

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** May 16, 2008

**Thru:** LaDonna Castañuela, Chief Clerk  
Glenn Shankle, Executive Director

**From:** David C. Schanbacher, P.E., Chief Engineer  
Chief Engineer's Office

**Docket No.:** 2007-1058-RUL

**Subject:** Commission Approval for Rulemaking Adoption and State Implementation Plan (SIP) Revision  
Chapter 114, Control of Air Pollution from Motor Vehicles  
Repeal of Subchapter L, §§114.700–114.709  
Rule Project No. 2007-056-114-EN

## Scope of the rulemaking:

The rulemaking adoption repeals 30 Texas Administrative Code (TAC) §§114.700-114.702, 114.706, 114.707, and 114.709, Subchapter L: On-Road Engines, in its entirety.

Following the repeal, a letter will be sent to the United States Environmental Protection Agency (EPA) requesting withdrawal of a pending SIP revision for 30 TAC §§114.700-114.702, 114.706, 114.707, and 114.709. The SIP revision and rules submitted to the EPA on July 15, 2002, are no longer applicable.

## Reasons for the rule package:

On June 27, 2007, the commission directed staff to initiate rulemaking after consideration of a petition from the Engine Manufacturers Association (EMA) to repeal Subchapter L and the executive director's subsequent analysis in support for repealing these rules. On February 13, 2008, the commission approved staff's request to publish the proposed rulemaking to repeal 30 TAC §§114.700-114.702, 114.706, 114.707, and 114.709.

The current regulations under Subchapter L require all heavy-duty diesel engines (HDDE) produced for sale or use in Texas for the 2005 and newer model years, to be certified to meet the California emission control standards specified under Title 13, California Code of Regulations (13 CCR) §1956.8 that were revised by the California Air Resources Board (CARB), on December 8, 2000, and effective on July 25, 2001. The EMA petition requested the TCEQ to initiate rulemaking to repeal Subchapter L. A repeal would allow for the sale or other use in Texas of any 2008 or newer model year HDDE that are certified by the EPA, as well as CARB, as being compliant with all applicable EPA emission control regulations.

The EMA states that revisions by CARB to 13 CCR §1956.8 effective on November 15, 2006, enacting additional emission control requirements for automatic engine idle shutdown devices on 2008 and newer model year HDDE impact the validity of TCEQ's current regulations under Subchapter L since these rules are no longer consistent with California's amended rules. The EMA contends that subsequent implementation of TCEQ's regulations under Subchapter L may be construed as a violation of the identicality (i.e., "no third car") requirement in Section 177 of the Clean Air Act (42 United States Code (USC), §7507).

Re: Docket No. 2007-1058-RUL

Section 177 of the Clean Air Act (42 USC, §7507) allows states to adopt and implement vehicle and engine emission standards that are more stringent than federal requirements if the standards are identical to the California standards for which a waiver has been granted by the EPA for the model years affected by the standards. However, this section prohibits states from taking “any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a “third vehicle”) or otherwise create such a “third vehicle.”

The repeal of §§114.700- 114.702, 114.706, 114.707, and 114.709 removes regulations that have been rendered unnecessary by the EPA’s implementation of federal emission control standards (40 Code of Federal Regulations (CFR) §§ 86.007–11 and 86.008–10; 66 FR 5001, January 18, 2001), including not-to-exceed (NTE) standards, for 2007 and newer model year HDDE and heavy-duty on-highway (HDOH) vehicles, i.e., motor vehicles with a gross vehicle weight rating of greater than 8,500 pounds, that require HDDE manufacturers to meet emission limits that are equivalent to the California standards that were required under §§114.700-114.702, 114.706, 114.707, and 114.709. Repealing these sections provides regulatory flexibility by allowing persons selling or offering to sell new HDDE and HDOH vehicles in Texas with the option of selling new 2008 and newer HDDE and HDOH vehicles that are either certified by the EPA or by CARB, while having no significant impact on air quality. In addition, the repeal of §§114.700-114.702, 114.706, 114.707, and 114.709 eliminates the potential violation of the identicality (i.e., “no third car”) requirement in Section 177 of the Clean Air Act (42 USC, §7507) that might occur if the TCEQ enforced the rules specified under §§114.700-114.702, 114.706, 114.707, and 114.709 to require 2008 and newer model year HDDE and HDOH vehicles to be certified to meet the California emission control standards referenced by these rules.

