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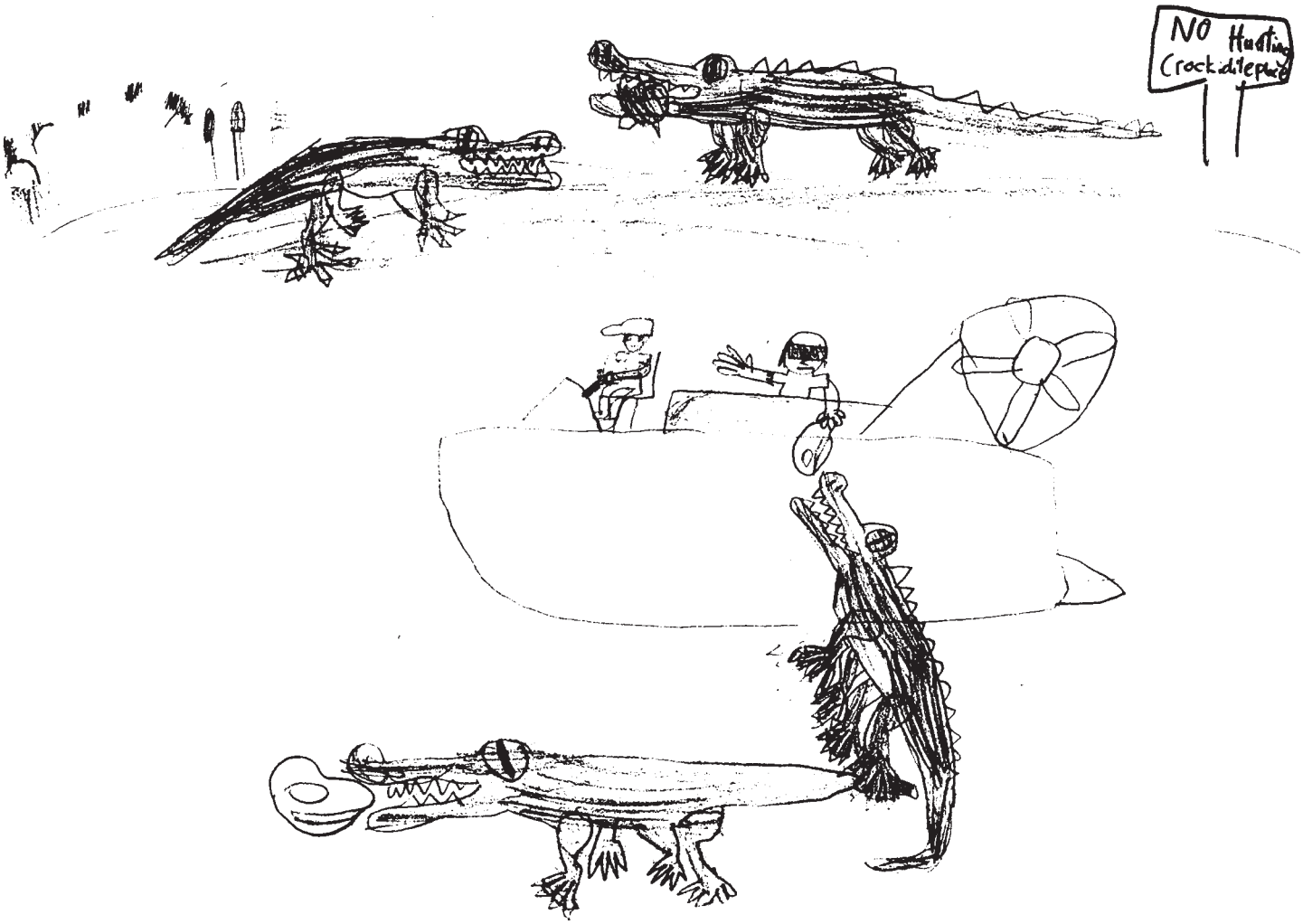

Application for admission to Texas of PacifiCare International Limited, a foreign third party administrator. The home office is Dublin, Ireland.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200000036
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 4, 2000

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission (TNRCC) proposed revisions to Chapter 117, specifically 30 TAC §§117.10, 117.131, 117.133-117.135, 117.138, 117.141, 117.143, 117.145, 117.147, 117.149, 117.260, 117.261, 117.265, 117.273, 117.279, 117.283, 117.512, and 117.524 which appeared in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11959). The following errors were as submitted by TNRCC.

