

The Texas Commission on Environmental Quality (commission or TCEQ) proposes the repeal of §106.392.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The Air Permits Division (APD) requests that the executive director repeal §106.392, Thermoset Resin Facilities. The repeal of the thermoset resin permit by rule (PBR) would ensure that new and modified thermoset resin facilities would use the most technically appropriate and protective method of authorization. The proposed thermoset resin standard permit being developed by APD updates administrative and technical requirements and is intended to replace the permit by rule that currently exists for these facilities.

The executive director recommends that the proposed rule change be adopted only if the associated standard permit is issued by the commission. Existing thermoset resin facilities registered under §106.392 prior to the effective date of the repeal would continue to be authorized under the PBR as long as the owner or operator can continue to follow the requirements of the PBR for the site.

SECTION DISCUSSION

§106.392 - Thermoset Resin Facilities

The commission is proposing to delete this section in order to replace its function with the proposed thermoset resin standard air permit.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year

period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will implement the proposed rule using currently available resources. Agency revenue is expected to increase, but the increase is not expected to be significant. Local governments and other state agencies do not typically own or operate thermoset resin facilities; therefore, the proposed rule is not expected to have fiscal implications for these entities.

The proposed rule would amend Chapter 106 to repeal the PBR for thermoset resin facilities. Thermoset resin facilities that do not modify their operations could continue to operate under their current PBR as long as they meet the requirements contained in that PBR. New or modified thermoset resin facilities would be required to obtain a standard permit that is also currently under proposal or a case-by-case new source review (NSR) permit. Thermoset resin is used in fiber-reinforced plastic and cultured (synthetic) marble products such as bathtubs, bathroom countertops, boats, and storage tanks.

The agency estimates an increase in fee revenue due to the repeal of the current PBR if affected facilities have to be authorized under the proposed standard permit or a case-by-case NSR permit. Only new or modified facilities would be affected by the proposed rule. The current PBR fee is \$450 for a large business and \$100 for a small business. The proposed standard permit is expected to become effective in December 2010 and will cost \$900 per registration. The standard permit would require renewal every ten years. The agency conservatively estimates that there will be ten approved standard permit registrations per year at \$900 for a total of \$9,000 per year. In the past, approximately eight small businesses have registered for a PBR and paid \$100 each while two large businesses have paid \$450 each for a PBR for a total of \$1,700 per year. The estimated net increase in agency revenue is expected to be \$7,300 per year

as a result of the proposed rule and proposed standard permit and is not expected to be significant.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be more detailed permit conditions and requirements than the PBR for improved air quality in the vicinity of thermoset resin facilities.

Fiscal implications are anticipated for individuals or businesses that propose a new facility or modify an existing one. Businesses that do not modify an existing facility or propose a new one will be able to continue to operate under the PBR for thermoset resin facilities as long as they continue to comply with the permit provisions.

The proposed repeal of the thermoset resin PBR will require businesses that own or operate new or modified facilities to register for the new proposed thermoset resin standard permit or apply for a NSR permit on a case-by-case basis. The proposed standard permit or case-by-case NSR permit would have more detailed permit conditions and requirements than the current PBR. The proposed thermoset resin standard permit would require a stack that is at least twice the height of the building where production takes place. Such a stack could be between 40 and 75 feet, and staff estimates that a new structurally supported stack could be as much as \$22,000 per facility and a structurally self-supported stack could cost as much as \$75,000 to \$80,000 per facility. Stacks required by the current PBR are roughly six to 20 feet and are estimated to have cost \$6,000 to \$11,000 per facility. The estimated cost increase for stacks could range between \$16,000 to \$69,000 depending on the type of stack and the required height. Staff

conservatively estimates that ten approved thermoset resin facilities per year will be affected by these proposed requirements. In addition, a large business will be required to pay \$450 more to register for the proposed standard permit, which cost \$900, as opposed to a PBR, which cost \$450.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for those small or micro-businesses that construct new or modify existing thermoset resin businesses as a result of the proposed rule. Staff estimates that eight out of ten approved thermoset resin businesses expected to modify existing facilities or build new ones will be small businesses. Small businesses that build new facilities or modify existing ones will be required to register for a proposed standard permit or a NSR permit. These permits will have the same stack requirements as those required for large businesses. The estimated increased cost for stacks could range between \$16,000 to \$69,000 depending on the type of stack and the required height. A small business that paid \$100 for the current PBR will also be required to pay \$800 more for the proposed standard permit, which costs \$900.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to protect the environment. The compliance and registration requirements for thermoset resin facilities are already designed to minimize the regulatory burden while still protecting the public from odor nuisance issues. The proposed standard permit allows for a range of designs and operating parameters to maximize flexibility. Thermoset resin facilities using less than one ton per year are exempt from all requirements except recordkeeping requirements. If no modification of a thermostat resin facility is made, a business can continue to operate

