

# TEXAS REGISTER



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For further information, please call: (512) 440-3700

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 115. Control of Air Pollution From Volatile Organic Compounds

##### Subchapter G. Consumer-Related Sources

##### Utility Engines

###### • 30 TAC §115.621, §115.625

The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopts the repeal of §115.621 and §115.625, concerning Utility Engines without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9378). This action removes regulations that have been made redundant by recent federal rulemaking and policy decisions.

The Utility Engine rule was adopted in November 1993, as part of a large rule revision package intended to reduce the emissions of volatile organic compounds (VOC) 15% below 1990 levels in the four areas of Texas that do not meet the national ambient air quality standard for ozone. These reductions were to be accomplished by the end of 1996. The rule established emission standards for small engines under 25 horsepower commonly used in lawn mowers, garden, and light industrial equipment. Emissions from these engines account for about 9.0% of VOC emissions inventories and were not previously regulated.

In December 1993, the Outdoor Power Equipment Institute (OPEI) filed suit against the TNRCC stating that the implementation schedule of the Utility Engine rule was in conflict with the Federal Clean Air Act. In an attempt to settle the suit, the TNRCC revised the rule in November 1994, to match the anticipated federal implementation schedule. The TNRCC retained the rule as a contingency in case the federal rule was delayed or modified. The TNRCC also agreed to evaluate emissions from 1994 and 1995 model year engines with the aid of the United States Environmental Protection Agency (EPA) Office of Mobile Sources. The OPEI contended that these engines, while not meeting the anticipated federal standards, produced less emissions than engines the TNRCC used to calculate emissions reductions required by 1996. Emissions data was submitted by OPEI.

In May 1995, the federal small engine rule was adopted with an implementation schedule that called for the introduction of complying engines over a two-year period from January 1996-December 1997. The TNRCC rule applies to engines manufactured after August 1, 1996, and conflicts with the adopted federal schedule. In September 1995, the EPA indicated that it would approve early reduction credit for 1994 and 1995 engines. This credit can be applied to the reductions in VOC that the TNRCC is required to achieve in the four ozone nonattainment areas.

Using conservative calculations, the emissions credits that accumulate as a result of these federal actions are comparable to those that the staff calculated from implementation of the TNRCC rule and make the rule unnecessary. Based on these developments, the TNRCC repeals the Utility Engine rule.

A public hearing was held in Austin on December 7, 1995 at the TNRCC offices located at 12100 North IH-35, Park 35 Technology Center, Austin. Three commenters submitted written testimony during the public comment period which closed December 11, 1995.

The OPEI and the Southwest Association support the repeal of the rule. The EPA did not oppose the repeal of the Utility engine rule but commented that, since the TNRCC was taking early VOC reduction credit as a result of EPA policy decisions, there could be less credit available after 1996 under the federal small engine rule. The TNRCC should be prepared to make up this credit.

The TNRCC is aware that further analysis of available VOC reduction credit by the EPA could modify the reductions available from the federal rule. The TNRCC does not anticipate that these potential modifications will significantly affect the rate of progress nor post 1996 state implementation plans. The TNRCC will evaluate the plans as necessary.

The repeals are adopted 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 11, 1996.

TRD-9600380

Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

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

## Chapter 117. Control of Air Pollution From Nitrogen Compounds

### Subchapter C. Acid Manufacturing

The Texas Natural Resource Conservation Commission (TNRCC or Commission) adopts 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. The amendments are adopted without changes to the proposed text as published in the September 5, 1995, *Texas Register* (20 TexReg 6912), and will not be republished. Chapter 117 was adopted in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO<sub>x</sub>) 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).