1. Under BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES, paragraph 5, third sentence, the words "in the Tyler-Longview area" should be deleted. In the fourth sentence, the word "Longview" should be replaced with the words "some areas." In paragraph 6, seventh sentence, "and the surrounding eight consolidated metropolitan statistical area (CMSA) counties" should be added to the end of the sentence. Paragraph 9, third sentence, reads as follows: "...would reduce 1997 EGF NOx emissions in the attainment counties of east and central Texas by about 55%...." The reference to 55% should be 50%.

2. Under SECTION BY SECTION ANALYSIS, paragraph 26, the following sentences should be added to the end of the paragraph. "A comprehensive trading system is contemplated for proposal during summer 2000. The commission believes it is appropriate to develop a holistic approach to emission trading, as opposed to a piecemeal approach. However, the commission is open to accepting all ideas regarding an emission trading program. Comments on emission trading will not be addressed as part of this rulemaking, but will be addressed when the commission considers its banking and trading program during summer 2000." The following phrase should be added to the end of the last sentence in Paragraph 31: ", estimated to occur sometime during summer 2000."

3. The FISCAL NOTE and the PUBLIC BENEFIT sections should be entirely replaced with the following text.

FISCAL NOTE

Bob Orozco, a technical specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect there will be no significant fiscal implications for units of state government as a result of administration or enforcement of the proposed amendments. However, there will be significant fiscal implications for units of local government and river authorities that own and operate EGFs (including electric utility boilers and/or stationary gas turbines used to generate electric power) located in 31 counties in east and central Texas. The affected units of government are the Lower Colorado River Authority and the cities of Austin, Bryan, Denton, Garland, and Greenville.

The proposed amendments to Chapter 117 would require reductions in emissions of NOx from certain electric generating facilities and cement kilns located in 34 attainment counties in east and central Texas as part of the strategy to reduce emissions of NOx necessary for the counties in the BPA, DFW, and HGA ozone nonattainment areas to be able to demonstrate attainment with the NAAQS for ozone. The proposed amendments are one element of the proposed DFW, BPA, and HGA Attainment Demonstration SIP. A SIP is a plan developed for any region where existing (measured and estimated) ambient levels of pollutant exceeds the levels specified in a national standard. The plan sets forth a control strategy that provides emission reductions necessary for attainment and maintenance of the national standards.

The proposed amendments to Chapter 117 require electric power boilers and gas fired turbines to reduce NOx to an emission rate of 0.165 lb/MMBtu or less. In addition, the proposed amendments would require cement kilns to reduce NOx emissions to levels specified in the EPA's notice of proposed rulemaking concerning Federal Implementation Plans to Reduce the Regional Transport of Ozone which was published in the October 21, 1998, issue of the Federal Register (63 FR 56394). These levels of emissions are consistent with plans to attain and maintain the requirements of the NAAQS.

The proposed amendments to Chapter 117 may require certain units of local government, river authorities, and other major electric power producers located in 31 attainment counties in east and central Texas that own and operate EGFs (including electric utility boilers and/or stationary gas turbines used to generate electric power) to reduce NOx emissions from those facilities. It is anticipated that the following EGFs will be affected by the proposed amendments: Welsh units 1, 2, and 3; Coleto Creek unit 1; J.K. Spruce unit 1; J.T. Deely units 1 and 2; Sam Seymour units 1, 2, and 3; Dansby unit 1; Monticello unit 3; Pirkey unit 1; San Miguel; Gibbons Creek unit 1; Limestone units 1 and 2; Martin Lake units 1, 2, and 3; and Sandow unit 4. It is also anticipated that the following EGFs will not be affected because further control is either not required and/or they already meet the proposed emission standards: Powerlane unit 3; Barney M. Davis unit 2; Decker Creek unit 2; TNP One units 1 and 2. It is also anticipated that the following stationary gas turbines will not be affected because they meet an exemption, based either on annual operation below 850 hours per year or heat input below 2.2 10(11) Btu: City of Bryan Atkins unit 7, Decker Creek units 1A/B-4A/B, DeCordova units 1-4, and Newgulf unit 1. In addition, it is anticipated that Tenaska units 1 and 2 will not be affected because these units are currently permitted at 42 parts per million NOx, which is equivalent to the proposed limit of 0.15 lb NOx/MMBtu.

