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specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test shall be required for proposed VOC [or NO_x] emissions increases that equal or exceed five tons per year in moderate, serious, and severe ozone nonattainment areas, and for NO_x emissions increases that equal or exceed forty tons per year in moderate, serious, and severe ozone nonattainment areas. In applying the de minimis threshold test, if the net emissions increases aggregated over the contemporaneous period are greater than the major modification levels stated in Table I, then the following requirements apply:

(1)-(4) (No change.)

(b) For sources located in the Dallas/Fort Worth ozone nonattainment area (Collin, Dallas, Denton, and Tarrant counties) or the El Paso ozone nonattainment area (El Paso County), the requirements of this section do not apply to NO_x emissions.

(c) For sources located in the Houston/Galveston (HGA) ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) or the Beaumont/Port Arthur (BPA) ozone nonattainment area (Hardin, Jefferson, and Orange counties), the following shall apply to NO_x emissions:

(1) For permit applications in review after April 12, 1995 and declared administratively complete on or before December 31, 1997:

(A) Subsection (a)(1), (2), and (4) of this section do not apply.

(B) The requirements of subsection (a)(3) of this section apply and shall be made a part of the source's permit. However, the requirements shall be held in abeyance for a period ending no sooner than January 1, 1998. The Commission may on or after January 1, 1998, and after making the determinations described in paragraph (2) of this subsection, require the source to implement the permit requirements imposed pursuant to the requirements of subsection (a)(3) of this section. If the Commission requires implementation, the source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000.

(C) Documentation of proposed increases of NO_x equal to or greater than 40 tons per year, as well as documentation of netting calculations for these increases, shall be submitted.

(D) A source otherwise subject to the requirements of subsection (a)(1)-(4) of this section may, at its option, comply with any of those requirements.

(2) The Commission will review, during the years 1996 and 1997, the results of the Urban Airshed Model for the HGA and BPA ozone nonattainment areas, using data from the Coastal Oxidant Assessment for Southeast Texas study, in accordance with the United States Environmental Protection Agency document "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)" (December 1993). If the Commission determines that additional NO_x reductions in the nonattainment area would contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area the Commission will notify sources which have permit requirements in abeyance pursuant to paragraph (1)(B) of this subsection, that the period of abeyance shall end. The source shall obtain the NO_x offsets as specified in subsection (a)(3) of this section no later than January 1, 2000. On or after January 1, 1998, the Commission pursuant to a formal rulemaking proceeding may require sources in the HGA and BPA nonattainment areas who file an application after January 1, 1998, to comply with the requirements of subsection (a)(1)-(4) of this section.

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 August 24, 1995.

TRD-9510765

Lydia Gonzalez-Gromatzky
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption. December 20, 1995

For further information, please call: (512) 239-1970

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Chapter 117. Control of Air
Pollution From Nitrogen
Compounds

Subchapter C. Acid Manufacturing

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, to extend the final compliance dates in Chapter 117, concerning Control of Air Pollution From Nitrogen Compounds, by two years to May 31, 1999. Chapter 117 was adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (CAA) Amendments for states to apply reasonably available

control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller (Houston/Galveston ozone nonattainment area) and Hardin, Jefferson, and Orange (Beaumont/Port Arthur ozone nonattainment area).

Section 182(f) of the 1990 CAA requires states to adopt rules to apply RACT by May 31, 1995 to major stationary sources of NO_x in ozone nonattainment areas designated moderate or above, 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, for the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas, based on the strength of preliminary indications of resulting benefits. By March, 1994, initial results of photochemical grid modeling, using the Urban Airshed Model (UAM), became available which predicted that NO_x reductions would be counterproductive to ozone control in portions of the HGA and BPA areas.

As a result, the Chapter 117 final compliance date was extended from May 31, 1995 to May 31, 1997 in rulemaking effective September 22, 1994. This extension delayed the implementation of NO_x RACT in HGA and BPA to allow time for UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results are critical in determining whether, and to what extent, NO_x reductions will be needed to attain the ozone standard.

Based on UAM modeling, the TNRCC submitted a petition to the EPA on August 17, 1994, requesting that NO_x requirements in HGA and BPA be temporarily suspended under the CAA, §182(f). The EPA approved the §182(f) exemption on April 12, 1995, granting a temporary exemption until December 31, 1996 for the following NO_x requirements: RACT, nonattainment new source review, vehicle inspection/maintenance, and conformity. The approval stipulated that NO_x RACT must be implemented no later than May 31, 1997.

