

EXEC#44687

May 27, 2017

Executive Director  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX. 78711-3087



TCEQ Executive Director,

In the spirit of the EPA's call for regulatory reductions, I would like to submit a petition to change a section of the regulations. While I am employed as an environmental engineer, I am making this petition solely on my own behalf as a resident of Texas.

The enclosed petition requests a modification to the NO<sub>x</sub> regulations in Title 30 of the Texas Administrative code Section 117. This requests the removal of a particularly onerous regulation, 30 TAC 117.310(f) and the identical 117.410(f). These two subsections prohibit operating a stationary diesel engine for testing or maintenance between 6:00 AM and noon. These regulations are routinely cited in environmental circles whenever an example of nonsensical and arbitrary requirements is needed as even brief consideration reveals that they do not protect the environment but have severe negative consequences.

Thank you for consideration of this petition. If any further information is required, you may contact me at Benjamin@ArborOaks.com.

A handwritten signature in blue ink that reads "Ben Dickson".

Ben Dickson P.E.  
License 123542  
Address: 3406 Silver Crown Ct. Richmond, TX. 77406

## Petition for Rulemaking

### Petitioner is an interested person

As a lifelong resident of Texas, I qualify as an interested person according to 30 TAC 20.15(a)(1). Furthermore, I live in Fort Bend county, part of the Harris-Galveston-Brazoria Nonattainment area directly affected by 30 TAC 117.310(f). Therefore, I am personally affected by this regulation.

### Explanation of the proposed rule

My request is to remove two identical subsections from the Texas Administrative Code. These are 30 TAC 117.310(f) and the identical 30 TAC 117.410(f). These rules are identical except that 117.310(f) applies to Harris-Galveston-Brazoria non-attainment area, while 117.410(f) applies to the Dallas-Fort Worth non-attainment area. These rules state that stationary diesel engines cannot be run for testing or maintenance between 6:00 AM and noon. This is not protective to the environment, but instead is actively detrimental to human health. No minor alteration would transform this into a desirable effect. Therefore, I request that these subparts be entirely deleted.

### Proposed Rule Language

I propose to delete the two subparts of the rule entirely, including their three subsections. As these requirements are the final subpart of their respective sections, no renumbering of the remaining text is required.

~~30 TAC 117.310(f) Operating restrictions. No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:~~  
~~–(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;~~  
~~–(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or~~  
~~–(3) firewater pumps for emergency response training conducted in the months of April through October.~~

~~30 TAC 117.410 (f) Operating restrictions. No person may start or operate any stationary diesel or dual-fuel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:~~  
~~–(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;~~  
~~–(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or~~  
~~–(3) firewater pumps for emergency response training conducted from April 1 through October 31.~~

### Statutory Authority

The Texas Commission on Environmental Quality has authority to adopt the proposed rule under the Texas Clean Air Act (5 THSC 382). Section 382.017 allows the commission to adopt rules to comply with the Texas Clean Air Act, and section 382.011, under the general powers and duties to administer the Clean Air Act.

In fact, the rule as it currently stands is questionably in compliance with 5 THSC 382.017(f), which prohibits the agency from specifying a particular method of control. The exceptions, listed between 382.0171 and 382.021, do not refer to time of day operating restrictions as an allowed required. These requirements also fall afoul of 382.001(b), which requires the agency to accomplish its mission "by all practical and economically feasible methods". As I detail in the following section, these requirements are not practical, and the economic damage they cause is not justifiable by the miniscule environmental damage they questionably avert. Therefore, the agency is required to remove these impractical requirements from the code of regulations.

### Injury from Failure to Adopt Proposed Changes

This requirement does not protect the environment. It is based on the concept that emissions in the morning rise to produce low level ozone in the peak of afternoon. Why later NOx emissions do not have similar effects is not explained and is questionable at best. Also, testing and maintenance are not eliminated, merely shifted. This ironically concentrates all testing into a smaller span of time, increasing the peak concentration of emissions from stationary diesel engines and exacerbating the effects of the emissions that are produced from testing and maintenance. While the total increase in emissions concentration caused by such actions is small, it is directly contrary to the express purpose of the agency's actions.

To contrast with its minimal benefits, this requirement causes much consternation and burden. Routine maintenance on stationary engines, which are typically installed either out of doors or non-air-conditioned buildings, is best done in the cool of early morning, especially during summer months. This regulation increases the amount of labor that must be performed in the afternoon sun with all associated safety risks of sunburn, dehydration, and heat-related illnesses. Environmental regulations are designed to improve human health and safety, not endanger it.

Furthermore, as these regulations only apply to the Houston and DFW areas, personnel and contractors that originate from outside the affected areas quite often do not know about this relatively obscure regulation. This causes a needless training burden on all personnel and causes a frustrating number of deviations from the requirements. These deviations stem from well-meaning maintenance personnel wishing to get ahead of schedule, engineers testing firewater systems, manufacturer's default settings for automatic tests, and endless other similar situations. While people are trained to not operate the engines between these hours, the requirement is counterintuitive, making it difficult to remember.

In addition, the documentation to demonstrate compliance with this requirement is uniquely burdensome. All other regulations on stationary diesel engines requires engine runtime to be determined via a non-resettable runtime meter. However, complying with this regulation requires a detailed log of runtime. As these engines often start automatically, it requires a retroactive determination of the reasons for runtime for any the discrepancy between the log and the runtime meter. This places a significant, undue burden on stationary diesel engines, including emergency generators, firewater pumps, and other engines that are lightly regulated in almost all other aspects.

The combination of minimal to nonexistent benefits to the environment and a heavy compliance burden has caused these specific subparts to be widely mocked by those even casually familiar with industry as the single most concise example of nonsensical regulatory requirements. The requirement

becomes almost comical when it is contrasted with the fact that neither mobile sources nor diesel locomotives have such time-of-day requirements, no matter their size. A 30 ton bulldozer can run any time day or night for any reason, while a half-horsepower generator cannot be run for five minutes between 6:00 AM and noon to determine its functionality. Worst of all, the transparently arbitrary and inconsistent nature of this requirement causes a general decrease of the esteem people hold of compliance, fostering opinions that compliance with regulations is unimportant for actually protecting the environment. This disillusionment makes it harder to obtain compliance with all other requirements, including those that do reduce emissions.

### Conclusion

In the spirit of increasing the utility and effectiveness of regulations, I request that the TCEQ review and eliminate these two subparts from the Texas Administrative Code. They are *not protective of human health or the environment*. Instead, they negatively affect both environmental quality and human safety, apply cumbersome regulatory requirements, and cause general disillusionment with regulatory compliance.