

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** August 7, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Susana M. Hildebrand, P.E., Chief Engineer
Docket No.: 2009-0542-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 115, Control of Air Pollution from Volatile Organic Compounds
Portable Fuel Container (PFC) Rule Repeal
Rule Project No. 2008-032-115-EN

Reasons for the rule package:

On February 26, 2007, the United States Environmental Protection Agency (EPA) adopted federal regulations that limit the evaporative hydrocarbon (HC) emissions from gasoline, diesel, and kerosene portable fuel containers (PFC) to 0.3 grams per gallon per day (*72 Federal Register* 8432). All PFCs manufactured on or after January 1, 2009, are required to comply with the federal standards. The current Texas PFC regulations specified under 30 Texas Administrative Code §§115.620 - 115.622, 115.626, 115.627, and 115.629 as adopted on October 27, 2004, are less stringent than the federal PFC standards because the Texas PFC rules are based on the PFC testing methods adopted by the California Air Resources Board (CARB) in 2001, and they lack an evaporative HC emission standard. Therefore, it is necessary to repeal the state PFC regulations.

Under what authority are we proposing these changes?

The repeals are proposed under Texas Water Code (TWC), §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 TWC; 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 repeal are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission 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; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere.

The proposed repeal implement THSC, §§382.002, 382.011, 382.012, and 382.051.

Is this rulemaking required by federal rule or state statute? Which ones?

No.

Are there any legal deadlines by which these rules must be proposed, adopted, or effective?

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There are no legal deadlines at this time.

What issue(s) or problem(s) are we trying to solve?

The proposed repeal of 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 are necessary since the EPA's adoption of more stringent federal PFC regulations (*72 Federal Register* 8432, February 26, 2007) that established a national evaporative HC emissions standard for gasoline, diesel, and kerosene PFCs.

Why is it important that we do this rule package?

The current Texas PFC regulations are less stringent than the new federal PFC standards because they are based on out-of-date CARB testing methods, and they lack an evaporative HC emission standard.

Other important background or historical information.

The current requirements relating to the design criteria for PFCs and PFC spouts specified under 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 were adopted on October 27, 2004. The Texas PFC rules established design criteria for "no-spill" PFCs based in large part on the 2001 CARB PFC standards.

The Texas PFC rules went into effect on December 31, 2005. On January 11, 2006, the executive director received a petition for rulemaking under 30 TAC §20.15 from Mr. Jon Lips of L&W Innovations, LLC. L&W Innovations manufactures a one-time use emergency fuel carrier known as the "Gas-O-Haul." The "Gas-O-Haul" emergency fuel carrier is currently prohibited from sale in Texas because it does not comply with the performance standards and testing requirements of §115.622 and the labeling requirements of §115.626. The "Gas-O-Haul" emergency fuel carrier did not qualify for the exemption provided in §115.627 for one-time use containers that have been filled by the manufacturer but are not intended for reuse because it is not a pre-filled container.

On March 8, 2006, the commission approved the petition for rulemaking (Docket No. 2006-0055-RUL), and instructed the executive director to initiate the rulemaking process. The proposed modifications to the rule would allow one-time use, unfilled, emergency fuel containers to be exempt and be eligible for sale in the State of Texas. On May 1, 2006, the petitioner was granted an interim enforcement discretion waiver that is effective until the PFC rules are appropriately revised. In December 2006, a concept memo was drafted to initiate proposed revisions to the PFC rules. However, the project was put on hold when it was learned the EPA was promulgating a federal PFC rule.

On February 26, 2007, the EPA adopted federal regulations (*72 Federal Register* 8432) that limit the evaporative HC emissions from gasoline, diesel, and kerosene PFCs to 0.3 grams per gallon per day. These new federal PFC regulations are very similar to the revised PFC regulations adopted by the CARB on September 15, 2005. The federal PFC rule also defined a "portable fuel container" in 40 Code of Federal Regulations §59.680 as "any reusable container." Thus, the "Gas-O-Haul" emergency fuel carrier is exempt under the federal rule because it can only be used once.

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All PFCs manufactured on or after January 1, 2009, are required to comply with the federal PFC standards. The proposed repeal of the current state PFC regulations is necessary since they are less stringent than the adopted federal regulations for PFCs.

Scope of the rulemaking:

The proposed rulemaking would repeal 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629, Subchapter G – Consumer-Related Sources, Division 2 – Portable Fuel Containers, in its entirety.

Changes required by federal rule:

None.

Changes required by state statute:

None.

Staff recommendations that are not expressly required by federal rule or state statute:

- Repeal 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629, Subchapter G – Consumer-Related Sources, Division 2 – Portable Fuel Containers, in its entirety.
- Revise Chapter 115 index to remove citation for Division 2 under Subchapter G.

Impact on the regulated community:

Who will be affected?

The proposed repeal of 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 would have no impact on the regulated community.

Does it create a group of affected persons who were not affected previously? How?

No.

Will there be a fiscal impact? If so, estimate.

No.

Impact on the public:

Who will be affected?

The proposed repeal of 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 would have no impact on the public.

Does it create a group of affected persons who were not affected previously? How?

No.

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Will there be a fiscal impact? If so, estimate.

No.

Impact on agency programs:

The proposed repeal of 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 would have no impact on agency programs. There is no back-sliding issue as the emissions modeling for estimating the air quality benefits associated with the state's PFC rules for the state implementation plan will be performed using factors associated with the federal PFC emission standards, which are more stringent than the state's PFC standards.

Stakeholder meetings:

Have any stakeholder meetings been held?

No.

With whom?

N/A

What were the general sentiments?

N/A

Were any changes made in response to stakeholder concerns?

N/A

Policy issues:

What policy issues are affected?

None.

Are any policies that are not currently based on rule being made into a rule?

No.

What are the consequences if this rulemaking is not approved to go forward?

None. However, retaining the state PFC regulations specified under 30 TAC §§115.620 - 115.622, 115.626, 115.627, and 115.629 will continue to provide no emissions reduction benefit since they are less stringent than the federal PFC regulations, and could result in confusion for manufacturers.

Are there alternatives?

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- The state rule could be revised to reflect only the petition. If so, the rule will be inconsistent with the EPA rule for the following reasons: the EPA regulations are based on the CARB PFC program adopted in 2005, and the current state rule is based on the CARB PFC program adopted in 2001; state and federal regulations define a PFC differently; the EPA regulations include anti-permeation requirements; and the EPA regulations include kerosene and diesel fuel containers.
- The state rule could be revised to mirror the federal rule.

Potentially controversial matters:

None anticipated

Key points in proposed rulemaking schedule:

Anticipated proposal date: August 26, 2009
Anticipated *Texas Register* publication date: September 11, 2009
Public hearing date (if any): October 6, 2009
Public comment period: September 11 – October 12, 2009
Anticipated adoption date: February 3, 2010

Agency contacts:

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Attachments

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