

The Texas Commission on Environmental Quality (commission) adopts amendments to §§117.1020, 117.1120, 117.1220, 117.3020, and 117.9800 *without changes* to the proposed text as published in the October 21, 2011, issue of the *Texas Register* (36 TexReg 7138) and the text will not be republished.

The amendments 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 Rules**

On March 21, 2001, the commission adopted rules that provided owners or operators of electric generating facilities (EGF) located in the Dallas-Fort Worth one-hour ozone nonattainment area (consisting of Collin, Dallas, Denton, and Tarrant Counties) or the East and Central Texas counties, as listed in §117.3000(a)(4), and subject to the system cap emission limits specified in Chapter 117 additional compliance flexibility in meeting their system caps through participation in the System Cap Trading (SCT) program. The SCT program was established through rules adopted by the commission on March 21, 2001, specifying the requirements for the SCT program in 30 TAC Chapter 101, Subchapter H, Emissions Banking and Trading.

The system cap emission limits in Chapter 117 set daily, 30-day rolling average, or annual emission caps on total nitrogen oxides (NO<sub>x</sub>) emissions from EGFs that are:

subject to the Chapter 117 emission specifications for attainment demonstration (ESAD); under common ownership or control; and grouped together in an electric power generating system, as defined in §117.10(14). For example, if company A has three sites, X, Y, and Z with three, four, and five EGFs, respectively, that are subject to the Chapter 117 ESADs and are part of an electric power generating system, Chapter 117 sets a daily, 30-day rolling average, or annual emission caps on the total emissions from the 12 affected EGFs.

On May 23, 2007, the commission adopted reformatted and renumbered Chapter 117 rules. The adopted rules also provided new emission specifications for the Dallas-Fort Worth 1997 eight-hour ozone nonattainment area (DFW area), consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, necessary to demonstrate the attainment of the 1997 eight-hour ozone National Ambient Air Quality Standards (NAAQS). Under the adopted rules, EGFs in the Collin, Dallas, Denton, or Tarrant Counties that are subject to the new emissions specifications are no longer required to meet the emission specifications specified in Chapter 117, Subchapter B, Division 2, or Subchapter C, Division 2, after March 1, 2009. For EGFs in the DFW area, the Chapter 117 rules do not allow participation in a system cap as an alternative means of compliance with the new emissions specifications, and hence EGFs in the DFW area no longer have the option of participating in the SCT program.

Certain compliance flexibility options (the SCT program, the Emission Credit Banking

and Trading program, and the Discrete Emission Credit Banking and Trading program) were provided by the adopted rules to owners or operators of EGFs with system cap emission limits specified in Chapter 117 and located in the Beaumont-Port Arthur 1997 ozone maintenance area (BPA area), consisting of Hardin, Jefferson, and Orange Counties; the Houston-Galveston-Brazoria 1997 eight-hour ozone nonattainment area (HGB area), consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; and in the East and Central Texas counties of Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, and Wharton. The adopted rules also made clear that EGFs in the HGB area are required to meet the system cap emission limits specified in §117.320 or §117.1220, in addition to complying with the emission specifications in §117.310 or §117.1210 through participation in the Mass Emissions Cap and Trade program.

The SCT program rules in §101.383 and §101.385 were amended on July 25, 2007, to accurately reference the newly renumbered sections in Chapter 117 related to system cap emission limits.

The SCT program has seen minimal participation from affected sources, and on February 23, 2011, the commission approved the withdrawal of the Chapter 101 SCT

program rules from consideration by the EPA as a revision to the SIP. The EPA was notified of this withdrawal in a letter dated March 4, 2011. While the repeal of the Chapter 101 SCT program rules and corresponding revisions to Chapter 117 are not specifically required by federal regulation, the Chapter 117 rules for system cap requirements are included in the SIP as published in the December 3, 2008, issue of the *Federal Register* (73 FR 73562) and allow the SCT program as a regulatory option for compliance. Removing the references to the SCT program in Chapter 117 will avoid confusion among regulated entities that are subject to the Chapter 117 system cap emission limits and will address any potential concerns regarding the use of a compliance option that is not federally enforceable to meet a federally enforceable rule.

The amendments to §§117.1020, 117.1120, 117.1220, 117.3020, and 117.9800 are adopted concurrently with the repeal of sections pertaining to the SCT program from Chapter 101. The repeal of sections pertaining to the SCT program from Chapter 101 is published in a separate rulemaking in this issue of the *Texas Register*.

