

The commission adopts new §106.181, concerning Small Boilers, Heaters, and Other Combustion Devices, with changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8384). The new section exempts small boilers, heaters, and other combustion devices burning used oil from the preconstruction permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057 and §382.0518.

EXPLANATION OF ADOPTED RULE

This rulemaking action is part of the commission's plan to recodify standard exemptions in a new Chapter 106, concerning Exemptions from Permitting. This action creates a new §106.181, which is a partial recodification of current Standard Exemption (SE) 7 in §116.211, and will allow for burning used oil in small boilers, heaters, and other combustion devices. Small boilers, heaters, and other combustion devices burning used oil constructed or modified after the effective date of this section will be subject to the requirements of this new chapter. The current SE 7 should continue to be used when burning other fuels allowed by exemption. The commission plans to recodify the remainder of SE 7 into §106.182 in a future rulemaking.

The rule addresses the following problem: a significant opportunity for recycling used oil is to use it for fuel for heating purposes. However, the current standard exemption for boilers, heaters, and other combustion devices, SE 7, does not allow for the burning of used oil. Thus, in order to burn used oil in one of these devices, the owner/operator of combustion devices burning used oil would be required to obtain a new construction permit. The rule solves this problem by creating §106.181 to exempt the

burning of used oil in boilers, heaters, and other combustion devices as long as certain conditions are met.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code, §2007.043. Promulgation and enforcement of this rule will not affect private real property.

HEARING AND COMMENTERS

A public hearing was held in Austin on October 1, 1996. No oral testimony was presented. Written comments were received from the City of Wichita Falls and Environeering, Inc.

The City of Wichita Falls supported the proposal and the commission's efforts to make the rules more user friendly.

The commission acknowledges and appreciates the support.

Environeering, Inc. commented that the size restriction for the exemption should be a range of 0.5 million Btu per hour (MM Btu/hr) to 10 MM Btu/hr with a combined total not to exceed 10 MM Btu/hr. The commenter stated that United States Environmental Protection Agency emissions factors do not differentiate between the level of emissions expected from combustion units in this range. Further, the commenter stated that the nitrogen oxide (NO_x) emissions from boilers up to 10 MM Btu/hr would still be of a level at which an exemption would be appropriate.

The intent of this rulemaking was to allow the burning of used oil in small combustion devices, such as water heaters, for energy recovery purposes. The size restriction established in the exemption was established to be consistent with the requirements of 40 Code of Federal Regulations, Part 279 and the requirement under the TCAA that the exemption be protective of human health and the environment. Burning of used oil generates emissions in addition to NO_x that were evaluated for this purpose and resulted in the total capacity restrictions. The previous exemption (SE 7) is not being changed with this new exemption and is still applicable for boilers greater than 0.5 MM BTU/hr.

Environeering, Inc. commented that the current exemption (SE 7) does not allow fuel oil to be used except as a backup fuel and that it was unclear why this proposal does not include fuel oil as exemptible since the emissions would be approximately the same as from burning used oil.

The intent of this rule proposal was to allow the burning of used oil in small combustion devices for energy recovery purposes, and therefore this comment is outside the scope of this rulemaking. The commission will be considering other changes to the current exemption (SE 7) in future rulemaking and will have another public comment period.

The commission has made changes to make the proposal consistent with the requirements of §106.102, concerning Comfort Heating. These two exemptions complete the commission's effort to exempt from permitting the burning of used oil for energy recovery purposes.

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

CHAPTER 106
EXEMPTIONS FROM PERMITTING
SUBCHAPTER G : COMBUSTION

§106.181

§106.181. Small Boilers, Heaters, and Other Combustion Devices.

(a) Small boilers, heaters, drying or curing ovens, furnaces, or other combustion units, but not including stationary internal combustion engines or turbines, are exempt provided that all the conditions of this section are met.

(b) Combustion units may burn used oil as a fuel as long as the used oil has not been mixed with hazardous waste and the combustion unit meets the following conditions:

(1) the combustion unit or combination of combustion units at the same account have a maximum capacity of 1.0 million Btu per hour (MMBtu/hr) and each individual combustion unit is not greater than 0.5 MMBtu/hr;

(2) the combustion gases from the combustion unit(s) are vented to the ambient air in accordance with the following requirements:

(A) through an unobstructed vent; or

(B) through a vertical vent with a cap; and

(i) a flat roof, through a minimum of a three-foot stack; or

(ii) a sloped roof, through a stack that is at least three feet higher than the highest point on the roof or three feet higher than a point extending ten feet horizontally from the roof; and

(3) the combustion unit(s) burns only used oil the owner or operator generates on-site or used oil received from household do-it-yourself used oil generators.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 4, 1996.