

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §117.570, Trading, ~~without changes~~ to the proposed text as published in the August 25, 2000 issue of the ~~Texas Register~~ (25 TexReg 8318) and therefore will not be republished. This amendment will be submitted as a revision to the Texas state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

In concurrent rulemaking, §101.29 is repealed and its requirements transferred and amended to new Chapter 101, Subchapter H, Divisions 1 and 4. This rulemaking amends §117.570 to cite the correct cross-references and relocate equations and methodologies for calculating emission requirements to comply with Chapter 117 nitrogen oxides (NO_x) emission specifications to Chapter 101, Subchapter H, Divisions 1 and 4. In addition, the amended section requires the user of credits to obtain additional emission credits or achieve lower actual emissions if new lower NO_x emission specifications are established by future amendments to Chapter 117.

SECTION BY SECTION DISCUSSION

Revised §117.570 changes the title of the section to "Use of Emissions Credits for Compliance" from "Trading" to more clearly reflect the language in §117.570, which discusses how to use emission reduction credits for alternative compliance, not how to trade emission reduction credits.

The amendment to §117.570(a) removes the reference to §101.29 and replaces it with a reference to Chapter 101, Subchapter H, Division 1, Emission Reduction Credit Banking and Trading, or Chapter 101, Subchapter H, Division 4, Discrete Emission Reduction Banking and Trading. In addition, this adoption clarifies that emission reduction credits (ERCs), mobile emission reduction credits (MERCs), discrete emission reduction credits (DERCs), or mobile discrete emission reduction credits (MDERCs) may be used to meet certain control requirements of Chapter 117. This option

would be limited to those units not subject to the mass cap and trade requirements of Chapter 101, Subchapter H, Division 3. The term "RC" refers to an ERC, MERC, DERC, or MDERC.

Existing §117.570(b) and the equations located within, is deleted because the methodology for computing emission credits for compliance with Chapter 117 is revised to be consistent with concurrently adopted methodology in Chapter 101, Subchapter H, new Divisions 1 and 4.

Section 117.570(c) and the equations located within, are deleted. The equations in §117.570(c)(1) are transferred to Chapter 101, Subchapter H, new Divisions 1 and 4 in concurrent rulemaking. The equations in §117.570(c)(2) are deleted because the methodology for computing emission credits for compliance with Chapter 117 is revised to be consistent with concurrently adopted methodology in Chapter 101, Subchapter H, new Divisions 1 and 4.

The revisions to §117.570(d) redesignate the subsection to §117.570(b) and remove the requirement to reevaluate used RCs. The revisions also add language detailing how owners or operators using Chapter 101, Subchapter H, Division 1 or Division 4 to meet the emission control requirements of Chapter 117 must obtain additional RCs or reduce actual emissions if any lower volatile organic compound emission specification is established by Chapter 117 for the unit or units using RCs.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission has determined that this amendment to Chapter 117 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "Major environmental

rule' means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission is adopting this amendment to achieve administrative consistency with amendments to Chapter 101 adopted in concurrent rulemaking. The amendment to Chapter 117 does not add regulatory requirements, but is adopted to allow compliance flexibility in meeting current or future NO_x emission limitations in Chapter 117. Therefore, there will be no adverse impact of this rule.

TAKINGS IMPACT ASSESSMENT

The commission has completed a takings impact assessment for the adopted rule. The following is a summary of that assessment. The commission is adopting the amendment to achieve administrative consistency with amendments to Chapter 101 adopted in concurrent rulemaking. The amendment to Chapter 117 does not add regulatory requirements, but allows compliance flexibility in meeting current or future NO_x emission limitations in Chapter 117. The amendment does not affect private real property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, the adopted section does not meet the definition of a takings under Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined the rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 ~~et seq~~), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2),

relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The amendment to Chapter 117 does not add regulatory requirements, but is adopted to allow compliance flexibility in meeting current or future NO_x emission limitations in Chapter 117.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sources which currently have §117.570 listed in their federal operating permit would not be required to amend the permit in response to this amendment. However, those sources that do not have a reference to §117.570 in their operating permit and wish to use RCs must revise their operating permit consistent with the process in 30 TAC Chapter 122, to include the revised §117.570 requirements for each emission unit affected by §117.570 at their site.