### **Section by Section Discussion**

The adopted rulemaking will amend the major source rules in Chapter 117, Subchapter C, Divisions 1 - 3; Subchapter E, Division 1; and Subchapter H, Division 2. These adopted changes will amend §§117.1020, 117.1120, 117.1220, 117.3020, and 117.9800 by removing references to Chapter 101 SCT program rules. The adopted rulemaking will

also include various non-substantive revisions to these sections to conform to current *Texas Register* style and format requirements.

*§§117.1020, 117.1120, 117.1220, 117.3020, System Cap*

The adopted amendments to §§117.1020(l), 117.1120(l), 117.1220(l), and 117.3020(l) remove all references to Chapter 101, Subchapter H, Division 5, SCT program.

*§117.9800, Use of Emission Credits for Compliance*

The adopted amendments to §117.9800(b) remove references to the SCT program requirements in Chapter 101, Subchapter H, Division 5.

**Final Draft Regulatory Impact Analysis**

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute.

A "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 purpose of the adopted rulemaking is to remove the references to the Chapter 101 SCT program rules from Chapter 117. The SCT rules in Chapter 101 are being repealed in a concurrent rulemaking and are not a part of the SIP. Therefore, the adopted rulemaking will remove the option to use the SCT program from Chapter 117 to avoid any potential concerns that a compliance option that is not federally enforceable might be used to meet a federally enforceable rule.

Additionally, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The requirement to provide a fiscal analysis of the adopted 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 concluding that "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 Federal Clean Air Act (FCAA) does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment 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 United States Code (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 will have a broad impact, the 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 and do not exceed, federal law, including the approved SIP. In addition, these rules do not exceed any contract between the state and a federal agency.

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." 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.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This

rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." The adopted rulemaking will remove an obsolete compliance option from Chapter 117, and therefore avoid any potential concerns that a compliance option that is not federally enforceable might be used to meet a federally enforceable rule. This rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but is authorized under Texas Health and Safety Code, §§382.011, 382.012, and 382.017, as well as under 42 USC, §§7401, *et seq.*, which requires states to submit SIP revisions that specify the manner in which the NAAQS will be achieved and maintained within each air quality control region of the state.

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**

Under Texas Government Code, §2007.002(5), taking means 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 §17 or §19, Article I, Texas Constitution; or a governmental action that

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 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 commission completed a takings impact analysis for the adopted repeal under Texas Government Code, §2007.043. The adopted rules will remove the references to the Chapter 101 SCT program rules from Chapter 117. The SCT program rules in Chapter 101 are being repealed in a concurrent rulemaking, and are not a part of the SIP. Therefore, the adopted rulemaking will remove the option to use the SCT program from Chapter 117 to avoid any potential concerns that a compliance option that is not federally enforceable might be used to meet a federally enforceable rule. The adopted amendments will not create any additional burden on private real property. The adopted amendments will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted amendments will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted amendments

will not cause a taking under Texas Government Code, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRA) (31 TAC §501.12(l)). The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas so as to protect CNRAs and promote the public health, safety, and welfare (31 TAC §501.32). The adopted rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received concerning the 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 with facilities subject to the federal operating permit program must revise their operating permit to include the new Chapter 117 requirements. The owners or operators of these facilities will have the option of initiating a permit action or waiting for the next permit action, such as a renewal, to include these requirements.

### **Public Comment**

The commission scheduled public hearings in Houston on November 15, 2011, and in Austin on November 17, 2011. However, since no one registered to provide comments,

the hearings were not officially opened. The comment period closed on October 21, 2011.

The commission received one written comment from the EPA in support of the rulemaking.

### **Response to Comments**

The EPA stated its support of the repeal of the SCT program and all associated references to the SCT program in Chapter 117. The EPA further stated that the repeal of the SCT program will clarify the available compliance options for electric generating units in Texas.

**The commission appreciates the comment and the support. No changes were made to the rule based on this comment.**

**SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC  
GENERATION SOURCES IN OZONE NONATTAINMENT AREAS  
DIVISION 1: BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT  
AREA UTILITY ELECTRIC GENERATION SOURCES  
§117.1020**

**Statutory Authority**

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and

monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amended section 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 Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

**§117.1020.System Cap.**

(a) An owner or operator of an electric generating facility (EGF) may achieve compliance with the nitrogen oxides (NO<sub>x</sub>) emission specifications of §117.1010 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO<sub>x</sub> emission reductions obtained by compliance with a daily and 30-day system cap emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO<sub>x</sub> emission rates of §117.1010 of this title must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.