In related actions, the commission has approved submittal of a petition to the EPA requesting a one-year extension of the exemption, previously granted by EPA under §182(f) of the FCAA, from federal NO<sub>x</sub> requirements. The FCAA, §182(f) allows the following federally required measures pertaining to NO<sub>x</sub> to be waived if the state demonstrates that NO<sub>x</sub> reductions do not contribute to ozone attainment: RACT, nonattainment new source review, vehicle inspection/maintenance, and conformity. Based on Urban Airshed Model (UAM) modeling, the TNRCC submitted a petition to the EPA on August 17, 1994, requesting that NO<sub>x</sub> requirements in the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) areas be temporarily suspended under the FCAA, §182(f). The EPA approved the §182(f) exemption on April 12, 1995, granting a temporary exemption until December 31, 1996, for the federally required NO<sub>x</sub> measures referenced previously. The approval stipulated that NO<sub>x</sub> RACT must be implemented no later than May 31, 1997. The current petition requests extension of the temporary exemption, previously granted under §182(f), and extension of the temporary NO<sub>x</sub> exemption for transportation conformity, under §182(b)(1) of the FCAA, to December 31, 1997; and extension of the NO<sub>x</sub> RACT final compliance date to May 31, 1999.

Section 182(f) of the 1990 FCAA requires states to adopt rules to apply RACT by May 31, 1995 to major stationary sources of NO<sub>x</sub> in ozone nonattainment areas designated moderate or above, unless it can be demonstrated that reducing NO<sub>x</sub> emissions would not contribute to attainment of the ozone standard in those areas. The TNRCC adopted NO<sub>x</sub> RACT rules in Chapter 117, effective June 9, 1993, for the HGA and BPA ozone nonattainment areas, based on the strength of prelimi-

nary indications of resulting benefits. By March, 1994, initial results of photochemical grid modeling, using the UAM, became available which predicted that NO<sub>x</sub> 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. The extension delayed the implementation of NO<sub>x</sub> 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<sub>x</sub> reductions will be needed to attain the ozone standard.

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<sub>x</sub> controls are determined to not be needed. The EPA's approval of the petition to extend the temporary §182(f) NO<sub>x</sub> exemption would provide additional time necessary to perform the UAM modeling. Extending the NO<sub>x</sub> RACT compliance date to May 31, 1999, will provide industry with the necessary lead time to begin implementing the rule after UAM modeling results become known.

The TNRCC is, therefore, adopting revised compliance schedules in §§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<sub>x</sub> 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 applicable 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. This adoption changes references from May 31, 1997 to May 31, 1999 in these sections.

This adoption does not amend existing §117.540 (relating to Phased RACT). 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 the required date, delays could be encountered, and that a procedure was needed to allow a phased approach to implementing the rule requirements. With the adoption 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 February, 1996, in order to combine them with separate revisions to §117.540(c) authorizing alternative fuel credits for Chapter 117 compliance.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rule amendment is to extend the Chapter 117 final compliance date by two years to May 31, 1999. The rule amendment will substantially advance this specific purpose by changing rule references of May 31, 1997 to May 31, 1999 where appropriate. Promulgation and enforcement of this rule amendment will not affect private real property which is the subject of the rule because the change is only to postpone the rule final compliance date.

A public hearing on this proposal was held October 2, 1995, at the TNRCC Austin offices. In addition to the Chapter 117 NO<sub>x</sub> RACT final compliance date extension and submittal of a petition to the EPA

requesting a one-year extension of the temporary §182(f) NO<sub>x</sub> exemption and a one-year extension of the transportation conformity NO<sub>x</sub> exemption under §182(b)(1), the public hearing concerned revisions to §116.150, regarding NO<sub>x</sub> nonattainment new source review. Because the adoption of amendments to §116.150 proceeded on an expedited schedule, comments from the public hearing concerning those amendments have already been addressed in the October 20, 1995 *Texas Register* (20 TexReg 8619). Regarding the other referenced issues, two oral comments were received at the public hearing, and eight written comments were received.

Amoco Corporation, Dow Chemical Company, Houston Lighting and Power, Mobil Oil Corporation, the Texas Chemical Council, and the Texas Mid-Continent Oil and Gas Association expressed general support of the two-year extension of the NO<sub>x</sub> RACT final compliance date to May 31, 1999.

The staff acknowledges support for the referenced amendment.