The proposed amendments will also require Portland cement kilns in five counties in east and central Texas area to reduce NOx emissions. The five counties in east and central Texas affected by the proposed amendments are Bexar, Comal, Ellis, Hays, and McLennan Counties.

Applicability of the proposed amendments is limited to cement kilns and major electricity producers such as electric cooperatives, independent power producers, municipalities, river authorities or investor owned utilities in the specified counties. The proposed amendments would not apply to small auxiliary boilers or owners or operators of commercial, institutional, and industrial sources, some of whom may provide electric power to an electric grid for compensation. Gas turbine cogeneration facilities located at certain chemical plants and refineries in the affected counties are examples of sources that are not affected by the proposed amendments.

The fiscal implications for units of local government and the Lower Colorado River Authority with affected electric generating facilities will be significant and similar to those for business in general. It is estimated that emission reductions by the Lower Colorado River Authority at the Sam Seymour EGF units 1, 2, and 3 will cost approximately $1,261 annually per ton of NOx reduced or approximately $5.8 million to reduce emissions by 4,580 tons. It is estimated that the cities of Bryan, Denton, Garland, and Greenville, which share ownership of the Gibbons Creek unit 1, will incur annual costs of approximately $1,111 per ton of NOx reduced or approximately $1.8 million to reduce emissions by 1,610 tons. The Dansby EGF, which is owned by the city of Bryan, will have to reduce emissions by 76 tons, but an estimated annual cost per ton of NOx reduced is not available at this time. If the weighted annual cost for combustion modifications at other utilities is used for the Dansby plant, the annual cost would be approximately $800 per ton of NOx reduced or approximately $60,800 annually to reduce emission by 76 tons. It is anticipated that the gas turbines will not be affected by the proposed amendments because they are not operated above the proposed exemption levels or are already meeting the proposed emission limit. However, if any of the turbines were required to operate above the exemption levels, the estimated cost of control is $30/kilowatt and $400/ton, based on the low range of cost estimates in "Electric Utility Nitrogen Oxides Reduction Technology Options for Application by the Ozone Transport Assessment Group," EPA, January 1996. The low range is selected since the units operated at levels approaching the exemption levels are DeCordova units 1-4 and Newgulf unit 1. These units already operate with water or steam injection, and therefore the costs would involve additional water or steam production costs rather than costs to modify the turbines for wet injection. There will be no costs for compliance with the proposed amendments to Chapter 117 for EGFs which are subject to SB 7 because these facilities will be required to comply with the SB 7 reductions, adopted on December 16, 1999, and expected to be published in the January 7, 2000, issue of the *Texas Register*, in Chapters 101, concerning General Rules, and 116, concerning Control of Air Pollution by Permits for New Construction or Modification.

The cement plants and EGFs which will have to comply with the proposed rules are currently subject to air permits and/or to other requirements under federal rules, and therefore are already being inspected for compliance. Consequently, no additional EGFs and cement kilns will need to be inspected for compliance with the proposed rules. The commission anticipates that the Field Operations Division inspectors will inspect for compliance with the proposed requirements when conducting their routine inspections. However, these rules will cause a minor increase in workload when inspecting the affected facilities.

PUBLIC BENEFIT - EGFs

Mr. Orozco has determined that for each year of the first five years the proposed amendments to Chapter 117 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a reduction of public exposure to NOx emitted from affected EGFs and the concomitant reduced risks to human health and safety from ozone, a reduction of ground-level ozone in near-attainment areas and ozone nonattainment areas and surrounding counties, and conformance with the requirements of the FCAA. In addition, the public benefit includes increased flexibility for affected EGFs in planning and determining the most economical mix of control technology alternatives.