Figure: 30 TAC §117.1020(c)(1) (No change)

$$Cap_{30day} = \sum_{i=1}^N (H_i \times R_i)$$

Where:

Cap<sub>30day</sub> = the NO<sub>x</sub> 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H<sub>i</sub> = the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1996, 1997, and 1998. For an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1996 - 1998 may be used; and

R<sub>i</sub> = the emission specification of §117.1010(a) of this title.

(2) A maximum daily cap must be calculated using the following equation.

Figure: 30 TAC §117.1020(c)(2) (No change)

$$Cap_{daily} = \sum_{i=1}^N (H_{mi} \times R_i)$$

Where:

$Cap_{daily}$  = the NO<sub>x</sub> maximum daily cap in pounds per day;

$i$  = as defined in paragraph (1) of this subsection;

$N$  = as defined in paragraph (1) of this subsection;

$H_{mi}$  = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

$R_i$  = as defined in paragraph (1) of this subsection.

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The NO<sub>x</sub> emissions monitoring required by §117.1040 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO<sub>x</sub> monitor is off-line:

(1) if the NO<sub>x</sub> monitor is a continuous emissions monitoring system

(CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.1040(d) of this title;

(3) if the NO<sub>x</sub> monitor is a predictive emissions monitoring system

(PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator of any EGF subject to a system cap shall maintain daily records indicating the NO<sub>x</sub> emissions and fuel usage from each EGF and summations of total NO<sub>x</sub> emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1045 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any EGF subject to a system cap shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure

future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1045 of this title.

(h) The owner or operator of any EGF subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions)

must be calculated from the NO<sub>x</sub> emission rate measured by the NO<sub>x</sub> monitor, if operating properly. If the NO<sub>x</sub> monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO<sub>x</sub> monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO<sub>x</sub> who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap.

**SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC  
GENERATION SOURCES IN OZONE NONATTAINMENT AREAS  
DIVISION 2: DALLAS-FORT WORTH OZONE NONATTAINMENT AREA  
UTILITY ELECTRIC GENERATION SOURCES  
§117.1120**

**Statutory Authority**

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and

monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amended section 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 Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

**§117.1120. System Cap.**

(a) An owner or operator of an electric generating facility (EGF) may achieve compliance with the nitrogen oxides (NO<sub>x</sub>) emission specifications of §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO<sub>x</sub> emission reductions obtained by compliance with a daily and 30-day system cap emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO<sub>x</sub> emission rates of §117.1110 of this title must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.

Figure: 30 TAC §117.1120(c)(1) (No change)

$$Cap_{30day} = \sum_{i=1}^N (H_i \times R_i)$$

Where:

Cap<sub>30day</sub> = the NO<sub>x</sub> 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H<sub>i</sub> = the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1996, 1997, and 1998. For an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1996 - 1998 may be used; and

R<sub>i</sub> = the emission specification of §117.1110(a) of this title.

(2) A maximum daily cap must be calculated using the following equation.

Figure: 30 TAC §117.1120(c)(2) (No change)

$$Cap_{daily} = \sum_{i=1}^N (H_{mi} \times R_i)$$

Where:

$Cap_{daily}$  = the NO<sub>x</sub> maximum daily cap in pounds per day;

$i$  = as defined in paragraph (1) of this subsection;

$N$  = as defined in paragraph (1) of this subsection;

$H_{mi}$  = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

$R_i$  = as defined in paragraph (1) of this subsection.

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The NO<sub>x</sub> emissions monitoring required by §117.1140 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO<sub>x</sub> monitor is off-line:

(1) if the NO<sub>x</sub> monitor is a continuous emissions monitoring system

(CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.1140(d) of this title;

(3) if the NO<sub>x</sub> monitor is a predictive emissions monitoring system

(PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) if the methods specified in paragraphs (1) - (3) of this subsection are not used, the owner or operator shall use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator of any EGF subject to a system cap shall maintain daily records indicating the NO<sub>x</sub> emissions and fuel usage from each EGF and summations of total NO<sub>x</sub> emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any EGF subject to a system cap shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure

future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1145 of this title.

(h) The owner or operator of any EGF subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions)

must be calculated from the NO<sub>x</sub> emission rate measured by the NO<sub>x</sub> monitor, if operating properly. If the NO<sub>x</sub> monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO<sub>x</sub> monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO<sub>x</sub> who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap. The value R<sub>i</sub> in this section is based on the unit's status as part of a large or small system as of January 1, 2000, and does not change as a result of sale or transfer of the unit, regardless of the size of the transferee's system.

**SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC  
GENERATION SOURCES IN OZONE NONATTAINMENT AREAS  
DIVISION 3: HOUSTON-GALVESTON-BRAZORIA OZONE  
NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES  
§117.1220**

**Statutory Authority**

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and

monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amended section 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 Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

**§117.1220. System Cap**

(a) An owner or operator of an electric generating facility (EGF) shall comply with a daily and 30-day system cap nitrogen oxides (NO<sub>x</sub>) emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that is subject to §117.1210(a) of this title (relating to Emission Specifications for Attainment Demonstration) must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.

Figure: 30 TAC §117.1220(c)(1) (No Change)

$$Cap_{30\text{day}} = \sum_{i=1}^N (H_i \times R_i)$$

Where:

$Cap_{30\text{day}}$  = the NO<sub>x</sub> 30-day rolling average emission cap in pounds per day;

$i$  = each EGF in the electric power generating system;

$N$  = the total number of EGFs in the emission cap;

$H_i$  = (A) the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for any system 30-day period in the nine months of July, August, and September 1997, 1998, and 1999;

(B) for an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to any system 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1997 - 1999 may be used;

(C) the level of activity authorized by the executive director for the third quarter (July, August, and September), until such time two consecutive third quarters of actual level of activity data are available, must be used for the following:

(i) an EGF that the owner or operator has submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application determined to be administratively complete by the executive director before January 2, 2001;

(ii) an EGF that qualifies for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and has commenced construction before January 2, 2001; and

(iii) an EGF that was not in operation before January 1, 1997;

(D) after two consecutive third quarters of actual level of activity data are available for an EGF described in subsection (c)(1) of this section, variable (C) of this figure, the owner or operator may calculate the baseline as the average of any two consecutive third quarters in the first five years of operation. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions); and

(E) in extenuating circumstances, the owner or operator of an EGF may request, subject to approval of the executive director, up to two additional calendar years to establish the baseline period described in subsection (c)(1) of this section, variables (A) - (D) of this figure. Applications seeking an alternate baseline period must be submitted by the owner or operator of the EGF to the executive director:

(i) no later than December 31, 2001; or

(ii) for an EGF that the baseline period as described in subsection (c)(1) of this section, variables (A) - (D) of this figure is not complete by December 31, 2001, no later than 90 days after completion of the baseline period; and

$R_i$  = the emission specification of §117.1210(a) of this title.

(2) A maximum daily cap must be calculated using the following equation.

Figure: 30 TAC §117.1220(c)(2) (No Change)

$$Cap_{daily} = \sum_{i=1}^N (H_{mi} \times R_i)$$

Where:

$Cap_{daily}$  = the NO<sub>x</sub> maximum daily cap in pounds per day;

$i$  = as defined in paragraph (1) of this subsection;

$N$  = as defined in paragraph (1) of this subsection;

$H_{mi}$  = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

$R_i$  = as defined in paragraph (1) of this subsection.

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The  $NO_x$  emissions monitoring required by §117.1240 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the  $NO_x$  monitor is off-line:

(1) if the  $NO_x$  monitor is a continuous emissions monitoring system

(CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title;

(3) if the NO<sub>x</sub> monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) if the methods specified in paragraphs (1) - (3) of this subsection are not used, the owner or operator shall use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator shall maintain daily records indicating the NO<sub>x</sub> emissions and fuel usage from each EGF and summations of total NO<sub>x</sub> emissions and

fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1245 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1245 of this title.

(h) The owner or operator shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the

permanent shutdown occurred after January 1, 2000. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO<sub>x</sub> emission rate measured by the NO<sub>x</sub> monitor, if operating properly. If the NO<sub>x</sub> monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO<sub>x</sub> monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO<sub>x</sub> who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap.

**SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL  
DIVISION 1: UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL  
TEXAS  
§117.3020**

**Statutory Authority**

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling

Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amended section 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 Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

**§117.3020. System Cap.**

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO<sub>x</sub>) emission specifications of §117.3010 of this title (relating to Emission Specifications) by achieving equivalent NO<sub>x</sub> emission reductions obtained by compliance with a system cap emission limitation in accordance with the requirements of this section.

(b) Each unit within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO<sub>x</sub> emission specifications of §117.3010 of this title must be included in the system cap.

(c) The annual average emission cap must be calculated using the following equation.

