The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §117.2110 *without changes* to the proposed text as published in the November 19, 2010, issue of the *Texas Register* (35 TexReg 10162) and the text will not be republished.

The amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

On April 27, 2010, Ameresco of Texas (petitioner) submitted a petition for rulemaking (Project Number 2010-026-PET-NR) requesting an amendment to Chapter 117, Subchapter D, Division 2, §117.2110 for the Dallas-Fort Worth (DFW) 1997 eight-hour ozone nonattainment area. The commission approved the petition for rulemaking on June 16, 2010, and issued an order on June 22, 2010, directing the executive director to examine the issues in the petition and to initiate rulemaking. Currently, §117.2110 limits nitrogen oxides (NO_X) emissions from stationary gas-fired, lean-burn engines installed, modified, reconstructed, or relocated on or after June 1, 2007, to 0.60 grams per horsepower-hour (g/hp-hr) if fired on landfill gas and 0.50 g/hp-hr for all other lean-burn engines. The adopted change will expand the emission specification for lean-burn engines fired on landfill gas to include lean-burn engines fired on biogas at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area.

Landfill gas and other biogas are produced from anaerobic digestion or decomposition of organic matter and have similar fuel and combustion characteristics. Both landfill gas and other biogas can contain contaminants such as sulfur, chlorine, and silicon, which are present in other gaseous fuels. Consequently, engines fired on landfill gas and other biogas can have technological feasibility issues with regard to the installation of a NO_X control catalyst because these contaminants can result in catalyst failure or deactivation in hours or days. The technological feasibility issues with regard to the installation of a NO_X control catalyst is the basis for the 0.60 g/hp-hr emission standard in the current rule and the justification for the adopted expansion of the existing emission specification to include lean-burn engines fired on biogas at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area.

Demonstrating Noninterference under Federal Clean Air Act (FCAA), §110(l)

The commission provides the following information to demonstrate why the adopted change to expand the emission specification in §117.2110(a)(1)(B)(ii)(I) will not negatively impact the status of the state's attainment with the 1997 eight-hour ozone National Ambient Air Quality Standard (NAAQS), will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS. The commission acknowledges that the DFW area failed to attain the 1997 eight-hour ozone NAAQS by the June 15, 2010, attainment deadline based on

monitoring data; however, the adopted rule change will not adversely affect the ability of the DFW area to attain the 1997 eight-hour ozone NAAQS for the reasons discussed in this preamble.

The requirement for reasonable notice and public hearing was satisfied through a public hearing scheduled for December 14, 2010, and the public comment period, held November 19, 2010, to December 20, 2010. The purpose of the hearing was to accept written and oral comments on the proposed rulemaking. A written comment was submitted by the EPA. The EPA stated their agreement with the commission's §110(l) determination that the proposed rulemaking will not interfere with attainment or maintenance of the 1997 eight-hour ozone NAAQS in the DFW area.

On May 23, 2007, as part of the DFW attainment demonstration, the commission adopted a new Chapter 117, Subchapter D, Division 2 with new emission control requirements for minor industrial, commercial, or institutional sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area. Subchapter D, Division 2 requires owners or operators of minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area to reduce NO_X emissions from affected stationary internal combustion engines. A minor source of NO_X in the DFW 1997 eight-hour ozone nonattainment area is any stationary source, or group of sources located within a contiguous area and under common control that emits or has the potential to emit less

than 50 tons per year of NO_X.

One source category newly regulated under Chapter 117 during the 2007 rulemaking was lean-burn engines at minor sources. The current applicable NO_X emission specification in §117.2110(a)(1)(B)(ii)(II) for gas-fired, lean-burn engines using gaseous fuels other than landfill gas that are installed, modified, reconstructed, or relocated on or after June 1, 2007, is 0.50 g/hp-hr. During the 2007 rulemaking, no landfill gas-fired engines were identified in the emissions inventory in the counties impacted by the proposed rule; however, the emission specification of 0.60 g/hp-hr for gas-fired engines fired on landfill gas established by §117.2110(a)(1)(B)(ii)(I) is consistent with the emission specification for this category of engines in the Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment area.