The schedule submitted in the state's original §182(f) petition for HGA and BPA was based on completion of the UAM COAST modeling for attainment demonstration purposes by May 31, 1996. Now, an adjusted schedule has been developed to be consistent with submittal of the state's phased attainment demonstration State Implementation Plan (SIP) by May 31, 1997. This additional year allows the UAM modeling, using COAST data, to accommodate improvements in the modeling process. Submittal of the UAM modeling in mid-1997 using the more refined COAST data will allow the development of better substantiated control programs and minimize the possibility that earlier modeling could result in unnecessary or even counterproductive control programs, particularly if NO_x controls are determined to not be needed.

The EPA's approval of the petition to extend the temporary §182(f) NO_x exemption would

provide additional time necessary to perform the UAM modeling. If UAM modeling results support a more specifically targeted NO_x control strategy, revisions to the NO_x RACT rule may be necessary before implementation. In that case, the NO_x RACT rule would be revised to eliminate any requirements shown by the UAM to be ineffective, and would be submitted to EPA by May 31, 1997. Extending the NO_x RACT compliance date to May 31, 1999 would provide industry with the necessary lead time to begin implementing the rule after UAM modeling results become known and rule revisions, if needed, are adopted. The state is submitting to EPA a petition to extend the temporary §182(f) NO_x exemption by one year to December 31, 1997. The petition requests that the NO_x RACT implementation date be extended two years to May 31, 1999.

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, 1997 to May 31, 1999. 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 may 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.

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, 1997 to May 31, 1999 in these sections.

Existing §117.540 (relating to Phased RACT) is not being revised in this proposal. The phased RACT rule was adopted to allow affected sources to petition the agency for additional time past the original May 31, 1995, compliance date to implement 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, 1999, references to dates in §117.540 will need to be changed. The TNRCC plans to propose these revisions by December, 1995, in order to combine them with separate revisions to §117.540(c) authorizing alternative fuel credits for Chapter 117 compliance.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there are no significant fiscal implications anticipated for state and local governments as a result of administra-

tion or enforcement of the sections. Economic costs to businesses as a result of this proposal are not readily 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.

Mr. Minick also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improved consistency with EPA requirements and provisions of the FCAA Amendments and potential NO_x emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard. There are no economic costs anticipated for any individual required to comply with the sections as proposed. 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.

A public hearing on this proposal will be held October 2, 1995 at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95118-101-AI. Please fax written comments to (512) 239-5687. Copies of the proposed rule are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Mike Magee at (512) 239-1511.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

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 implements the Health and Safety Code, §382.017.

§117.451. Applicability. The emission limitations specified in §117.455 of this title (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 non-attainment areas, the emission limitations of §117.405 of this title (relating to Emission Specifications) shall apply after May 31, 1999 [1997].

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 August 24, 1995.

TRD-9510766

Lydia Gonzalez-Gromatzky
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: December 20, 1995

For further information, please call: (512) 239-1970

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 implement the Health and Safety Code, §382.017.

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of §§117.101, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, and 117.121 of this title (relating to Utility Electric Generation) shall be in compliance as soon as practicable, but no later than May 31, 1999 [1997] (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 equipment and software not required pursuant to 40 CFR 75, no later than May 31, 1999 [1997].

(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, 1999 [1997];

(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, 1999 [1997];

(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 no later than July 31, 1999 [1997];

(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, 1999 [1997];

(7) (No change.)

(8) no later than May 31, 1999 [1997], 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 §§117.201, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, and 117.223 of this title (relating to Commercial, Institutional, and Industrial Sources) shall be in compliance as soon as practicable, but no later than May 31, 1999

[1997] (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 NO_x abatement equipment and implement all NO_x control techniques no later than May 31, 1999 [1997];

(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, 1999 [1997];

(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, 1999 [1997];

(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, 1999 [1997]; and

(6) no later than May 31, 1999 [1997], 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 §§117.301, 117.305, 117.309, 117.311, 117.319, and 117.321 of this title (relating to Adipic Acid Manufacturing) or the provisions of §§117.401, 117.405, 117.409, 117.411, 117.413, 117.419, and 117.421 of this title (relating to Nitric Acid Manufacturing -Ozone Nonattainment Areas) shall be in compliance as soon as practicable, but no later than May 31, 1999 [1997] (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, 1999 [1997], 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 August 24, 1995.

