published in the October 19, 2007, issue of the *Federal Register* (72 FR 59190) available online at *www.epa.gov/fedrgstr/*.

On February 8, 2008, the United States Court of Appeals District of Columbia Circuit vacated CAMR (Number 05-1097) finding that the EPA did not follow the procedure set forth to remove EGUs from the requirements of the Federal Clean Air Act (FCAA), §112. Therefore, the emissions from EGUs could not be regulated under FCAA, §111 and a cap and trade system could not be implemented for controlling Hg emissions from oil-fired and coal-fired EGUs. On October 17, 2008, the EPA requested the United States Supreme Court review the case. However, on February 6, 2009, the Department of Justice filed a motion on behalf of the EPA to dismiss the EPA's request to review the case stating that the EPA decided to develop appropriate standards to regulate power plant emissions under FCAA, §112. On February 23, 2009, the United States Supreme Court decided not to hear the case. This officially vacated CAMR at the federal level; therefore, the state CAMR rule, incorporated by reference, and state plan are longer applicable or necessary.

SECTION BY SECTION DISCUSSION

The commission adopts the repeal of §101.601 and §101.602 since the federal references cited in these sections are no longer valid. Section 101.601, Applicability, incorporated by reference the applicability requirements of 40 CFR §60.4104. Section 101.602, Clean Air Mercury Rule Trading Rule, incorporated by reference 40 CFR Part 60, Subpart HHHH.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. 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. This rulemaking will repeal rules that incorporate by reference the federal CAMR emissions trading rules located in 40 CFR Part 60, Subpart HHHH. 42 United States Code (USC), §7411 created a system for the establishment of standards of performance to reduce emissions from stationary sources. The rules were originally adopted to fulfill the requirements of HB 2481 to incorporate CAMR by reference and to specify the sources to which the trading program is applicable. Since the adoption of these rules, however, CAMR has been overturned by the United States Court of Appeals for the District of Columbia. The United States Supreme Court declined to hear an appeal of this decision, rendering it final. Therefore, CAMR has been invalidated by the courts and is no longer an enforceable federal requirement. The repeal of the state CAMR rule incorporating the federal CAMR requirements does not meet the definition of a "major environmental rule," and therefore a regulatory impact analysis is not required under Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the rulemaking is to repeal rules that incorporated by reference the federal CAMR emissions trading rules, located in 40 CFR Part 60, Subpart HHHH. Subpart HHHH established a Hg emissions cap and trade program for new and existing coal-fired EGUs for which standards of performance were promulgated under 42 USC, §7411. During the 79th Legislature, 2005, the legislature enacted HB 2481, which created a requirement in the Texas Clean Air Act, codified in THSC, §382.0173, to adopt the federal program rules by reference. Since the adoption of these rules, however, CAMR has been overturned by the United States Court of Appeals for the District of Columbia. The United States Supreme Court has declined to hear an appeal of this decision, rendering it final. Therefore, CAMR has been invalidated by the courts and is no longer an enforceable federal requirement. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission found that the repeal of §101.601 and §101.602 are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor do they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the repeal of §101.601 and §101.602 are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

Public hearings were held in Fort Worth on October 20, 2009; in Austin on October 21, 2009; and in Houston on October 22, 2009. The commission did not receive any oral comments at the public hearings. The comment period for this repeal closed on October 26, 2009. The commission did not receive any written comments.

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory; §382.016, concerning Monitoring Requirements; House Bill 2481, §2, 79th Legislature, 2005, codified in THSC, §382.0173, concerning Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; THSC, §382.054, concerning Federal Operating Permit; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq*., which requires states to submit plans establishing standards of performance for existing sources of pollutants for which National Ambient Air Quality Standards have not been established and providing for the implementation and enforcement of such standards of performance.

The adopted repeals implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0173, and 382.054, and FCAA, 42 USC, §§7401 *et seq*.

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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Robert Martinez
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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

SUBCHAPTER G. CONSUMER-RELATED SOURCES

DIVISION 2. PORTABLE FUEL CONTAINERS

30 TAC §§115.620 - 115.622, 115.626, 115.627, 115.629

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §§115.620 - 115.622, 115.626, 115.627, and 115.629. The repeals are adopted *without changes* as published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6279).

The repealed sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The EPA adopted a federal portable fuel container (PFC) rule (72 *Federal Register* 8432, February 26, 2007) that set a national standard for gasoline, diesel, and kerosene PFCs. All PFCs manufactured on or after January 1, 2009, are required to comply with the federal standards. The federal regulations are very similar to the revised PFC regulations adopted by the California Air Resources Board (CARB) on September 15, 2005. The current Texas PFC regulations are inconsistent with the federal standards, because the state regulations were based on the previous PFC testing methods adopted by the CARB in 2001.

