

TEXAS REGISTER

IN THIS ISSUE

Volume 19, Number 43 June 10, 1994

Page 4463-4589

Office of the Governor

Appointments Made May 26, 1994

Texas Workers' Compensation Insurance Fund Board of Directors 4473

Coastal Water Authority Board of Directors 4473

Appointments Made May 27, 1994

Texas Guaranteed Student Loan Corporation Board of Directors 4473

Produce Recovery Fund Board 4473

Board of Vocational Nurse Examiners 4473

Texas Cancer Council 4473

Texas Ethics Commission

Opinions

AOR-242 4475

Proposed Sections

Board of Nurse Examiners

Practice and Procedure

22 TAC §213 33, §213 34. 4477

Nurse Education

22 TAC §215 1, §215 14 4478

Texas Department of Health

County Indigent Health Care Program

25 TAC §14 202 4479

Emergency Medical Care

25 TAC §157 121, §157 125 4479

Texas Department of Insurance

General Administration

28 TAC §1 301 4486

Texas Natural Resource Conservation Commission

Control of Air Pollution From Nitrogen Com- pounds

30 TAC §117 451 4487

30 TAC §§117 510, 117 520, 117 530 4488

30 TAC §117 601 4489

Texas Youth Commission

Administrative Provisions

37 TAC §81 17 4489

Contents Continued Inside



The Texas Register is printed on recycled paper

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonable available control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller.

Section 182(f) of the 1990 FCAA requires states to adopt rules to apply RACT to major stationary sources of NO_x in certain ozone nonattainment areas, unless it can be demonstrated that reducing NO_x emissions would not contribute to attainment of the ozone standard in those areas. The TNRCC adopted NO_x RACT rules in Chapter 117, effective June 9, 1993, and revised August 30, 1993, for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, based on the strength of preliminary indications of resulting benefits. By late March, 1994, initial results of photochemical grid modeling, using the Urban Airshed Model (UAM), became available which showed that NO_x reductions will not contribute to ozone attainment and, for the most part, will actually increase ozone levels in portions of the Houston/Galveston and Beaumont/Port Arthur areas.

The TNRCC is therefore proposing to revise the compliance schedules of §§117.510, 117.520, and 117.530, contained in Subchapter D, Administrative Provisions, to extend the final compliance dates from May 31, 1995 to May 31, 1997. This extension would delay the implementation of NO_x RACT in the Houston/Galveston and Beaumont/Port Arthur areas, and make the implementation of NO_x RACT contingent on UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study.

If the UAM modeling results from the COAST study indicate that NO_x reductions do not contribute to attainment of the ozone standard, then the requirements of Chapter 117

will be proposed in rulemaking to address these findings and rescind the rule. Existing §117.560, relating to Rescission, details the procedures to be followed in this contingency.

If, however, the UAM modeling results show that NO_x reductions contribute to attainment of the ozone standard, then the requirements of Chapter 117 will be reevaluated, if necessary, and proposed in rulemaking. It is anticipated that such rulemaking would be finalized by November, 1995, thus providing a reasonable implementation schedule for sources required to attain rule compliance by May 31, 1997.

References to the final compliance date appear in §117.451 (relating to Applicability, Nitric Acid Manufacturing-General) and §117.601(a) (relating to Gas-Fired Steam Generation). These rule sections state that for emission units located in ozone nonattainment areas, the existing Chapter 117 emission specifications apply until superseded by the new emission specifications which become effective on the final rule compliance date. The TNRCC is proposing to change references to May 31, 1995 to May 31, 1997 in these sections.

The existing rule requirements for submitting initial control plans under §117.109 and §117.209 (relating to Initial Control Plan Procedures) by April 1, 1994 are not affected by this proposal. These rule sections require the submission of NO_x testing data and other information crucial to refining the modeling data to be used in the COAST study. In addition, revisions to §117.520(1) requiring the submission of certain initial control plan information by September 1, 1994 were adopted on May 25, 1994. The §117.520(1) compliance schedules for submitting initial control plans are not affected by this proposal.

Existing §117.540 (relating to Phased RACT) is not affected by this proposal. The phased RACT rule provides a mechanism whereby affected sources may petition the agency for additional time past May 31, 1995 to comply with the Chapter 117 requirements. The rule section was developed in response to companies' concerns that in spite of good faith efforts to achieve compliance by May 31, 1995, delays could be encountered, and that a procedure was needed to allow a phased approach to implementing the rule requirements. With the proposed extension of the compliance date to May 31, 1997, the need for further extensions by means of the phased RACT approach cannot be accurately determined at this time. Therefore, revisions to §117.540 are not being proposed.

Stephen Minick, budget and planning Division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal cost implications for state and local governments to implement the program.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and potential NO_x emission reductions in ozone nonattainment areas which

are necessary for the timely attainment of the ozone standard.

Economic costs to businesses as a result of this proposal are not easily quantifiable. Extending the rule's final compliance dates will generally result in savings for affected companies which have not yet made large capital commitments to achieve rule compliance. However, for other companies which have already made substantial expenditures or entered into binding contractual agreements to install control equipment, economic impacts are expected to be greater.

