

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** September 4, 2009
Thru: LaDonna Castañuela, Chief Clerk
Mark R. Vickery, P.G., Executive Director
From: Susana M. Hildebrand, P.E., Chief Engineer
Docket No.: 2009-0932-RUL
Subject: Commission Approval for Proposed Rulemaking
Chapter 101, General Air Quality Rules
Highly Reactive Volatile Organic Compounds (HRVOC) Emissions Cap and Trade
Program (HECT) Cap Reduction and Allowance Reallocation
Rule Project No. 2009-006-101-EN

Reasons for the rule package:

The purpose of this rulemaking is to propose a 25% reduction in the total HECT program allowance cap and revise the HRVOC allocation methodology. The HECT program was adopted as a control measure for the Houston-Galveston-Brazoria (HGB) one-hour attainment demonstration state implementation plan (SIP). Currently, the HECT program is only applicable in Harris County.

The HGB metropolitan area was originally designated nonattainment for the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS) and classified as a moderate area effective June 15, 2004. In October 2008, the HGB area was reclassified as a severe ozone nonattainment area by the United States Environmental Protection Agency (EPA) as requested by the governor of Texas. The HGB area is required to attain the 1997 eight-hour ozone standard of 0.08 parts per million as expeditiously as practicable but no later than June 15, 2019. The EPA requires submittal of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard by April 15, 2010. Photochemical modeling analysis demonstrates that a 25% reduction of the HRVOC cap in Harris County would contribute to attainment of the eight-hour ozone NAAQS by reducing the future 2018 ozone design values at all HGB monitors. The largest reductions are projected at the Deer Park monitoring site.

Following the initial allocation of allowances, companies participating in the HECT program commented that the allocation was not equitably distributed. Information from the first three years of monitoring data, 2006 - 2008, supports the assertion of an inequitable distribution of allowances. Revisions to the rule are anticipated to result in a more equitable approach while contributing to the area's attainment of the NAAQS as expeditiously as practicable. This rulemaking would be submitted as part of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard.

Under what authority are we proposing these changes?

The amendments would be proposed 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

Re: Docket No. 2009-0932-RUL

the TWC; 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 amendments would also be proposed 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 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; §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules; and 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives, such as fees, marketable permits, and auction of emission rights.

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

This rulemaking is not required by federal rule or state statute.

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

There are no specific legal deadlines affecting this rulemaking. This rulemaking would be submitted as part of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard. The EPA requires submittal of the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard by April 15, 2010.

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

Companies participating in the HECT program commented that the initial allocation of allowances was not equitably distributed. Information from the first three years of monitoring data, 2006 - 2008, supports the assertion of an inequitable distribution of allowances. Revisions to the rule are anticipated to result in a more equitable approach while contributing to the area's attainment of the NAAQS as expeditiously as practicable.

Why is it important that we do this rule package?

The proposed rulemaking would support the HGB Attainment Demonstration SIP Revision for the 1997 Eight-Hour Ozone Standard. Photochemical modeling analysis demonstrates that a 25% reduction of the HRVOC cap in Harris County would contribute to attainment of the eight-hour ozone NAAQS by reducing the future 2018 ozone design values at all HGB monitors. The largest reductions are projected at the Deer Park monitoring site.

Other important background or historical information.

N/A.

Re: Docket No. 2009-0932-RUL

Scope of the rulemaking:

The proposed rulemaking would revise 30 Texas Administrative Code (TAC) Chapter 101, Subchapter A and Subchapter H, Division 6, to reduce the total cap amount of HRVOC allowances and revise the allocation methodology for participants of the HECT program. The proposed rulemaking would also update the definition of volatile organic compound to link the 30 TAC definition with the current definition in the 40 Code of Federal Regulations. The proposed rulemaking would also correct §101.1(88)(A)(i)(III)(-y-) to include the reportable quantity of 5,000 pounds for 1,1,1,2,3,3,3-heptafluoropropane that was inadvertently omitted in the adopted rule filed with the Secretary of State's Office in December, 2005.

Changes required by federal rule:

N/A.

Changes required by state statute:

N/A.

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

- Amend the definition of "Volatile organic compound" to link the 30 TAC Chapter 101 definition with the current definition in the 40 Code of Federal Regulations.
- Correct the definition of 1,1,1,2,3,3,3-heptafluoropropane to include the 5,000 pound reportable quantity that was previously omitted.
- Add the definitions of "Baseline emissions period" and "Uncontrolled emissions."
- Revise the allocation methodology of the HECT program based on actual emissions data with the goals of fairly and equitably distributing the compliance burden for HECT program participants, applying credit for controlling and reducing HRVOC emissions, and not rewarding or encouraging emissions from emissions events.
- Reduce the total cap amount of HRVOC allowances using gradual annual percent reductions in the total cap of allowances. The first step is a 10% reduction in the total cap in calendar year control period 2014, followed by successive 5% reductions per calendar year control period until the 25% total reduction in the cap is reached in calendar year control period 2017.
- Include in the proposed rule a 250 ton emissions event set-aside to be solely dedicated to covering emissions from emissions events. Designed to account for emissions events subject to HECT in reported chronological order, remaining allowances from the emission event set-aside would not be available for sale or use as vintage allowances after the control period. In the event that the sum total of emissions events in any control period exceeded the 250 ton amount, individual sites would be required to cover any emissions from emissions events in excess of the 250 ton set-aside from their allocation or through the acquisition of allowances on the open market.