The design criteria requirements for PFCs and PFC spouts specified under §§115.620 - 115.622, 115.626, 115.627, and 115.629 were adopted on October 27, 2004. These PFC rules established design criteria for "no-spill" PFCs based primarily on the 2001 CARB standards. The Texas PFC regulations differ from the 2001 CARB standards, because the Texas PFC rules do not

ments as specified in subsection (b)(2) of this section) regardless of the registration number or account code assigned by the executive director. A facility authorized by the Air Quality Standard Permit for Concrete Batch Plants or concrete batch plant permits by rule for which an applicant provided public notice is an exception.

(3) The executive director will not convert a permanent facility permit number to a portable designation unless the owner or operator is requesting a change of location as defined in §116.20 of this title (relating to Portable Facilities Definitions) for the facility. The permit holder must publish notice for any change in an existing permit number. The notice must identify the new permit number and the proposed location.

(b) Relocation qualifications. The appropriate regional office may approve the relocation of a portable facility if the applicant's permit contains current special conditions defining the approval process to move. A relocation application cannot include a modification. Approval for relocation is based on one of the following conditions:

(1) a permitted portable facility and associated equipment are moving to a site for support of a public works project in which the proposed site is located in or contiguous to the right-of-way of the public works project; or

(2) a portable facility is moving to a site in which a portable facility has been located at the site at any time during the previous two years and the site was subject to public notice as required under Chapter 39 of this title (relating to Public Notice), the Air Quality Standard Permit for Concrete Batch Plants, or the concrete batch plant permits by rule.

(c) Relocation request requirements. The permit holder shall submit a complete written request to the appropriate commission regional office for the new location and obtain written approval before the start of construction and commencement of operations at the new site. The permit holder is responsible for providing proof of submittal for all relocation requests. Construction may begin after receipt of approval from the appropriate commission regional office or 12 business days after the date of postmark or the date of personal delivery of the request, whichever occurs first, unless disapproval is sent within the 12 business days. The permit holder's request is considered approved if the appropriate regional office does not provide approval or denial of a complete submittal within 12 business days; however, the presumed approval does not exempt the applicant from ensuring that public notice was accomplished at the new site as required under Chapter 39 of this title. The relocation request shall contain all of the following information:

(1) the company name, address, company contact, and telephone number;

(2) a copy of the existing permit conditions and the maximum allowable emission rates table that is in effect for the permitted facility;

(3) the regulated entity number (RN), customer reference number (CN), applicable permit or registration numbers, and, if available, the Texas Commission on Environmental Quality account number;

(4) the location from which the facility is moving (current location);

(5) a location description of the proposed site (city, county, and exact physical location description);

(6) a scaled plot plan that identifies the location of all equipment and stockpiles, and also indicates that the required distances to the property lines can be met;

(7) a scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to the right-of-way of a public works project (if required);

(8) the proposed date for start of construction and expected date for start of operation;

(9) the expected time period at the proposed site;

(10) the permit or registration number of the portable facility that was located at the proposed site any time during the last two years, and the date the facility was last located there. This information is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project; and

(11) proof that the proposed site had accomplished public notice, as required by Chapter 39 of this title. This proof is not necessary if the relocation request is for a public works project that is contiguous or adjacent to the right-of-way of a public works project.

(d) Denial of relocation. If the permit holder cannot qualify for a relocation, as described in subsection (c) of this section, the appropriate regional office shall deny the relocation request and the applicant may request a change of location, as defined in §116.20 of this title.

(e) Requesting changes to relocation instructions. A permit holder shall request from the executive director a permit alteration, as defined in §116.116(c)(1)(B) of this title (relating to Changes to Facilities), to update relocation instructions. The permit holder may apply for a relocation simultaneously with the alteration. The permit holder shall obtain written approval before the start of construction and commencement of operations at the new site and shall not assume approval within 12 businesses days. The permit holder shall submit the following information for any alteration request and relocation application to the TCEQ Central Office in Austin, Air Permits Division:

(1) the required form and attachments, including a detailed plot plan and area map; and

(2) a copy of the current permit.

(f) Requesting changes of location. For a change of location application, the permit holder shall submit the required form and attachments to the TCEQ Central Office in Austin, Air Permits Division. All applications must include an evaluation of best available control technology and protection of public health and welfare as described in §116.111(a)(2)(C) of this title (relating to General Application).