Akin, Gump, Strauss, Hauer and Feld, L.L.P. submitted comments on behalf of Enron/Dominion Cogen Corp. (EDCC), which operates gas-fired cogeneration facilities in the HGA area. The commenter expressed support of the two-year extension of the NO<sub>x</sub> RACT final compliance date in §117.601 to May 31, 1999, which provides industry with the necessary lead time to implement the rule. The commenter stated that the economics of cogeneration require that they operate reliably and without unplanned interruption. For RACT, this means they must have adequate lead time to have control equipment manufactured, then to have it installed during scheduled maintenance operations which typically occur every two years. The commenter also stated that the implementation of RACT controls may result in permanent reduction of cogeneration unit generating capacity, resulting in the need for units to apply controls no earlier than required. The EPA Region 6 Dallas office commented that the state has requested two additional years for compliance with the NO<sub>x</sub> RACT rules, based on a seven-month technical delay in UAM modeling. The EPA recommended that the NO<sub>x</sub> RACT final compliance date be extended only one year, to May 31, 1998, since the NO<sub>x</sub> RACT rules are adopted and industry should have significant lead time when the modeling results are taken to public hearing in late 1996. The EPA further commented that, if the TNRCC revises the existing NO<sub>x</sub> RACT rules, such a revision would have to be based on a modeled attainment demonstration for the final attainment year.

It is important that industry have sufficient lead time to implement the rule once the COAST modeling results are known. The original adoption of the NO<sub>x</sub> RACT rule on May 11, 1993, allowed two full years until the final compliance date of May 31, 1995. In June 1994, after the initial modeling indicated that NO<sub>x</sub> would not be beneficial, the TNRCC proposed in rulemaking to extend the compliance date of NO<sub>x</sub> RACT to May 31, 1997. This proposal was based on a schedule developed in May 1994 (Table 2 of letter, May 19, 1994, from TNRCC Chairman John Hall to EPA Assistant Administrator Mary Nichols), which indicated that directional guidance regarding the benefit of NO<sub>x</sub> reductions for ozone control would be generated from modeling by May 1995. Thus, the extended schedule also was based on a two-year period between identification of the need to make the reductions and the industry compliance date. However, by the time of adoption in August 1994, the date for obtaining directional guidance from the modeling had been revised to a period between November 1995 and May 1996 (this was also the projected UAM completion period in the 182(f) exemption request), and the lead time available for NO<sub>x</sub> RACT implementation was shortened to twelve to eighteen months after modeling results were to have become available. This reduction in lead time could partly be accommodated because initial compliance plans, representing a substantial portion of the work effort, had already been completed. However, the effect of the rule delay since the original §182(f) petition will be to make these earlier efforts not fully cumulative, since conditions will have changed in many cases. In particular, it will be necessary to budget for control equipment and to set installation dates to coincide with scheduled outages. Budget and outage schedules usually have annual and sometimes longer time frames, so a one year implementation schedule is not appropriate.

The schedule previously proposed in August 1994, for completing the §182(f) modeling has been displaced by as much as 15 months, until March 1997, to allow time for analyses of the COAST data before input to the model. Modeling for directional guidance is projected for completion by December 1996. If this modeling shows that NO<sub>x</sub> reductions are

beneficial in controlling ozone, specific modeling sensitivity analyses, to be completed by March 1997, would be performed which simulate various reductions required to attain the ozone standard. During the period in 1995 when preliminary COAST model runs have been performed, it has become clear from discussions with EPA that a more formal process (i.e., public hearings) is needed, rather than TNRCC simply providing the information on the modeling results. Factoring in the additional time needed for documenting modeling results, holding public hearings, and taking action by the commission adds four to six months to the process before industry has the necessary signal to proceed with rule implementation. In contrast to EPA's expectation that modeling will be taken to hearing in late 1996, the TNRCC had intended to hold hearings on the SIP and UAM modeling in March or April 1997. Submittal of the SIP and UAM modeling results to EPA is now scheduled for May 1997.