TRD-9510767

Lydia Gonzalez-Gromatzky
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

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For further information, please call: (512) 239-1970

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 TNRC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements 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, 1999 [1997].

(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 August 24, 1995.

TRD-9510768 Lydia Gonzalez-Gromatzky
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

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For further information, please call: (512) 239-1970

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 1. Executive Administration

Vacancies

• 31 TAC §1.3

The General Land Office, with the approval of the School Land Board, proposes an amendment to §1.3, concerning fees and charges which may be collected by the School Land Board.

As originally adopted in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1311), §1.3 contains a comprehensive list of all fees to be charged and collected by both the General Land Office and the School Land Board, even though the School Land Board fees more properly belong in Title 31, Part IV (School Land Board). The consolidation of all fees administered by the General Land Office into one section has not had the intended result of clarification and simplification of the process for the public. The proposed amendment will delete §1.3(c) (School Land Board Fees and Charges) from Title 31, Part I (General Land Office) and, with the adoption of a new §155.15, the schedule of fees will be moved to Title 31, Part IV, with other School Land Board admin-

istrative rules.

Christopher K. Price, Deputy Commissioner, Asset Management Division, Texas General Land Office, has determined that for each year of the first five years that the rule will be in effect there will be minimal or no fiscal implications resulting from administration or enforcement of the rule amendment. No additional administrative costs will be incurred as a result of this proposal.

Mr. Price also has determined that the public benefit anticipated as a result of amending the section will be clarification of charges and fees for coastal activities administered by the School Land Board. Mr. Price has determined that for each year of the first five years that the proposed amendment is in effect there will be no significant increase in economic costs to persons or small business for compliance with the rule as proposed.

Comments on the proposed amendment may be submitted to Robert Moreland, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). Comments must be received by 5:00 p.m. on Wednesday, October 4, 1995.

The amendment is proposed under the Texas Natural Resources Code, §§33.051, 33.052, 33.063 and 33.064, which authorizes the General Land Office and/or School Land Board to adopt procedural and substantive rules necessary to administer, implement, and enforce the Coastal Public Lands Management Act of 1973.

The Texas Natural Resources Code, Chapter 33, §33.063 is affected by the proposed amendment.

§1.3. Fees.

(a)-(b) (No change.)

(c) School Land Board fees and charges. The School Land Board is authorized and required under the Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable.

(1) Definitions. The following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Adjacent littoral property—The property, specified in the easement application as owned by the easement applicant, that is contiguous and borders the coastal public land upon which the easement is sought.

(B) Appraised market value of adjacent littoral property—Fair market value of the unimproved adjacent littoral property. This value is the appraised value as determined by the appropriate tax appraisal district unless the School Land Board determines that such an appraisal is not reasonable after consultation with the appraisers of the General Land Office.

((C) Basin—A structure used for commercial or industrial activity that consists of the area of the state land encumbered and any fixtures attached thereto. This definition includes the construction and maintenance of marinas, piers, walkways, docks, dolphins, and wharves and any and all dredged area associated therewith.

((D) Basin formula—The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment.

((E) Channel—an excavated or dredged structure on coastal public lands that enhances vessel access to littoral property. This definition applies only to commercial and industrial activity and excludes any structure that would be included in the definition of fill area or basin.

((F) Commercial activity—activity which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses if there is revenue generating activity conducted on the premises.

((G) Encumbered state land—the amount of state coastal public land encumbered by the permitted activity and is expressed in number of square feet.

((H) Evaluation fee—a one-time easement evaluation fee assessed upon the granting of the initial easement not to exceed 1.5% of the value of the state land encumbered. The value of the state land encumbered equals the state land encumbered multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount.

((I) Fill area—a structure, excluding riprap, breakwaters, jetties, and groins that permanently and fully encumbers, and entirely displaces the water covering the coastal public land. This activity includes the construction and maintenance of bulkheads.

((J) Fill formula—state land encumbered multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment.

((K) Homeowners association—an association whose individual members, by virtue of holding full and exclusive legal title to the adjacent littoral property area specifically defined in an easement