A public hearing on this proposal will be held July 6, 1994 at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than July 8, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Randy Hamilton at (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Subchapter C. Acid Manufacturing

Nitric Acid Manufacturing-General

• 30 TAC §117.451

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

§117.451. Applicability. The emission limitations specified in §117.455 of this undesignated head (relating to Emission Specifications) shall apply to all nitric acid production units in the state, with the exception that for nitric acid production units located in applicable ozone nonattainment areas, the emission limitations of §117.405 of this title (relating to Emission Specifica-

tions) shall apply after May 31, 1997 [1995].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441672

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments affect the Health and Safety Code, §382.017.

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of the undesignated head (relating to Utility Electric Generation) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1997 [1995] (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) evaluations and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(A) (No change.)

(B) for units not required to install CEMS pursuant to the requirements of 40 CFR 75, no later than May 31, 1997 [1995];

(3) install all nitrogen oxides (NO_x) abatement equipment, implement all NO_x control techniques, and submit the results of the CEMS or PEMS performance evaluation and quality assurance procedures to the Texas Natural Resource Conservation

Commission no later than May 31, 1997 [1995];

(4) for units operating without CEMS or PEMS, conduct applicable tests for initial demonstration of compliance as specified in §117.111 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1997 [1995];

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1997 [1995].

(6) for units operating with CEMS or PEMS and complying with the NO_x emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1997 [1995];

(7) (No change.)

(8) no later than May 31, 1997 [1995], submit a final control plan for compliance in accordance with §117.115 of this title (relating to Final Control Plan Procedures).

§117.520. Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources. All persons affected by the provisions of the undesignated head (relating to Commercial, Institutional, and Industrial Sources) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1997 [1995] (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than May 31, 1997 [1995];

(3) for units operating without continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS), conduct applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance);

and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1997 [1995];

(4) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1997 [1995];

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title by May 31, 1997 [1995]; and

(6) no later than May 31, 1997 [1995], submit a final control plan for compliance in accordance with §117.215 of this title (relating to Final Control Plan Procedures).

§117.530. Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources. All persons affected by the provisions of the undesignated head (relating to Adipic Acid Manufacturing) in Subchapter C of this chapter or the provisions of the undesignated head (relating to Nitric Acid Manufacturing) in Subchapter C of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1997 [1995] (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation and quality assurance procedures as specified in §117.313 of this title (relating to Continuous Demonstration of Compliance) and §117.413 of this title (relating to Continuous Demonstration of Compliance); provide previous testing documentation for any claimed test waiver as allowed by §117.311(d) of this title (relating to Initial Demonstration of Compliance) or §117.411(d) of this title (relating to Initial Demonstration of Compliance); and conduct applicable initial demonstration of compliance testing as specified in §117.311 and §117.411 of this title, by:

(A) (No change.)

(B) no later than May 31, 1997 [1995], for affected facilities performing process modification or installation of a CEMS or PEMS device as part of the control plan specified in §117.309 and §117.409 of this title.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441673

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

Subchapter E. Gas-Fired Steam Generation

• 30 TAC §117.601

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

§117.601. Gas-Fired Steam Generation.

(a) Subsections (b), (c), and (d) of this section shall apply only in the Dallas/Fort Worth Air Quality Control Region which consists of Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise counties and in the Houston/Galveston Air Quality Control Region which consists of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Waller, and Wharton counties. For gas-fired steam generators located in applicable ozone nonattainment areas, only the emission limitations of §117.105 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.205 of this title (relating to Emission Specifications), and §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) shall apply after May 31, 1997 [1995].

(b)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441674

Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.17

The Texas Youth Commission (TYC) proposes new §81.17, concerning research projects. The new rule will provide guidelines for TYC research projects as required by the Appropriations Act, §66.

John Franks, director of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that TYC research projects provide benefits to TYC or the juvenile justice profession and ensure confidentiality of TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.041, which provides the Texas Youth Commission with the authority to conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of children.

The proposed rule implements the Human Resource Code, §61.034.

§81.17. Research Projects.

(a) Policy.

(1) The Texas Youth Commission (TYC) encourages and uses research to aid decision making for youth treatment pro-

grams and agency operations and collaborates with other agencies whenever possible. This policy sets forth procedures which comply with state and federal guidelines and accepted professional and scientific ethics.

(2) Any patentable product, process, or idea that might result from a research project funded by the Texas Youth Commission is the property of the Texas Youth Commission.

(3) Participation by TYC youth as research subjects is restricted as follows.

(A) TYC youth will not be used in experimental projects involving medical, pharmaceutical, or cosmetic research.

(B) TYC youth may participate in nonmedical, nonpharmaceutical or noncosmetic research on a voluntary, non-coercive basis.

(C) TYC youth who elect to participate in research projects will not be denied basic services available to other youth, nor participate in research activities which may accrue negative personal results.

(4) TYC staff, university faculty or students, or contracted firms or individuals may, if approved, conduct research if they:

(A) show that the proposed project will provide benefits to TYC or the juvenile justice profession;

(B) ensure confidentiality of TYC youth;

(C) do not place undue burden on TYC staff, youth or resources; and

(D) agree to comply with other agency rules of conduct for research as specified in subsection (b) of this section.

(b) Rules. Procedures for research projects are managed through the research and planning department according to the following rules.

(1) Research Proposals. Project directors other than those employed by the research and planning department must submit a research proposal to the research and planning department including:

(A) project title;

(B) names and qualifications of all project researchers;