Setting a final NO<sub>x</sub> RACT compliance date two years past the May 1997, submittal of the SIP and modeling results to EPA is thus a reasonable time frame, and brings the compliance schedule into line with the original two-year lead time afforded to industry. If modeling sensitivity analyses show the need for revisions to the NO<sub>x</sub> RACT rule to eliminate provisions determined to be ineffective in reducing ozone, additional time would be needed to adopt these revisions. A tentative time frame of December 31, 1997, for adoption of rule revisions, if needed, and a final compliance date of December 31, 1999, would then be necessary. It should be noted that the current petition requests an extension of the original §182(f) exemption by one year, to December 31, 1997, whereas the current time frame to reasonably implement NO<sub>x</sub> RACT extends to May 31, 1999.

The TNRCC would like to clarify, in response to EDCC's comments, that the compliance date requirements applicable to cogeneration facilities are located in §117.520, rather than §117.601.

The Southeast Texas Regional Planning Commission (SETRPC) and Houston-Galveston Area Council (HGAC) supported the petition to extend the temporary §182(f) exemption for HGA and BPA. The SETRPC suggested that the exemption be extended an additional year, to December 31, 1998, if feasible. The HGAC requested that if the TNRCC pursues further extensions for UAM modeling, it should request a further NO<sub>x</sub> exemption for transportation conformity as well.

The current petition to the EPA requests a one-year extension of the temporary §182(f) exemption for HGA and BPA, based on a revised modeling schedule with submittal of modeling results to EPA by May 31, 1997. Thus, the §182(f) extension would be extended from December 31, 1996 to December 31, 1997. The timeline for expiration of the proposed §182(f) exemption extension is closely tied to the projected completion of UAM modeling, using the COAST data. The proposed extension would expire seven months past the submittal of the SIP and UAM modeling to EPA, which is consistent with the current exemption. The current exemption expires seven months past May, 1996, the date for submittal of the SIP and UAM modeling to EPA in the original exemption proposal. Any further extension of NO<sub>x</sub> requirements not related to modeling completion departs from EPA's original basis for granting the exemption. However, if it becomes necessary to extend the schedule for completing UAM modeling, the TNRCC will work with EPA to assure that applicable NO<sub>x</sub> requirements are implemented within a reasonable time frame. Initial UAM modeling results for NO<sub>x</sub> directional guidance are expected to be available by December 1996, a full year before the extended exemption, if approved, expires. During that time, modeling results will be documented and public hearings will be held. The TNRCC will keep the SETRPC and HGAC fully informed of developments in the UAM modeling, so that advance planning necessary to comply with transportation conformity requirements can proceed.

The Galveston-Houston Association for Smog Prevention stated its opposition to the extension of the §182(f) exemption, and to the extension of the NO<sub>x</sub> RACT compliance date. The commenter further stated that the additional benefits of reduced acid rain and air toxics would result from implementing NO<sub>x</sub> controls now.

Although NO<sub>x</sub> emissions do play a minor role in the formation of visible haze, fine acid particulate matter, and acid rain, these effects have not been adequately quantified to the extent that would warrant NO<sub>x</sub> reductions independent of the ozone control strategy. For this reason, it is difficult to weigh these contributions against prematurely implementing a NO<sub>x</sub> control program which possibly would increase ozone levels, based on currently available air quality modeling data.

## Nitric Acid Manufacturing-General

### • 30 TAC §117.451

The amendment is adopted 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Legal Services Division  
Texas Natural Resource Conservation Commission

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

## Subchapter D. Administrative Provisions

### • 30 TAC §§117.510, 117.520, 117.530

The amendments are adopted 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter E. Gas-Fired Steam Generation

### • 30 TAC §117.601

The amendment is adopted 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Natural Resource Conservation Commission

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

## Chapter 330. Municipal Solid Waste

### Subchapter P. Fees and Reporting

#### • 30 TAC §330.601, §330.602

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §330.601 and §330.602, concerning the exemption from payment of municipal solid waste fees for