In the 2007 Chapter 117 rulemaking for the DFW 1997 eight-hour ozone attainment demonstration, no gas-fired engines fired on biogas or other non-landfill gaseous fuels were relied upon for creditable reductions for the SIP. Therefore, if the petitioner's proposed change is adopted, allowing the slightly higher emission specification of 0.60 g/hp-hr on gas-fired engines fired on other biogas fuels would not result in a loss of any SIP creditable reductions for the DFW 1997 eight-hour ozone nonattainment area. The adopted change is limited to a narrow category of stationary gas-fired engines with NO_X controls that were not relied upon in the DFW 1997 eight-hour ozone attainment

demonstration adopted in 2007, and the resulting change in future NO_X emissions is negligible. Furthermore, if the rulemaking is not adopted and the petitioner is not able to comply with the 0.50 g/hp-hr emission limit or purchase credits to offset the surplus emissions, the petitioner may be forced to abandon the project. This outcome could actually result in a net NO_X emissions increase that is more than the 0.02 tons per day increase anticipated if the rule is adopted. If the company is forced to send the emission stream to a flare for destruction rather than use the stream as a fuel source in the engines, the total uncontrolled NO_X emissions could exceed that of the controlled emissions under the proposed emission limit, because flares are exempt from NO_X emission limits under Chapter 117. Based on these factors, the commission has determined that the adopted rule change will not negatively impact the status of the state's attainment demonstration for the 1997 eight-hour ozone NAAQS, will not interfere with control measures, and will not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section Discussion

Section 117.2110, Emission Specifications for Eight-Hour Attainment Demonstration

The commission adopts the amendment to §117.2110(a)(1)(B)(ii)(I) to expand the emission specification for lean-burn engines fired on landfill gas to include lean-burn engines fired on biogas at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area. The adopted rule revision will require owners or operators of

stationary gas-fired, lean-burn internal combustion engines fired on biogas fuels other than landfill gas that are installed, modified, reconstructed, or relocated on or after June 1, 2007, to comply with a NO_X emission limit of 0.60 g/hp-hr.

In addition to the adopted rule revision, the commission adopts non-substantive formatting changes to conform with current Texas Register format requirements. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted rule does not meet the definition of a "major environmental rule." Texas Government Code, §2001.0225 states that a "major environmental rule" is, "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." Furthermore, while the adopted rulemaking does not constitute a major environmental rule, even if it did, a regulatory impact analysis would not be required because the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a

major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule which, "(1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law."

The adopted rulemaking implements requirements of the FCAA. Under 42 United States Code (USC), §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, a SIP must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the

specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs and control measures to assure that their SIP provides for implementation, attainment, maintenance, and enforcement of the NAAQS within the state.

The specific intent of the adopted rulemaking is to provide fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area. The current applicable NO_X emission specification in §117.2110(a)(1)(B)(ii)(II) for gas-fired, lean-burn engines using gaseous fuels other than landfill gas that are installed, modified, reconstructed, or relocated on or after June 1, 2007, is 0.50 g/hp-hr. The current applicable NO_X emission specification in §117.2110(a)(1)(B)(ii)(I) for gas-fired engines fired on landfill gas is 0.60 g/hp-hr. Landfill gas and other biogas are produced from anaerobic digestion or decomposition of organic matter and have similar fuel and combustion characteristics. Both landfill gas and other biogas can contain contaminants such as sulfur, chlorine, and silicon. Consequently, engines fired on landfill gas and other biogas can have technological feasibility issues with regard to the installation of a NO_X control catalyst, because these contaminants can result in catalyst failure or deactivation in hours or days. The technological feasibility issues with regard to the installation of a NO_X control catalyst is the basis for the 0.60 g/hp-hr emission standard

in the current §117.2110(a)(1)(B)(ii)(I) and the justification for the adopted expansion of the existing emission specification to include lean-burn engines fired on biogas at minor sources NO_X in the DFW 1997 eight-hour ozone nonattainment area. To further the specific intent of providing fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area, the adopted rule will expand the current §117.2110(a)(1)(B)(ii)(I) to include biogas other than landfill gas.