The proposed amendments apply to any EGF located in any of the 31 attainment counties in east and central Texas as listed in proposed §117.131. The proposed emission reductions may be met by installing control technologies to reduce emissions. For purposes of this fiscal note, the estimated total annualized cost to EGFs of implementing the provisions of the proposed amendments consists of the cost of installing and operating the control technology sufficient to insure that emission allowances are not exceeded. The emission monitoring requirements in the proposed amendments cross reference federal regulations concerning acid rain requirements. No additional costs are anticipated for monitoring requirements because utilities are already required to comply with acid rain regulations.

A worksheet was prepared by the commission staff in which an emission control technology was assigned to each affected utility and costs estimated on a dollars per ton of NOx reduced basis to achieve the proposed NOx reductions. The worksheet was based on the EPA cost model, "NOx Cost Tool," available on the Internet at http://www.epa.gov/acidrain/nox/noxtech.htm. The EPA cost model is based on cost information contained in Chapter 5 of Regulatory Impact Analysis of NOx Regulations, EPA (October 1996) and Analyzing Electric Power Generation Under the CAA, EPA (July 1996). The EPA cost model limits SCR reductions to 70% on coal-fired units, a conservative assumption which was modified to 80% based on case studies documented in Status Report on NOx Control Technologies and Effectiveness for Utility Boilers, Northeast States for Coordinated Air Use Management (1998). Utilities were either anticipated to use SCR, low-NOx combustion modifications, or low-NOx burner and over-fired air technologies. The annual average weighted cost per ton of NOx reduced varied from $365 per ton of NOx reduced for low-NOx burner and over-fired air technologies at the San Miguel plant to $2,161 per ton for SCR at the Monticello plant. The annual average weighted cost for plants using SCR controls were calculated at approximately $1,600 per ton of NOx reduced while the annual average weighted cost for plants using combustion modifications was approximately $800 per ton of NOx reduced. The combined annual average weighted cost for all plants with required reductions was $1,242 per ton of NOx reduced. The total reductions required by utilities in the proposed amendments was approximately 84,192 tons of NOx with a total annual fiscal impact of approximately $104.6 million.

In February 1999, the Public Utility Commission of Texas (PUCT) and the commission published a report entitled, "Electric Restructuring and Air Quality: A Preliminary Analysis of Reductions and Costs of Nitrogen Oxides Controls from Electric Utility Boilers in Texas." What was stated in that study also applies to the estimates in this fiscal note. Reductions were estimated and generic cost factors were used in this estimate, but individual companies and specific units will most likely have different costs. This variability in cost depends on the amount of emission reductions, the specific processes involved, the size of the facility, and control methodologies employed for emission reductions. The data also indicates that EGFs with the largest required emission reductions have the lowest cost per ton of emissions reduced. In general, the annualized cost for emission reductions is inversely proportional to the amount of emissions required because when larger emission reductions are required, the average cost is spread over more tons reduced.

The intent of the amendments to Chapter 117 is to reduce regional levels of ozone, thereby moving nonattainment and near-nonattainment areas closer to achieving attainment of the NAAQS. These revisions are an integral part of the commission's overall goal of reducing ozone precursors, and complement other strategies already adopted or soon to be proposed. Other strategies include control requirements for other industries as well as controls for mobile and area sources of emissions.

PUBLIC BENEFIT - CEMENT KILNS

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 117 are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be a reduction of public exposure to NOx emitted from affected cement kilns and the concomitant reduced risks to human health and safety from ozone, a reduction of ground-level ozone in near-attainment areas and ozone nonattainment areas and surrounding counties, and conformance with the requirements of the FCAA.

There are no fiscal implications for units of state and local government associated with the proposed amendments concerning cement kilns because there are no cement kilns owned by state or local units of government.

The proposed amendments apply to nine existing cement plants located in five counties (Bexar, Comal, Ellis, Hayes, and McLennan Counties) in east and central Texas. The proposed emission reductions may be met by a variety of control technologies and/or process controls to reduce emissions. The rules do not mandate a specific method to be used to meet the emission limits, but instead allow the owner or operator to determine the method which is most cost-effective for each cement kiln. In Ellis County, the proposed rules are estimated to require a NOx emission reduction of approximately 40% from baseline at two of the three cement plants. The third cement plant in Ellis County has already reduced its NOx emission rate by approximately 50% from baseline. A summary of the nine existing cement plants and the estimated emission reductions are as follows: Figure 1: 30 TAC Chapter 117-preamble (FIGURE REMAINS UNCHANGED FROM PROPOSAL).

