

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners Date: May 29, 1998

Thru: Eugenia K. Brumm, Ph.D.
Chief Clerk

From: Beverly Hartsock, Deputy Director
Office of Policy and Regulatory Development

Subject: **Docket No. 98-0615-RUL.** Consideration of petition for rulemaking for amendments to 30 TAC Chapter 117, Subchapter B, Section 117.213, concerning Combustion at Existing Major Sources. If approved, the petition would allow predictive emission monitoring system quality assurance tests conducted after the initial test to be postponed until after the Chapter 117 final compliance date. The staff recommends approval of the petition. (Randy Hamilton) (Rule Log No. 98025-117-AI)

What the Proposed Rule Would Do:

On April 20, 1998, the agency received a letter from Pavilion Technologies, Incorporated (attached) which requested modification of 30 Texas Administrative Code (TAC) §117.213(c)(3) to allow postponement of relative accuracy test audits for predictive emissions monitoring systems (PEMS) until after the final compliance date (November 15, 1999). The Legal Division has determined that the company's letter should be considered a petition for rulemaking under the commission's rules at 30 TAC §20.15.

In addition, the staff has identified several other revisions to take back to the commission for concurrent permission to propose in the *Texas Register*:

- Rule reform to simplify language in Chapter 117 sections dealing with monitoring, final control plans, and recordkeeping/reporting.
- Revise the continuous emissions monitoring (CEMS) requirements to allow the quarterly cylinder gas audits following the initial CEMS certification to be postponed until after the final compliance date.
- Clarify the time frame for obtaining executive director approval of PEMS/CEMS.
- Adopt by reference, with revisions as necessary, the May 1994, draft PEMS protocol.
- Require final compliance plan data to be submitted on standard forms.
- Add recordkeeping requirements for the optional periodic carbon monoxide sampling, in response to U.S. Environmental Protection Agency comments on the May 20, 1998 Chapter 117 rulemaking.

- Re-evaluate reporting requirements, particularly with regard to quarterly frequency.
- Change three references in §117.540 from “commission” to “executive director” for internal consistency in the section. This was suggested by the Office of General Counsel in their review of the Chapter 117 revisions adopted on May 20, 1998.

Applicable Law:

30 TAC §20.15(c) states: “Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the APA.” The APA is the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001. The 60-day deadline for commission action on the petition is June 19, 1998.

Reason Rules Are Needed:

The petitioner says that the existing language discourages early installation of PEMS because it requires ongoing testing before the final compliance date. The recommended rule change would allow customers to avoid ongoing testing costs before the final compliance date, and postpone some of the initial certification testing costs until after the final compliance date.

Affected Public:

The rule change would affect owners of major nitrogen oxides sources in the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas who have combustion units subject to the CEMS/PEMS requirements of §117.213 and who elect to install PEMS. The change suggested by the petitioner would remove an existing disincentive to early installation of PEMS.

Takings Impact Assessment:

N/A

Coastal Management Program Consistency Review:

N/A

Affected Agency Programs:

The Field Operations Division and the Enforcement Division of the Office of Compliance and Enforcement are responsible for enforcing the Chapter 117 rules. The proposed rule revision could benefit the agency’s compliance activities by distributing the PEMS review workload more evenly, concentrating less of it at the final compliance date.

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Additional Comments:

The staff plans to submit the proposed rules for publication in the Fall of 1998. Chapter 117 rules for the Dallas/Fort Worth (DFW) ozone nonattainment area (to provide emission reductions creditable toward the 1996-1999 rate-of-progress requirements) will probably be needed in support of the revised DFW attainment demonstration, due in March 1999. If these DFW rules are needed, the two rule proposals will be combined into a single publication in the fall, so that the rulemaking associated with the petition does not delay adoption of the DFW rules.

Agency Contacts:

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