Figure: 30 TAC §117.3020(c) (No change)

$$Cap_{annual} = \sum_{i=1}^N \frac{(H_i \times R_i)}{2000}$$

Where:

$Cap_{annual}$  = the NO<sub>x</sub> annual average emission cap in tons per year;

$i$  = each unit in the electric power generating system;

$N$  = the total number of units in the emission cap;

$H_i$  = the average of the annual heat input for each unit in the emission cap, in million British thermal units per year, as certified to the executive director, for 1996, 1997, and 1998;  
and

$R_i$  = the emission specification of §117.3010 of this title.

(d) The NO<sub>x</sub> emissions monitoring required by §117.3040 of this title (relating to Continuous Demonstration of Compliance) for each unit in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating unit, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO<sub>x</sub> monitor is off-line:

(1) if the NO<sub>x</sub> monitor is a continuous emissions monitoring system

(CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.3040(e) of this title;

(3) if the NO<sub>x</sub> monitor is a predictive emissions monitoring system

(PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) use the maximum emission rate as measured by the testing conducted in accordance with §117.3035(d) of this title (relating to Initial Demonstration of Compliance).

(f) The owner or operator of any unit subject to a system cap shall maintain daily records indicating the NO<sub>x</sub> emissions and fuel usage from each unit and summations of total NO<sub>x</sub> emissions and fuel usage for all units under the system cap on a daily basis. Records must also be retained in accordance with §117.3045 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any unit subject to a system cap shall submit annual reports for the monitoring systems in accordance with §117.3045 of this title. The owner or operator shall also report any exceedance of the system cap emission limit in the annual report and shall include an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance.

(h) The owner or operator of any unit subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in

§117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas).

(i) A unit that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred on or after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO<sub>x</sub> emission rate measured by the NO<sub>x</sub> monitor, if operating properly. If the NO<sub>x</sub> monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO<sub>x</sub> monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless

the owner or operator provides data demonstrating to the satisfaction of the executive director and United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO<sub>x</sub> in any of the east and central Texas attainment counties listed in §117.3000(a)(4) of this title (relating to Applicability) who is participating in the system cap under this section (relating to System Cap) may exceed their system cap provided that the owner or operator is complying with the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).

**SUBCHAPTER H: ADMINISTRATIVE PROVISIONS**  
**DIVISION 2: COMPLIANCE FLEXIBILITY**  
**§117.9800**

**Statutory Authority**

The amended section is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also adopted under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions and THSC, §382.021, concerning Sampling

Methods and Procedures, that authorizes the commission to prescribe sampling methods. The amended section 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 Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements TWC, §§5.102, 5.103, and 5.105; THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021; and FCAA, 42 USC, §§7401 *et seq.*

**§117.9800. Use of Emission 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 Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) - (8) of this subsection, 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 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading), unless there are federal or

state regulations or permits under the same commission account number that contain a condition or conditions precluding such use:

(1) §§117.105, 117.205, 117.305, 117.1005, 117.1105, or 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

(2) §§117.110, 117.210, 117.1010, or 117.1110 of this title (relating to Emission Specifications for Attainment Demonstration);

(3) §§117.1015, 117.1115, or 117.1215 of this title (relating to Alternative System-Wide Emission Specifications);

(4) §§117.115, 117.215, or 117.315 of this title (relating to Alternative Plant-Wide Emission Specifications);

(5) §§117.123, 117.223, 117.323, 117.423, or §117.3120 of this title (relating to Source Cap);

(6) §§117.2010, 117.3010, or 117.3110 of this title (relating to Emission Specifications);

(7) §§117.410, 117.1310, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration); or

(8) §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements).

(b) An owner or operator of a unit subject to §§117.320, 117.1020, 117.1120, 117.1220, or 117.3020 of this title (relating to System Cap) may meet the emission control requirements of these sections in whole or in part, by complying with the requirements of Chapter 101, Subchapter H, Division 1 or 4 of this title, by obtaining an ERC, MERC, DERC, or MDERC, unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use.

(c) For the purposes of this section, the term "reduction credit (RC)" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(d) Any lower nitrogen oxides (NO<sub>x</sub>) emission specification established under this chapter for the unit or units using RCs requires the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 or 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 that 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 §§117.156, 117.256, 117.356, 117.456, 117.1056, 117.1156, 117.1256, and 117.1356 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 §117.9800(d) (No change)

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

Where:

$\Delta E$  = the differential of emissions;

LA = the maximum level of activity;

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

$ER_{new}$  = the new  $NO_x$  emission rate for the affected unit in pounds per unit of activity; and

d = (A) to calculate annual emission reductions, d = 365; and

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