The commission estimates the average cost-effectiveness (the cost per ton of NOx emissions reduced) to be approximately $1,458 per ton, based upon the EPA's Regulatory Impact Analysis for the NOx SIP Call, FIP, and Section 126 Petitions, Volume 1: Costs and Economic Impacts (EPA-452/R-98-003, September 1998). Based upon this document, the average annual control costs are approximately $5.3 million per kiln, with average annual monitoring/administrative costs estimated at $975,000 per kiln. It should be noted that because the EPA grouped all kilns together in their cost estimates, the costs for some kilns may be significantly higher, while others will be significantly lower. Because the cost for certain kilns may be too high to be considered reasonable, the commission is proposing the availability of §117.283, concerning Source Cap, for such situations.

The commission estimates the initial cost of a CEMS which monitors NOx, oxygen, and flow to be approximately $137,400 to $179,600, with total annual costs of $64,800 to $66,000, based upon U.S. Environmental Protection Agency's Continuous Emission Monitoring System Cost Model, Version 3.0. It should be noted that this cost model provides the initial costs (including capital and installation costs) and annual costs (operating costs) for a single CEMS installed to monitor emissions from one source at a plant. In the cost model's user manual, the EPA notes that the cost model is not intended for use in estimating the costs for multiple CEMS to monitor multiple sources at a plant. Simply multiplying the number of CEMS by the model's result will overestimate the total cost since some of the costs are not repeated with the addition of a second CEMS or more.

Based on vendor quotes, it appears that the cost of CEMS has been dropping, such that the EPA cost model overestimates both the initial and annual costs. In addition, the proposed rule allows multiple kilns to share one CEMS, as well as allowing PEMS as an alternative to CEMS, which should further reduce the costs of complying with the proposed rule. It is generally recognized that a PEMS, which consists of equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameters measurements and a conversion equation, graph, or computer program to produce results in units of the applicable emission limitation, are generally less expensive than a CEMS. Therefore, the costs estimated by the EPA's cost model could be expected to represent an upper bound of the monitoring costs.

4. Under SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES, paragraph 1, last sentence, the words "$4,000 per ton of emissions reduced would appear to be an acceptable estimate." should be replaced with "$800 per ton of NOx reduced for combustion modifications and approximately $1,600 per ton of NOx reduced for SCR would appear to be a reasonable cost estimate." The following sentence should be added to the end of paragraph 2: "However, if there are cement kilns which may be classified as small businesses or micro-businesses, the average cost of $1,458 per ton of NOx emissions reduced, which was estimated for the industry at large, would appear to be a reasonable estimate of costs for small or micro-businesses."

5. Under DRAFT REGULATORY IMPACT ANALYSIS, paragraph 2, the next to the last sentence should read as follows: "...established under federal law as the NAAQS and authorized under Texas Clean Air Act (TCAA), §§382.011, 382,012, and 382.017."

6. Under TAKINGS IMPACT ASSESSMENT, paragraph 2, the fifth sentence should read as follows. "Although the rule revisions do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and fulfill a federal mandate under §110 of the 1990 Amendments to the FCAA."

7. In §117.138(b), the reference to §117.10 should be §117.10(11)(B). In §117.138(k), the reference to "subsection (d) of this section" should be "subsection (e) of this section."

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Enforcement Orders

An agreed order was entered regarding BATESVILLE WATER SUPPLY CORPORATION, Docket Number 1997-1000-PWS-E; TNRCC PWS ID Number 2540005 on December 20, 1999 assessing $6,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867 or Scott McDonald, Staff Attorney at (512) 239-6005, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CROWELL& FOARD COUNTY, Docket Number 1998- 0666-MSW-E; TNRCC MSW Permit Number 1401 on December 20, 1999 assessing $21,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512) 239-0600 or Timothy Haase, Enforcement Coordinator at (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WAYNE BOOHER DBA BORDER TANK & OIL, Docket Number 1998-1025-IHW-E; Enforcement ID Number 12470 on December 20, 1999 assessing $5,100 in administrative penalties.