

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** July 24, 2009  
**Thru:** LaDonna Castañuela, Chief Clerk  
Mark R. Vickery, P.G., Executive Director  
**From:** Zak Covar  
Assistant Deputy Executive Director  
**Docket No.:** 2009-0338-RUL  
**Subject:** Commission Approval for Proposed Rulemaking and SIP Revision  
Chapter 117, Control of Air Pollution from Nitrogen Compounds  
Exemption of Low-Temperature Drying and Curing Ovens in Mineral Wool-type  
Fiberglass Manufacturing in the Dallas-Fort Worth (DFW) Ozone Nonattainment  
Area  
Rule Project No. 2009-023-117-EN

## Reasons for the rule package:

On December 11, 2008, Elk Corporation of Texas submitted a petition for rulemaking requesting an amendment to Title 30 Texas Administrative Code (TAC) Chapter 117, Subchapter B, Division 4, to exempt curing ovens used in mineral wool-type fiberglass manufacturing where nitrogen-bound chemical additives are used in the DFW eight-hour ozone nonattainment area. The commission approved the petition for rulemaking on January 28, 2009, and issued an order February 2, 2009, directing the executive director to examine the issues in the petition and to initiate rulemaking.

This proposed rulemaking would amend Chapter 117, Subchapter B, Division 4, §117.403(a)(12) to expand the exemption from the current rule to include low-temperature drying ovens and curing ovens used in wet-laid, non-woven fiber mat manufacturing, as well as low temperature drying ovens used in mineral wool-type fiberglass manufacturing at major sources of nitrogen oxides (NO<sub>x</sub>) in the DFW eight-hour ozone nonattainment area. The current §117.403(a)(12) exempts from Chapter 117, curing ovens used in mineral wool-type fiberglass manufacturing where nitrogen-bound chemical additives are used. In response to a comment from Owens Corning in the May 2007 Chapter 117 rule revisions, a provision was added under §117.403(a)(12) to exempt curing ovens used in mineral wool-type fiberglass manufacturing in which nitrogen-bound chemical additives are used because of technical feasibility issues with controlling NO<sub>x</sub> emissions from the curing ovens of this specific operation. While the type of manufacturing covered by the proposed amendment is different from that specified in the current rule exemption, the technical feasibility issue described is similar to the issue that is the basis of the current exemption in §117.403(a)(12). The addition of nitrogen-bound chemical additives contributes to the creation of non-combustion related thermal NO<sub>x</sub> that cannot be controlled using the control methodologies the commission had identified as appropriate for curing ovens used in mineral wool type fiberglass manufacturing. In addition, the amount of NO<sub>x</sub> from curing ovens of this type are estimated to be a small contribution to the total NO<sub>x</sub> emissions from this industry.

**Under what authority are we proposing these changes?**

Texas Government Code, §2001.021, establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 TAC §20.15 provides such procedures specific to the commission.

The following provisions authorize the commission to adopt rules necessary to carry out its powers and duties: 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, §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.

Also, THSC, §382.016, concerning Monitoring Requirements; Examination of Records, authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.021, concerning Sampling Methods and Procedures, authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission; Rules, authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382.

**Is this rulemaking required by federal rule or state statute? Which ones?**

No

**Are there any legal deadlines by which these rules must be proposed, adopted, or effective?**

Yes. The date that the specific units must be in compliance with the NO<sub>x</sub> emission specification in §117.410 is March 1, 2010.

**What issue(s) or problem(s) are we trying to solve?**

Due to the technical feasibility issues described by the petitioner, the control technology anticipated by the commission in the May 2007 revisions to Chapter 117 for major sources in the DFW area will not work on the petitioner's drying and curing ovens. Therefore, the petitioner is not capable of meeting the applicable emission specification for these unit types in §117.410.

**Why is it important that we do this rule package?**

The proposed rulemaking would allow the owners and operators continued use of these specific drying and curing oven types in the DFW ozone nonattainment area through a fair and consistent application of SIP rules in the DFW eight-hour ozone nonattainment area.

