

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts an amendment to §106.4, concerning Requirements for Exemption from Permitting. The amendment is adopted without changes to the proposed text as published in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12399) and will not be republished.

EXPLANATION OF THE ADOPTED RULE

The Federal Clean Air Act (FCAA), §182(f), specifies that required measures for major sources of volatile organic compounds must also be applied to major sources of nitrogen oxides (NO_x), unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The United States Environmental Protection Agency's (EPA) interpretation of §182(f) allows the following federally required NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: reasonably available control technology (RACT), nonattainment new source review (NNSR), vehicle inspection/maintenance, and general and transportation conformity. On April 12, 1995, the EPA approved a temporary §182(f) exemption from these NO_x measures in the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas. The EPA's approval was based on the state's preliminary demonstration, using Urban Airshed Model (UAM) modeling, that NO_x reductions in HGA and BPA would not lower ozone levels, and in fact could make them worse ("NO_x disbenefit"). The temporary exemption allowed more time to conduct UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results were judged critical in determining whether, and to what extent, NO_x reductions are needed to attain the ozone standard. The EPA specified that the temporary exemption would expire on December 31, 1996. On May 23, 1997, the EPA approved a one-year

extension of the §182(f) temporary exemption, which since expired on December 31, 1997. This additional year allowed the commission to accommodate improvements in the UAM, using COAST data, and to better substantiate an emission reduction strategy.

As a result of the original exemption and extension, the agency revised certain rules, including §106.4, to be consistent with the §182(f) waiver. In the fall of 1997, commission staff completed the UAM modeling analysis of the airshed of the upper Texas Gulf Coast. This study indicated that NO_x reductions are a necessary step toward the area's attaining the federal air quality standard for ozone. Because of the modeling and the need to continue steady reductions of the pollutants that contribute to ozone smog, on November 24, 1997, the commission determined not to seek further federal §182(f) waivers from the NO_x reduction requirements of the 1990 FCAA for the HGA and BPA areas.

This amendment to Chapter 106, regarding Exemptions from Permitting, requires a source seeking a standard exemption to instead undergo full NNSR if the project constitutes a new major source or major modification for NO_x.

REGULATORY IMPACT ANALYSIS

The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the Code. The amendment, which implements the requirements of FCAA, §§172(c)(5), 173, and 182(f), does not meet the definition of “major environmental rule” because the obligations have already been

established by federal law and thus are not new requirements. The full federal NNSR requirements became effective by operation of federal law upon expiration of the temporary §182(f) exemption. No comments on the regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this amended section under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this amendment is to remove an existing waiver for NO_x NNSR. As adopted, some new or modified sources located in the HGA and BPA ozone nonattainment areas will no longer qualify for an exemption and instead will be subject to a review of their NO_x emissions and possibly new control measures. However, there is no restriction or taking of private real property associated with the adoption of this amendment.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and

has determined that this rulemaking action is consistent with the applicable CMP goals and policies.

The primary CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Code of Federal Regulations, Title 40, to protect and enhance air quality in the coastal area. Adoption of the proposed amendment should result in reductions of ambient NO_x and ozone concentrations. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies.

HEARING AND COMMENTERS

A public hearing was held on January 20, 1998. No testimony was provided at the hearing. The public comment period also closed on January 20, 1998. Three commenters, the Galveston-Houston Association for Smog Prevention, an individual, and an attorney representing the Texas Industry Project, expressed general support for the amendment. These commenters referenced the proposed rulemaking in their comments on the concurrent proposed amendments to Chapter 116, without specific comments in regard to the Chapter 106 amendment. There was no general opposition to the amendment.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, 382.051, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.051 authorizes the commission to adopt rules as necessary to comply with changes in federal law

or regulations applicable to permits issued under the Health and Safety Code, Chapter 382. Section 382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

SUBCHAPTER A : GENERAL REQUIREMENTS

§106.4

§106.4. Requirements for Exemption from Permitting.

(a) To qualify for an exemption, the following general requirements must be met.

(1) (No change.)

(2) Any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter. Persons claiming an exemption under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA,

Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(4) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO₂ or PM₁₀; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(5) Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(6) A proposed facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) There are no permits under the same Texas Natural Resource Conservation Commission account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(b) - (d) (No change.)