PUBLIC HEARINGS AND COMMENTERS

The commission held public hearings on this proposal at the following locations: September 18, 2000, in Conroe and Lake Jackson; September 19, 2000 in Houston (2 hearings); September 20, 2000, in Katy and Pasadena; September 21, 2000, in Beaumont, Amarillo, and Texas City; September 22, 2000, in Dayton, El Paso, and Arlington; and September 25, 2000, in Austin and Corpus Christi. The comment period closed at 5:00 p.m. on September 25, 2000.

The EPA opposed the amendment to §117.570.

ANALYSIS OF TESTIMONY

The EPA questioned whether the definitions of "baseline activity" and "baseline emissions" are redundant. If the only reason for defining baseline emissions is to provide emission reduction trading for non mass cap and trade reasonably available control technology (RACT) sources, then §117.570 should be revised so that RACT source cannot participate in a discretionary trading program without an activity limit on the source.

The rule was not revised in response to this comment. The purpose of §117.570 is to allow the option to facilities subject to Chapter 117 to obtain and use emission credits in lieu of making actual emission reductions in all areas of the state. It should be noted that this trading does not apply to facilities subject to the Houston/Galveston nonattainment area NO_x cap and trade program. The purpose of "baseline activity" and "baseline emission rate" is to multiply the two together to determine the baseline emissions of a facility. They are therefore not redundant. This determination is not only necessary for the determination of how many credits can be generated from a facility, but also for determining the amount of credits to be used for compliance by a facility. In addition, facilities not subject to the HGA cap and trade program do not have their emission capped at baseline levels; thus capping their level of activity for compliance with Chapter 117 is not appropriate. Besides which, the specific requirement in the cap and trade program, Chapter 117 does not regulate total emissions, only the rate of emissions.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to develop a plan for control of the

state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA, and 42 United States Code, §7410(a)(2)(A), which requires SIPs to include enforceable emission limitations and other control measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

CHAPTER 117: CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

SUBCHAPTER E: ADMINISTRATIVE PROVISIONS

§117.570

§117.570. Use of Emissions Credits for Compliance.

(a) An owner or operator of a unit not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emission Cap and Trade Program) may meet emission control requirements of §117.105 or §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.106 or §117.206 of this title (relating to Emission Specifications for Attainment Demonstrations), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), §117.108 of this title (relating to System Cap), §117.223 of this title (relating to Source Cap), or §117.475 of this title (relating to Emission Specifications) in whole or in part, by obtaining an emission reduction credit (ERC), mobile emission reduction credit (MERC), discrete emission reduction credit (DERC), or mobile discrete emission reduction credit (MDERC) in accordance with Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Banking and Trading) or Chapter 101, Subchapter H, Division 4 of this title (relating to Discrete Emission Reduction Banking and Trading), unless there are federal or state regulations or permits under the same commission account number which contain a condition or conditions precluding such use. For the purposes of this section, the term "reduction credit (RC)" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(b) Any lower NO_x emission specification established under this chapter for the unit or units using RCs shall require the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 of this

title or Chapter 101, Subchapter H, Division 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. For units using RCs in accordance with this section which are subject to new, more stringent rule limitations, the owner or operator using the RCs shall submit a revised final control plan to the executive director in accordance with §117.117 or §117.217 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RCs shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.

Figure: 30 TAC §117.570(b)

Where:

$$\Delta E = \left[LA \times (ER_{old} - ER_{new}) \times \frac{d}{2000} \right]$$

ΔE = the differential of emissions

LA = the maximum level of activity

ER_{old} = the existing NO_x emission rate for the affected in lb per unit of activity

ER_{year} = the new NO_x emission rate for the affected unit in lb per unit of activity

d = (i) to calculate annual emission reductions, $d = 365$

(ii) to calculate emission reductions for the remainder of a control period, $d =$ the number of days remaining in the control period