**Other important background or historical information.**

While the type of manufacturing is different from that specified in the current rule exemption, the technical feasibility issue described in the Elk Corporation petition is similar to the issue that is the basis of the current exemption in §117.403(a)(12).

**Scope of the rulemaking:**

The proposed rulemaking would amend §117.403(a)(12) in Chapter 117, Subchapter B, Division 4, to expand the exemption from the rule to include low-temperature drying ovens and curing ovens used in wet-laid, non-woven fiber mat manufacturing as well as low temperature drying ovens used in mineral wool-type fiberglass manufacturing. The proposed amendment would also revise the rule language "nitrogen-bound chemical additives" to "nitrogen-containing resins, or other additives." This proposed change is to clarify that nitrogen-containing resins would qualify for this exemption because resins might not always be considered an additive.

**Changes required by federal rule:**

No

**Changes required by state statute:**

No

**Staff recommendations that are not expressly required by federal rule or state statute:**

Air Quality Division staff recommends stipulating in the proposal that the commission plans only to accept comments on the specific changes to the rules regarding the petitioner's request and no other changes will be considered during this rulemaking.

**Impact on the regulated community:**

**Who will be affected?**

The proposed rule amendment would affect owners and operators of low-temperature drying and curing ovens used in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing located at major sources in the DFW eight-hour ozone nonattainment area. In addition to the petitioner, one other major source in the DFW eight-hour ozone nonattainment area might also benefit from this proposed exemption if the manufacturer uses nitrogen-containing resins or other nitrogen-containing additives. However, staff does not have specific information to determine whether the drying ovens located at this site would also qualify for this revised exemption. The source categories affected by the petitioner's request are required to comply with the Chapter 117 rule requirements by March 1, 2010.

**Does it create a group of affected persons who were not affected previously? How?**

No

**Will there be a fiscal impact? If so, estimate.**

No

**Impact on the public:**

**Who will be affected?**

There will be no impact on the public.

**Does it create a group of affected persons who were not affected previously? How?**

No

**Will there be a fiscal impact? If so, estimate.**

No

**Impact on agency programs:** There are no anticipated impacts on agency programs.

**Stakeholder meetings:**

**Have any stakeholder meetings been held?**

No

**With whom?**

N/A

**What were the general sentiments?**

N/A

**Were any changes made in response to stakeholder concerns?**

N/A

**Policy issues:**

**What policy issues are affected?**

None

**Are any policies that are not currently based on rule being made into a rule?**

No

**What are the consequences if this rulemaking is not approved to go forward?**

The affected regulated entities would not be able to use low-temperature drying and curing ovens in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing in the DFW ozone nonattainment area. The operators/owners might be forced to reduce the production levels or shut down their operations altogether in order to comply with Chapter 117 Subchapter B, Division 4.

**Are there alternatives?**

There are no alternatives that would allow the petitioner to use low-temperature drying and curing ovens in mineral wool-type fiberglass manufacturing and wet-laid, non-woven fiber mat manufacturing in the DFW nonattainment area without rulemaking. The current Chapter 117 rules for the DFW ozone nonattainment area effectively prohibit the use of low-

temperature drying ovens and curing ovens used in wet-laid, non-woven fiber mat manufacturing as well as the use of low-temperature drying ovens in mineral wool-type fiberglass manufacturing.

**Potentially controversial matters:**

Although not expected to be controversial, if the proposed rulemaking is adopted approximately 0.1 tons per day (tpd) of NO<sub>x</sub> emission reductions from the 2007 DFW eight-hour ozone attainment demonstration SIP will need to be replaced with another measure. The commission proposes to replace the 0.1 tpd NO<sub>x</sub> reduction with surplus fleet turnover reductions.

**Key points in proposed rulemaking schedule:**

**Anticipated proposal date:** August 12, 2009

**Anticipated *Texas Register* publication date:** August 28, 2009

**Public hearing date (if any):** September 17, 2009, in Ennis

**Public comment period:** August 28 through September 28, 2009

**Anticipated adoption date:** January 13, 2010

**Agency contacts:**

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Attachments

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