The adopted rulemaking does not constitute a major environmental rule under Texas Government Code, §2001.0225(g)(3) because: 1) the specific intent of the adopted rule is not to protect the environment or reduce risks to human health from environmental exposure, but rather to provide fair and consistent application of SIP rules in the DFW eight-hour ozone nonattainment area by providing a specific expansion of §117.2110(a)(1)(B)(ii)(I) to apply to biogas other than landfill gas; and 2) the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will the adopted rule adversely affect in a material way the environment or the public health and safety of the state or a sector of the state. Because the adopted rulemaking is not a major environmental rule, it is not subject to a regulatory impact analysis under Texas Government Code, §2001.0225.

While the adopted rulemaking does not constitute a major environmental rule, even if it did it would not be subject to a regulatory impact assessment under Texas Government

Code, §2001.0225. The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded: "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

The FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was

considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that, "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." Central Power & Light Co. v. Sharp, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App.

Austin 1990, no writ). Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney v. State Farm Mut. Auto Ins. Co., 9 S.W.3d 884, 893 (Tex. App. Austin 2000); Southwestern Life Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and Coastal Indust. Water Auth. v. Trinity Portland Cement Div., 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

Regardless of whether the adopted rulemaking constitutes a major environmental rule under Texas Government Code, §2001.0225(g)(3), a regulatory impact analysis is not required because this rule is part of the commission's SIP for making progress toward the attainment and maintenance of the eight-hour ozone NAAQS in the DFW nonattainment area. Therefore, the adopted rule does not exceed a standard set by federal law or exceed an express requirement of state law, since the rule is part of an

overall regulatory scheme designed to meet, not exceed the relevant standard set by federal law - the NAAQS. The commission is charged with protecting air quality within the state and to design and submit a plan to achieve attainment and maintenance of the federally mandated NAAQS. The Third District Court of Appeals upheld this interpretation in Brazoria County v. Texas Comm'n on Envtl. Quality, 128 S.W. 3d 728 (Tex. App. - Austin 2004, no writ). In addition, no contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency but is authorized by specific sections of Texas Health and Safety Code (THSC), Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble, including THSC, §§382.011, 382.012, and 382.017.

This rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), for the following reasons. The adopted rulemaking is not a major environmental law because: 1) the specific intent of the adopted rule is not to protect the environment or reduce risks to human health from environmental exposure, but rather to provide fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area; and 2) the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs, nor will it adversely affect in a material way the environment, or

the public health and safety of the state or a sector of the state. Furthermore, even if the adopted rulemaking was a major environmental rule, it does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the adopted rulemaking is part of the DFW SIP, and as such is designed to meet, not exceed the relevant standard set by federal law; 2) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 3) the adopted rulemaking is authorized by specific sections of THSC, Chapter 382, and the TWC, which are cited in the STATUTORY AUTHORITY section of this preamble.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rule and performed an analysis of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The commission's assessment indicates Texas Government Code, Chapter 2007 does not apply because this rulemaking provides for fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area by expanding the current §117.2110(a)(1)(B)(ii)(I) NO_X emission specification to include biogas other than landfill gas.

Under Texas Government Code, §2007.002(5), taking means: "(A) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or (B) a governmental action that: (i) affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and (ii) is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect."

The specific purpose of the adopted rulemaking is to provide fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area. The current applicable NO_X emission specification in §117.2110(a)(1)(B)(ii)(II) for gas-fired, lean-burn engines using gaseous fuels other than landfill gas that are installed, modified, reconstructed, or relocated on or after June 1, 2007, is 0.50 g/hp-hr. The current applicable NO_X emission specification in §117.2110(a)(1)(B)(ii)(I) for gas-fired

engines fired on landfill gas is 0.60 g/hp-hr. Landfill gas and other biogas are produced from anaerobic digestion or decomposition of organic matter and have similar fuel and combustion characteristics. Both landfill gas and other biogas can contain contaminants such as sulfur, chlorine, and silicon. Consequently, engines fired on landfill gas and other biogas can have technological feasibility issues with regard to the installation of a NO_X control catalyst because these contaminants can result in catalyst failure or deactivation in hours or days. The technological feasibility issues with regard to the installation of a NO_X control catalyst is the basis for the 0.60 g/hp-hr emission standard in the current §117.2110(a)(1)(B)(ii)(I) and the justification for the adopted expansion of the existing emission specification to include lean-burn engines fired on biogas at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area. To further the specific intent of providing fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area, the adopted rule will broaden the current §117.2110(a)(1)(B)(ii)(I) to biogas other than landfill gas.

Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of private real property. Because the adopted rule promulgates an exemption, the rule is less burdensome, restrictive, or limiting of rights to private real property than the existing rule. Furthermore, the adopted rule will benefit the public by providing fair and consistent application of SIP rules in the DFW 1997 eight-hour ozone nonattainment area. The adopted rule does not affect a landowner's rights in private real

property because this rulemaking does not burden, restrict, or limit the owner's right to property, nor does it reduce the value of any private real property by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, this rule simply expands the existing exemption in §117.2110(a)(1)(B)(ii)(I) to include sources that have technological feasibility issues similar to those of the sources covered by the current exemption. Therefore, the rule will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission invited public comment regarding the consistency with the coastal management program (CMP) during the public comment period. No comments were received concerning the Texas CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permits program that elect to comply with the emission specification in §117.2110(a)(1)(B)(ii)(I) may need to revise their operating permit.

Public Comment

A public hearing was scheduled December 14, 2010, at 2:00 p.m., at the Texas

Commission on Environmental Quality Region 4 office in Fort Worth, Texas. The hearing was not officially opened, because no one requested to present oral testimony. The comment period closed on December 20, 2010. A written comment was received from the EPA.

Response to Comments

The EPA stated its understanding that the proposed revision would expand the NO_X emission specification for lean-burn engines fired on landfill gas to include lean-burn engines fired on biogas at minor sources in the DFW 1997 eight-hour ozone nonattainment area, and that the revision would allow a stationary diesel engine to be fired on biogas. The EPA also commented that although TCEQ has projected the potential for a small increase in NO_X emissions from engines firing biogas resulting from the rule change, because a larger amount of NO_X emissions could result from the likely alternative of sending the gas to a flare, the rulemaking did not appear to conflict with FCAA, §110(l). The EPA also commented that it agreed with the commission's determination that the proposed rulemaking will not interfere with attainment or maintenance of the 1997 eight-hour ozone NAAQS in the DFW area and commented that the proposed change appeared to be an appropriate revision to the SIP given the small amount of emissions change and the beneficial use of the biogas. In addition, the EPA requested the commission confirm the EPA's understanding of the proposed amendment to §117.2110 and requested that emissions from engines fired on biogas be

accounted for in future SIP revisions.

The commission appreciates the comment. The EPA's understanding of the amendment to §117.2110 is partially correct. The amendment to §117.2110 in this rulemaking only applies to lean-burn engines fired on landfill gas and lean-burn engines fired on other biogas at minor sources of NO_X in the DFW 1997 eight-hour ozone nonattainment area; the amendment does not apply to stationary diesel engines. The EPA is correct in its understanding that the change is limited to a narrow category of stationary gas-fired engines with NO_X controls that were not relied upon in the DFW 1997 eight-hour ozone attainment demonstration adopted in 2007, and the resulting change in future NO_X emissions is negligible. The commission agrees that the use of biogas as fuel is beneficial and preferential to sending the biogas to a flare for destruction. Lastly, all emissions from lean-burn engines fired on biogas will be accounted for in future SIP revisions. No change has been made to the rule based on this comment.

SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

§117.2110

Statutory Authority

The amendment is adopted under the authority of Texas Government Code, §2001.021, Petition for the Adoption of Rules, which authorizes an interested person to petition a state agency for the adoption of a rule; Texas Water Code (TWC), §5.102, General Powers, §5.103, Rules, and §5.105, General Policy (these provisions authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC); Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, TCAA, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amendment is also adopted under THSC, §382.016, Monitoring Requirements;

Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; THSC, §382.021, Sampling Methods and Procedures, which authorizes the commission to prescribe sampling methods and procedures; and THSC, §382.051, Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under THSC, Chapter 382. The amendment is also adopted under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq*., which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standard will be achieved and maintained within each air quality control region of the state.

