

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Richard Hyde, P.E., Division Director  
Air Permits

**Date:** April 11, 2005

**Thru:** David C. Schanbacher, P.E., Chief Engineer

**From:** Candy Garrett, Division Director  
Air Quality Planning and Implementation

**Subject:** Applicability of Chapter 117, Division 3, to Utility Sources

The following question has been asked by the Operating Permits Section of the Air Permits Division:

**Does Chapter 117, Subchapter B, Division 3 (Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas) apply to engines located at sites subject to the requirements of Chapter 117, Subchapter B, Division 1 (Utility Electric Generation in Ozone Nonattainment Areas)?**

The short answer to this question is no, the Division 3 requirements do not apply to electric utility sources that are subject to the Division 1 requirements.

Throughout the regulatory history of 30 TAC Chapter 117, the commission never expressed an intent to subject utilities to Division 3 in addition to Division 1. Discussion in the preamble to the 1993 adoption of the separate divisions indicates that the commission considered utility sources and industrial sources to be separate source categories that are subject to separate divisions in Chapter 117. Further, the fiscal note for the 2001 amendments that proposed the requirements for diesel engines in Chapter 117, Division 3, did not include any mention of utilities as possibly affected sources.

## More Detail

The preamble to the 1993 rule adoption (18 TexReg 3409, May 28, 1993) includes numerous instances where “utility” and “industrial” sources, units, or rules are mentioned in a context that indicates a distinction between the two categories. Examples include the following:

The annual heat input exemption for utility units has been increased to the level now recommended for industrial units. (18 TexReg 3414)

For purposes of maintaining rule consistency between the electric utility and industrial sections, the staff has revised the emission limit as suggested. (18 TexReg 3420)

Section 117.119(a) has been revised to make it consistent with the requirements of the industrial rule and less burdensome to utilities. (18 TexReg 3423)

The proposal preamble to the 2001 amendment that added requirements for diesel engines to Division 3 includes the following statement (26 TexReg 4413, June 15, 2001):

Examples of facilities and operations supported by affected stationary diesel engines include backup generators supporting data processing operations, hospitals, nursing homes, large retail facilities, and buildings requiring backup power to elevators. There are also affected stationary diesel engines at

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operations such as rock crushers, sand and gravel plants, hot mix asphalt and concrete plants, and oil and gas drilling rigs.

Electric utilities are not mentioned as sources that would potentially be affected by the proposed rule. Had the commission intended for engines at utilities to be subject to the requirements, the fiscal impact would have included some information regarding financial impacts at utilities from implementation of the requirements.

**Conclusion**

The preamble references cited above indicate that utility sources have been considered as separate from industrial, commercial, and institutional sources since the adoption of the separate divisions of Chapter 117 in 1993. The 2001 preamble indicates that the commission did not evaluate the effect of the diesel engine requirements in Division 3 on utility sources. These references indicate that the commission did not intend for utility sources subject to Chapter 117, Division 1 to also be subject to the requirements of Division 3.

cc: David C. Schanbacher, P.E.  
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DS/tsh