Re: Docket No. 2009-0932-RUL

Impact on the regulated community:

Who will be affected?

If the proposed rulemaking is adopted, sites with a HRVOC potential to emit greater than 10 tons per year from flares, vents, and cooling towers subject to Chapter 115 may have their existing HRVOC allowances reduced, and other facilities could benefit from an increase in HRVOC allowances. This rulemaking is intended to alleviate the disparity of allocations that occurred as a result of the original HECT allowance allocation. In addition, participants in the HECT program who have purchased future stream trades may have those trades reduced or voided.

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

No.

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

Facilities that have their HRVOC allowances reduced, either through the reallocation or reduction in the total HRVOC cap, may incur costs from the installation of additional controls or having to purchase allowances from other sources to comply with their revised allocation. A reduction in the HRVOC cap may increase the price of HRVOC allowances available in the market.

Impact on the public:

Who will be affected?

The general public should benefit from reduced ozone levels due to the impact of the proposed HRVOC cap reduction.

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 public fiscal impact is expected.

Impact on agency programs:

The Emissions Banking and Trading Program will be responsible for the reallocation and oversight of the program. Field Operations Division may benefit from improved clarity and enforceability of the rule.

Re: Docket No. 2009-0932-RUL

Stakeholder meetings:

Have any stakeholder meetings been held?

Yes, stakeholder meetings were held on June 10, 2009, and July 2, 2009, at the Houston-Galveston Area Council in Houston, Texas.

With whom?

HRVOC Stakeholder Group is an open-participation group that includes industry representatives, environmental groups, brokers, consultants, and the general public.

What were the general sentiments?

There was overall support for the HECT program and for the equitable reallocation of HRVOC allowances. There was little support for delaying the reallocation until more representative data was collected and using a reallocation methodology based on historical emissions. Most of the regulated community requested that the reallocation occur separately from the step down (25% cap reduction) in order to allow businesses to plan for these reductions.

Were any changes made in response to stakeholder concerns?

In response to stakeholder comments, the proposed rule package would separate the reallocation in 2011 from the cap reduction and postpone the first step down of 10% until 2014, followed by 5% reductions each year thereafter until a total step down of 25% is reached in 2017.

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?

Potential consequences include hampering of the HGB area's ability to attain the 1997 ozone NAAQS as well as jeopardize EPA approval of the SIP.

Are there alternatives?

The commission could retain the existing HRVOC allocation methodology and lower the HRVOC cap. This option would further exacerbate the inequities in the HRVOC allocation methodology with possible severe consequences to regulated entities in HGB, including the inability to operate units or entire plants. Another option would be to change the HRVOC

Re: Docket No. 2009-0932-RUL

allocation methodology and retain the existing HRVOC cap. This option could limit the HGB area's efforts to attain the 1997 ozone NAAQS as well as jeopardize EPA approval of the SIP.

The commission could also choose to repeal the HECT program and replace it with speciated HRVOC permit allowable limits. This option could involve the 25% cap reduction or retaining the existing HRVOC cap.

A final option would be for the commission to leave the rule as is. This option would likely have the severe consequences to the regulated entities in HGB who do not currently have sufficient allowances to operate as well as jeopardizing the approvability of the SIP.

To alleviate the inequities in the current system, one HRVOC allowance owner has voluntarily "donated" extra allowances, which the executive director has subsequently redistributed to prevent non-compliance resulting from inequities in the allocation methodology. If the rules were not revised, the agency would have to depend on this "donation" indefinitely.

Potentially controversial matters:

Although certain facilities have commented that the allocation methodology is inequitable, other facilities who have received larger HRVOC allocations may protest having their existing allowances reduced. Facilities that have made investments on future HRVOC stream trades may see the value of these investments reduced or nullified. Environmental groups and concerned citizens may object to specific sites receiving higher allocations.

A reduction in the total HRVOC cap is expected to be controversial. In addition to the costs possibly incurred by some sites being required to install additional controls to comply with reduced HRVOC allocations, a reduction in the HRVOC cap could increase the cost of allowances, and thus the cost of compliance.

Key points in proposed rulemaking schedule:

Anticipated proposal date: September 23, 2009
Anticipated *Texas Register* publication date: October 9, 2009
Public hearing dates (if any): October 28, 2009, Houston; October 29, 2009, Austin
Public comment period: October 9, 2009 - November 9, 2009
Anticipated adoption date: March 24, 2010

Agency contacts:

Jay C. Tonne Jr., P.E., Rule Project Manager, 239-1453, Air Quality Division
Luke Baine, Rule Project Lead, 239-5856, Air Quality Division
Amy Browning, Staff Attorney, 239-0891
Devon Ryan, Texas Register Coordinator, 239-6090

Attachments

Commissioners
Page 7
September 4, 2009

Re: Docket No. 2009-0932-RUL

cc: Chief Clerk, 5 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Daniel Womack
Kevin Patteson
Betsy Bird
Office of General Counsel
Jay C. Tonne Jr., P.E.
Devon Ryan