

1-1 By: Averitt S.B. No. 1672
1-2 (In the Senate - Filed March 8, 2007; March 21, 2007, read
1-3 first time and referred to Committee on Natural Resources;
1-4 April 2, 2007, reported favorably by the following vote: Yeas 11,
1-5 Nays 0; April 2, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to nitrogen oxide allowance allocation adjustments and the
1-9 incorporation of modifications to federal rules under the state
1-10 implementation plan.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsections (b), (c), and (e), Section 382.0173,
1-13 Health and Safety Code, are amended to read as follows:

1-14 (b) The commission may require emissions reductions in
1-15 conjunction with implementation of the rules adopted under
1-16 Subsection (a) only for electric generating units. The commission
1-17 shall make permanent allocations that are reflective of the
1-18 allocation requirements of 40 C.F.R. Subparts AA through HH and
1-19 Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of
1-20 Part 60, as applicable, at no cost to units as defined in 40 C.F.R.
1-21 Sections ~~[Section]~~ 51.123 and 60.4102 using the United States
1-22 Environmental Protection Agency's allocation method as specified
1-23 by 40 C.F.R. Section 60.4142(a)(1)(i) ~~[, as issued by that agency on~~
1-24 ~~May 12, 2005,]~~ or 40 C.F.R. Section 96.142(a)(1)(i) ~~[, as issued by~~
1-25 ~~that agency on May 18, 2005]~~, as applicable, with the exception of
1-26 nitrogen oxides which shall be allocated according to the
1-27 additional requirements of Subsection (c). The commission shall
1-28 maintain a special reserve of allocations for new units commencing
1-29 operation on or after January 1, 2001, as defined by 40 C.F.R.
1-30 Subparts AA through HH and Subparts AAA through HHH of Part 96 and
1-31 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception
1-32 of nitrogen oxides which shall be allocated according to the
1-33 additional requirements of Subsection (c).

1-34 (c) Additional requirements regarding NOx allocations:

1-35 (1) The commission shall maintain a special reserve of
1-36 allocations for nitrogen oxide of 9.5 percent for new units.
1-37 Beginning with the 2015 control period, units shall be considered
1-38 new for each control period in which they do not have five years of
1-39 operating data reported to the commission prior to the date of
1-40 allocation for a given control period. Prior to the 2015 control
1-41 period, units that commenced operation on or after January 1, 2001,
1-42 will receive NOx allocations from the special reserve only.

1-43 (2) Nitrogen oxide allowances shall be established for
1-44 the 2009-2014 control periods for units commencing operation before
1-45 January 1, 2001, using the average of the three highest amounts of
1-46 the unit's adjusted control period heat input for 2000 through
1-47 2004, with the adjusted control period heat input for each year
1-48 calculated as follows:

1-49 (A) if the unit is coal-fired during the year,
1-50 the unit's control period heat input for such year is multiplied by
1-51 90 percent;

1-52 (B) if the unit is natural gas-fired during the
1-53 year, the unit's control period heat input for such year is
1-54 multiplied by 50 percent; and

1-55 (C) if the fossil fuel fired unit is not subject
1-56 to Paragraph ~~[Subparagraph]~~ (A) or (B) of this subdivision
1-57 ~~[paragraph]~~, the unit's control period heat input for such year is
1-58 multiplied by 30 percent.

1-59 (3) Before the allocation date specified by EPA for
1-60 the control period beginning January 1, 2018 ~~[2016]~~, and every five
1-61 years thereafter, the commission shall adjust the baseline for all
1-62 affected units using the average of the three highest amounts of the
1-63 unit's adjusted control period heat input for periods one through
1-64 five of the preceding nine ~~[seven]~~ control periods, with the

2-1 adjusted control period heat input for each year calculated as
2-2 follows:

2-3 (A) for units commencing operation before
2-4 January 1, 2001:

2-5 (i) if the unit is coal-fired during the
2-6 year, the unit's control period heat input for such year is
2-7 multiplied by 90 percent;

2-8 (ii) if the unit is natural gas-fired
2-9 during the year, the unit's control period heat input for such year
2-10 is multiplied by 50 percent; and

2-11 (iii) if the fossil fuel fired unit is not
2-12 subject to Subparagraph (i) or (ii) [~~Subdivision (3)(A)(i) or~~
2-13 ~~(3)(A)(ii)]~~ of this paragraph [~~subparagraph~~], the unit's control
2-14 period heat input for such year is multiplied by 30 percent; and~~[-]~~

2-15 (B) for units commencing operation on or after
2-16 January 1, 2001, in accordance with the formulas set forth by USEPA
2-17 in 40 C.F.R. 96.142 with any corrections to this section that may be
2-18 issued by USEPA prior to the allocation date.

2-19 (e) In adopting rules under Subsection (a), the commission
2-20 shall incorporate any modifications to the federal rules cited in
2-21 this section that result from:

2-22 (1) a request for rehearing regarding those rules that
2-23 is filed with the United States Environmental Protection Agency;

2-24 (2) [~~or from~~] a petition for review of those rules that
2-25 is filed with a court; or

2-26 (3) a final rulemaking action of the United States
2-27 Environmental Protection Agency.

2-28 SECTION 2. This Act takes effect immediately if it receives
2-29 a vote of two-thirds of all the members elected to each house, as
2-30 provided by Section 39, Article III, Texas Constitution. If this
2-31 Act does not receive the vote necessary for immediate effect, this
2-32 Act takes effect September 1, 2007.

2-33 * * * * *