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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Robert Martinez
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CHAPTER 122. FEDERAL OPERATING PERMITS PROGRAM

The Texas Commission on Environmental Quality (commission) is adopting amendments to §§122.10, 122.12, and 122.120; and repealing §§122.440, 122.442, 122.444, 122.446, and 122.448, as published in the September 25, 2009, issue of the *Texas Register* (34 TexReg 6610) *without changes* and the text will not be republished.

The commission will submit a request to the United States Environmental Protection Agency (EPA) to withdraw from consideration the Texas State Plan for the Control of Designated Facilities and Pollutants, Plan for Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units, Clean Air Mercury Rule (CAMR).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On May 18, 2005, the EPA finalized CAMR to permanently cap and reduce mercury emissions from new and existing coal-fired electric generating units (EGU) nationwide. From 2010 through 2017 (Phase I), the annual mercury budget for Texas is 4.656 tons per year, then reduces to 1.838 tons per year starting in 2018 and beyond (Phase II).

The 79th Legislature, 2005, enacted House Bill (HB) 2481, amending Texas Health and Safety Code (THSC), Chapter 382 by adding §382.0173, which requires Texas to participate in the EPA-administered interstate cap and trade program through the incorporation by reference of Title 40 Code of Federal Regulations (CFR) Part 96, Subparts AA - II and Subparts AAA - III (regarding Clean Air Interstate Rule (CAIR)), and Part 60, Subpart HHHH (regarding CAMR). THSC, §382.0173(d) also states that "This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control requirements."

The 80th Legislature, 2007, enacted Senate Bill (SB) 1672, amending THSC, Chapter 382. The addition of THSC, §382.0173(e)(3), directs the commission to incorporate EPA final rulemaking action into state rules for both CAIR and CAMR.

Several petitions were filed against CAMR, and on February 8, 2008, the United States Court of Appeals, District of Columbia Circuit (Number 05-1097) vacated CAMR. The EPA petitioned the United States Supreme Court to review the decision. On February 23, 2009, the United States Supreme Court declined to hear the case. This officially vacates CAMR at the federal level. The state rules and plan submitted to the EPA for CAMR are no longer valid. Additionally, facilities formerly subject to CAMR may now be subject to a case-by-case Maximum Achievable Control Technology determination for mercury.

These amendments and repealed sections remove the state rules that implement CAMR. The commission will notify the EPA of the withdrawal of the Texas State Plan for the Control of Designated Facilities and Pollutants, Plan for Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units, Clean Air Mercury Rule (CAMR), adopted on July 12, 2006.

SECTION BY SECTION DISCUSSION

Subchapter A: Definitions

§122.10 - General Definitions

The commission is removing the phrase "Clean Air Mercury Rule" from §122.10(2)(I)(iii) because the CAMR was vacated by the United States Court of Appeals, District of Columbia Circuit.

§122.12 - Acid Rain, Clean Air Interstate Rule, and Clean Air Mercury Rule Definitions

The commission is removing the phrase "Clean Air Mercury Rule" from the title of this section and §122.12(5), Mercury budget permit, since the federal requirements have been vacated by the United States Court of Appeals, District of Columbia Circuit.

Subchapter B: Permit Requirements

Division 1: General Requirements

§122.120 - Applicability

The commission is removing §122.120(a)(7) from this section because it requires mercury budget units, as defined by the vacated rule, to have a federal operating permit.

Subchapter E: Acid Rain Permits, Clean Air Interstate Rule, Clean Air Mercury Rule

Division 3: Clean Air Mercury Rule

§122.440 - General Mercury Budget Trading Program Permit Requirements

The commission is repealing this section because the United States Court of Appeals, District of Columbia Circuit has vacated the underlying federal regulation.

§122.442 - Submission of Mercury Budget Permit Applications

The commission is repealing this section because the United States Court of Appeals, District of Columbia Circuit has vacated the underlying federal regulation.

§122.444 - Information Requirements for Mercury Budget Permit Applications

The commission is repealing this section because the United States Court of Appeals, District of Columbia Circuit has vacated the underlying federal regulation.

§122.446 - Mercury Budget Permit Contents and Term

The commission is repealing this section because the United States Court of Appeals District of Columbia Circuit has vacated the underlying federal regulation.