The executive director supports the repeal of 30 TAC §§114.700-114.702, 114.706, 114.707, and 114.709 because the original justification for Texas to require CARB-certified HDDE has been mitigated by the EPA’s implementation of federal emission control standards, including NTE standards, for 2007 and newer model year HDDE and HDOH vehicles that are equivalent to the current California emission standards, with the exception of California’s new automatic engine idle shut-down device requirements. California’s amended 13 CCR §1956.8 rule requires automatic engine idle shut-down devices on 2008 and newer model year HDDE. The device is required to be activated after five minutes of continuous idling operation, with no exceptions made for idling while a driver is using the vehicle’s sleeper berth for a government-mandated rest period. Section 382.0191 of the Texas Health and Safety Code prohibits the commission from prohibiting or limiting the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle’s sleeper berth for a government-mandated rest period.

**Statutory Authority:**

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and 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 THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeal 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 a State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control

Re: Docket No. 2007-1058-RUL

of the state's air; and §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles.

**Potentially controversial matters:**

The repeal of 30 TAC §§114.700-114.702, 114.706, 114.707, and 114.709, may be viewed as a controversial issue by the groups that submitted written comments opposing this repeal and supporting the adoption of the new California rules that include requirements for automatic engine idle shut-down devices on 2008 and newer HDDE or that supported delaying the repeal until a more complete analysis of the costs and benefits of not adopting the California rules could be conducted. Adoption of the California rules in Texas would violate THSC restrictions because the idling restrictions in the California rules provide no exceptions for idling while a driver is using the vehicle's sleeper berth for a government-mandated rest period.

**Public comment:**

A public hearing on this repeal was held in Austin on March 20, 2008, at 10:00 a.m. at the TCEQ complex located at 12100 Park 35 Circle in Building E, Room 201S. The TCEQ did not receive any oral comments at the public hearing.

The public comment period for this repeal closed on March 26, 2008. The TCEQ received written comments from the Engine Manufacturers Association (EMA), Environmental Defense Fund (EDF), City of Houston (Houston), Greater Houston Partnership (GHP), Houston-Galveston Area Council (HGAC), North Central Texas Council of Governments (NCTCOG), Houston Regional Group of the Sierra Club (Sierra Club), and the United States Environmental Protection Agency (EPA).

The EDF, GHP, HGAC, Houston, NCTCOG, and Sierra Club opposed the proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709. The EDF, Houston, NCTCOG, and Sierra Club commented that the commission should revise its current rules to adopt California's new 13 CCR §1956.8 rules that require automatic engine idle shut-down devices on 2008 and newer model year HDDE. The GHP and HGAC commented that the commission should take no action to repeal its current HDDE rules until a more complete analysis of the potential costs to consumers and emission reduction benefits of implementing the California rules requiring automatic engine idle shut-down devices in HDDE has been conducted, or alternatively, the commission should amend its current rules to include the more stringent California standards.

The EMA supported the proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709, and commented that the proposed rulemaking properly recognizes that the Texas regulations have been rendered unnecessary by the EPA's implementation of stringent federal emission control standards, including strict NTE standards for 2007 and newer model year HDDE and HDOH vehicles, which are equivalent to the California standards originally adopted by the commission. The EMA also commented that the proposed rulemaking recognizes that the rationale for the California standards originally adopted by the commission no longer pertains and that the continued enforcement of the commission's HDDE rules would likely violate the identity requirement of the federal Clean Air Act.

The EPA did not oppose the proposed repeal of §§114.700-114.702, 114.706, 114.707, and 114.709, based on the reasons stated in the proposal and commented that the commission should consider withdrawing the NTE rules previously submitted to the EPA as a SIP revision on July 15, 2002, since

Commissioners

Page 4

May 16, 2008

Re: Docket No. 2007-1058-RUL

the rules are no longer applicable. Doing so would allow the EPA to not have to take action on the pending revision.

**Significant changes from proposal:**

No changes were made from proposal.

**Key points in adoption rulemaking schedule:**

***Texas Register* proposal publication date:** February 29, 2008

**Six-month *Texas Register* filing deadline:** August 29, 2008

**Anticipated *Texas Register* publication date:** June 20, 2008

**Anticipated effective date:** June 26, 2008

**Agency contacts:**

Morris Brown, Rule Project Manager, 239-1438, Air Quality Division

John Minter, Staff Attorney, 239-0663

Kristin Smith, Texas Register Coordinator, 239-0177

Attachments

cc: Chief Clerk, 5 copies  
Executive Director's Office  
David C. Schanbacher, P.E.  
Ashley K. Wadick  
Daniel Womack  
Zak Covar  
Office of General Counsel  
Morris Brown  
Kristin Smith