under the repealed PBR.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A “major environmental rule” means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking is not a major environmental rule because it is mainly an administrative action only, to repeal the PBR thermoset resin facilities which is in §106.392. The proposed repeal will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a draft regulatory impact analysis is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major

environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this proposal does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to repeal the PBR for thermoset resin facilities, which is in §106.392. This repeal does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of this proposed repeal is neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property

because this rulemaking does not burden (constitutionally); nor restrict or limit the landowner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule(s) include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The proposed rulemaking will indirectly benefit the environment because the repeal of §106.392 is expected to ensure appropriate authorization for subject facilities, eliminate duplication, and provide a clear regulatory structure. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e), the commission

affirms that this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of the proposed rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Most facilities affected by this proposal are minor sources and not subject to the Federal Operating Permits Program. In addition, this proposal would not directly affect existing authorized sources unless those sources are modified and require new authorization. Therefore, there should be no direct effect on sites subject to the federal operating permits program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on August 9, 2010 at 10:00 A.M. in 201S of Building E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Charlotte Horn, Office of Legal Services at (512) 239-0779. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Duron, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2010-012-106-PR. The comment period closes August 16, 2010. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Ms. Becky Southard, Technical Program Support Section, (512) 239-1638.

[SUBCHAPTER Q: THERMOSET RESIN FACILITIES]

[\$106.392]

STATUTORY AUTHORITY

The repeal is proposed under the Texas Health and Safety Code, Texas Clean Air Act, §§382.002, Policy and Purpose; 382.011, General Powers and Duties; 382.012, State Air Control Plan; 382.017, Rules; 382.051, Permitting Authority of Commission; Rules; 382.05196, Permits by Rule; and 382.057, Exemption. The repeal is also be proposed under the commission's general authority under Texas Water Code, §§5.102, General Powers; 5.103, Rules; and 5.105, General Policy.

The proposed repeal implements Texas Health and Safety Code, §§382.017, 382.051, 382.05196, and 382.057.

[\$106.392. Thermoset Resin Facilities.]

[Facilities using thermoset resins (excluding resins that do not emit air contaminants) to manufacture or repair products are permitted by rule, provided that the following conditions of this section are satisfied for paragraph (1) and either paragraph (2) or (3) of this section.]

[(1) The following requirements shall apply to all thermoset resin facilities.]

[(A) Before construction begins, the facility must be registered with the commission using Form PI-7.]

[(B) Records of resin and acetone usage shall be kept on a monthly and calendar year-to-date basis to show compliance with this section, and shall be maintained for the most recent 24 months.]

[(C) All resin spraying and cleaning operations shall be conducted between two hours before sunrise and two hours after sunset. The exhaust fan(s) must be operating during and for at least 30 minutes after any usage of resin and/or cleaning solvents.]

[(D) All solid trim grinding operations shall be vented through a dry filter system or a water wash system which has a particulate removal efficiency of at least 95%. Particulates trapped in the dry filter system or water wash sludge shall be handled and stored in a way to minimize the escape of fugitive dust emissions.]

[(E) No more than five tons of acetone shall be used per year (gross usage minus waste disposal).]

[(2) The following requirements shall apply to facilities that have spraying operations (the facilities may include non-spraying operations).]

[(A) No more than 75 tons of resin and gelcoat combined shall be used per year (gross usage minus waste disposal).]

[(B) All resin spraying operations shall be conducted in a booth or an enclosed work area and the emissions shall be exhausted through elevated stack(s). All stacks shall discharge vertically to the atmosphere with no restrictions or obstructions to flow. Each stack shall meet one of the following minimum requirements:]

[(i) a flow rate of 20,000 actual cubic feet per minute (acfm) and the greater of six feet above the peak of the manufacturing building or 25 feet above ground level; or]

[(ii) a flow rate of 15,000 acfm and the greater of six feet above the peak of the manufacturing building or 30 feet above ground level.]

[(C) No more than 1,000 pounds per year of resin shall be used outdoors.]

[(D) If annual resin usage is less than 1,000 pounds, a facility is exempt from all requirements of this section except recordkeeping (paragraph (1)(B) of this section).]

[(3) The following requirements shall apply only to non-spraying operations.]

[(A) No more than 150 tons of resin and gelcoat combined shall be used per year (gross usage minus waste disposal).]

[(B) All resin operations shall be conducted in a booth or an enclosed work area or the manufacturing building and the emissions shall be exhausted through elevated stack(s). All stacks shall discharge vertically to the atmosphere with no restrictions or obstructions to flow. Each stack shall meet one of the following minimum requirements:]

[(i) a flow rate of 20,000 acfm and the greater of six feet above the peak of the manufacturing building or 25 feet above ground level; or]

[(ii) a flow rate of 15,000 acfm and the greater of six feet above the peak of the manufacturing building or 30 feet above ground level.]

[(C) No more than 3,000 pounds per year of resin shall be used outdoors.]

[(D) If annual resin usage is less than 3,000 pounds, a facility is exempt from all requirements of this section except recordkeeping (paragraph (1)(B) of this section).]