§122.448 - Mercury Budget Permit Revisions

The commission is repealing this section because the United States Court of Appeals District of Columbia Circuit has vacated the underlying federal regulation.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the amendments and repealed sections in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule" as defined in that statute. 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. This rulemaking amends and repeals rules that incorporate by reference the federal CAMR emissions trading rules located in 40 CFR Part 60, Subpart HHHH. 42 United States Code (USC), §7411 created a system for the establishment of standards of performance to reduce emissions from stationary sources. The rules were originally adopted to fulfill the requirements of HB 2481 to incorporate CAMR by reference and to

specify the sources to which the trading program is applicable. Since the adoption of the CAMR rule, however, CAMR has been overturned by the United States Court of Appeals for the District of Columbia. The United States Supreme Court declined to hear an appeal of this decision, rendering it final. Therefore, CAMR has been invalidated by the courts and is no longer an enforceable federal requirement. The repeal of the state CAMR rule incorporating the federal CAMR requirements does not meet the definition of a "major environmental rule," and therefore a regulatory impact analysis is not required under Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rules and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the rulemaking is to repeal rules that incorporated by reference the federal CAMR emissions trading rules, located in 40 CFR Part 60, Subpart HHHH. Subpart HHHH established a mercury emissions cap and trade program for new and existing coal-fired EGUs, for which standards of performance were promulgated under 42 USC, §7411. During the 79th Legislature, 2005, the legislature enacted HB 2481, which created a requirement in the Texas Clean Air Act, codified in THSC, §382.0173, to adopt the federal program rules by reference. Since the adoption of the CAMR rules, however, CAMR has been overturned by the United States Court of Appeals for the District of Columbia. The United States Supreme Court has declined to hear an appeal of this decision, rendering it final. Therefore, CAMR has been invalidated by the courts and is no longer an enforceable federal requirement. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rules are not subject to the Texas Coastal Management Program.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The changes to Chapter 122 will allow the owners or operators of facilities subject to the federal operating permits program that have been issued permits with CAMR requirements the option of initiating a permit action to remove these requirements or waiting for the next permit action, such as a renewal, to remove these requirements.

PUBLIC COMMENT

Public hearings were held in Fort Worth on October 20, 2009; in Austin on October 21, 2009; and in Houston on October 22, 2009. The commission did not receive any oral comments at the public hearings. The comment period for this repeal closed on October 26, 2009. The commission did not receive any written comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §122.10, §122.12

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory; §382.016, concerning Monitoring Requirements; House Bill 2481, §2, 79th Legislature, 2005, codified in THSC, §382.0173, concerning Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; THSC, §382.054, concerning Federal Operating Permit; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.,* which requires states to submit plans establishing standards of performance for existing sources of pollutants for which National Ambient Air Quality Standards have not been established and providing for the implementation and enforcement of such standards of performance.

These amendments implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0173, and 382.054, and FCAA, 42 USC, §§7401 *et seq.*

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 B. PERMIT REQUIREMENTS

DIVISION 1. GENERAL REQUIREMENTS

30 TAC §122.120

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning

Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory; §382.016, concerning Monitoring Requirements; House Bill 2481, §2, 79th Legislature, 2005, codified in THSC, §382.0173, concerning Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; THSC, §382.054, concerning Federal Operating Permit; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.,* which requires states to submit plans establishing standards of performance for existing sources of pollutants for which National Ambient Air Quality Standards have not been established and providing for the implementation and enforcement of such standards of performance.

The amendment implements THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0173, and 382.054, and FCAA, 42 USC, §§7401 *et seq.*

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 E. ACID RAIN PERMITS AND CLEAN AIR INTERSTATE RULE

DIVISION 3. CLEAN AIR MERCURY RULE

30 TAC §§122.440, 122.442, 122.444, 122.446, 122.448

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, which 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, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory; §382.016, concerning Monitoring Requirements; House Bill 2481, §2, 79th Legislature, 2005, codified in THSC, §382.0173, concerning Adoption of Rules Regarding Certain SIP Requirements and Standards of Performance for Certain Sources; THSC, §382.054, concerning Federal Operating Permit; and Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401 *et seq.,* which requires states to submit plans establishing standards of performance for existing sources of pollutants for which National Ambient Air Quality Standards have not been established and providing for the implementation and enforcement of such standards of performance.

These repeals implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 382.0173, and 382.054, and FCAA, 42 USC, §§7401 *et seq.*

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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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.416

The Comptroller of Public Accounts adopts new §9.416, concerning continuation of residence homestead exemption while a replacement structure is constructed, without changes to the proposed text as published in the January 1, 2010, issue of the *Texas Register* (35 TexReg 36). Tax Code, §11.135(g) authorizes the comptroller to adopt rules to implement the section. The new rule provides guidance to local chief appraisers on the steps to follow when a taxpayer who was granted a continuance fails to satisfy the statutory conditions for the continuation.

The new rule implements certain provisions of House Bill 770, 81st Legislature, 2009, effective January 1, 2010. Section 2 of the bill describes the conditions under which a residence homestead exemption may be continued for a residence homestead rendered uninhabitable or unusable by a casualty or by wind or water damage. The bill also provides a time limit for completing a replacement structure and for disallowing the exemption if the property is sold before the replacement structure is completed.