The adopted amendment implements TWC, §5.103 and §5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, 382.021, 382.051; and FCAA, 42 USC, §§7401 et seq.

§117.2110. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) The owner or operator of any source subject to this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) shall not

allow the discharge into the atmosphere emissions of nitrogen oxides (NO_X) in excess of the following emission specifications.

(1) Emission specifications for stationary, gas-fired, reciprocating internal combustion engines are as follows:

(A) rich-burn engines:

(i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and

(ii) all other rich-burn engines, 0.50 g/hp-hr; and

(B) lean-burn engines:

(i) placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated on or after June 1, 2007, 0.70 g/hp-hr; and

(ii) placed into service, modified, reconstructed, or relocated on or after June 1, 2007:

(I) fired on landfill gas or other biogas, 0.60 g/hp-hr; and

(II) all other lean-burn engines, 0.50 g/hp-hr.

(2) The emission specification for stationary, dual-fuel, reciprocating internal combustion engines is 5.83 g/hp-hr.

(3) Emission specifications for stationary, diesel, reciprocating internal combustion engines are as follows:

(A) placed into service before March 1, 2009, that have not been modified, reconstructed, or relocated on or after March 1, 2009, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data; and

(B) for engines not subject to subparagraph (A) of this paragraph:

(i) with a horsepower (hp) rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 3.3 g/hp-hr;

(ii) with a horsepower rating of 100 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 2.8 g/hp-hr; and

(iii) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after March 1, 2009, 4.5 g/hp-hr.

(4) As an alternative to the emission specifications in paragraphs (1) - (3) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 pound per million British thermal units (lb/MMBtu) heat input. For units placed into service on or before December 31, 2000, the annual capacity factor as of December 31, 2000, must be used to determine eligibility for the alternative emission specification of this paragraph. For units placed into service after December 31, 2000, a 12-month rolling average must be used to determine the annual capacity factor.

(5) For the purposes of this subsection, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in

§101.1 of this title (relating to Definitions), a used engine from anywhere outside that account.

(b) The averaging time for the NO_X emission specifications of subsection (a) of this section is as follows:

(1) if the unit is operated with a NO_X continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.2135(c) of this title (relating to Monitoring, Notification, and Testing Requirements), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers, calculated as the product of the boiler's maximum rated capacity and its applicable limit in lb/MMBtu; or

(2) if the unit is not operated with a NO_X CEMS or PEMS under §117.2135(c) of this title, a block one-hour average, in the units of the applicable standard.

(c) The maximum rated capacity used to determine the applicability of the emission specifications in subsection (a) of this section must be the greater of the following:

(1) the maximum rated capacity as of December 31, 2000; or

(2) the maximum rated capacity after December 31, 2000.

(d) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, must be classified as a stationary gas-fired engine for the purposes of this chapter.

(e) Changes after December 31, 2000, to a unit subject to an emission specification in subsection (a) of this section (ESAD unit) that result in increased NO_X emissions from a unit not subject to an emission specification in subsection (a) of this

section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare, is only allowed if:

(1) the increase in NO_X emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.2135(c) of this title, or through stack testing that meets the requirements of §117.2135(f) of this title; and

(2) emission credits equal to the increase in NO_X emissions at the non-ESAD unit are obtained and used in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(f) A source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but becomes a major source at any time after December 31, 2000, is from that time forward always classified as a major source for purposes of this chapter.

(g) The availability under subsection (a)(4) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000,

cannot be used to qualify for a more lenient emission specification under subsection (a)(4) of this section than would otherwise apply to the unit.

(h) No person shall allow the discharge into the atmosphere from any unit subject to NO_X emission specifications in subsection (a) of this section, emissions in excess of the following, except as provided in §117.2125 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO), 400 ppmv at 3.0% oxygen (O_2), dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_X control, ammonia emissions of 10 ppmv at 15% O_2, dry, for gas-fired lean-burn engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(i) An owner or operator may use emission reduction credits as specified in §117.9800 of this title to comply with the NO_X emission specifications of this section.