

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §106.512, Stationary Engines and Turbines. The commission proposes this amendment to Chapter 106, Permits by Rule, Subchapter W, Turbines and Engines, to preclude registration under §106.512 of engines or turbines used to generate electricity upon issuance of a standard permit for small electric generating units. However, the amendment exempts from this requirement engine or turbine-driven generators used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants or satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E, Aggregate and Pavement.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The Public Utility Commission (PUC) of Texas anticipates that small electric generating units may become an attractive option for electric customers as an alternative to central station generating units as a primary source of electricity due to electric restructuring and electric reliability concerns. These “distributed generation” units, sited at or near a load that will use all or most of the electricity generated, can export electricity to the electrical grid. The commission believes that these units, if used for this purpose, must adhere to emission limitations and standards comparable to recently permitted or constructed central station generating units. Otherwise, increased use of small electric generating units may undermine the emission reductions achieved with recently permitted combined cycle power plants.

Therefore, the commission is developing a standard permit for small electric generating units which it expects to issue in early 2001. It will contain emission limitations comparable to those which apply to recently permitted or constructed central station generating units. The standard permit is being

developed in accordance with Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. In accordance with §116.603, the public will have an opportunity to comment on the content of the standard permit.

Currently, any owner or operator of a small electric generating unit may register to operate under §106.512. However, the emission limitations in §106.512 are less stringent than those applicable to recently permitted or constructed central station generating units. For the reasons discussed previously, the commission does not believe that the emission limitations contained in §106.512 are sufficient to allow small electric generating units to operate as distributed generation units. Therefore, the commission is proposing to amend §106.512 so that these units would be required to operate under the standard permit once it is issued or obtain pre-construction authorization under Chapter 116, Subchapter B, New Source Review Permits.

SECTION BY SECTION DISCUSSION

The proposed amendment to §106.512 would preclude registrations under this section (previously Standard Exemption 6) for engines or turbines used to generate electricity once a standard permit for small electric generating units is issued. The rule would make an exception for engine or turbine-driven generators used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants, or satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E. The proposed revision is necessary to ensure that increased use of small electric generating units will not undermine the emission reductions achieved with recently permitted combined cycle power plants.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for each year of the first five-year period the proposed amendment is in effect, there will be fiscal implications which are not anticipated to be significant for units of state or local government as a result of administration or enforcement of the proposed amendment. Units of state and local government that purchase new or modify affected small electric generating units (up to and including ten megawatts of generating capacity) will have to pay a \$450 standard permit registration fee or a minimum \$450 application fee to construct and operate the affected equipment in Texas. There will be no fiscal impacts to units of state or local government that do not buy new or modify electric generating equipment currently registered under the §106.512 permit by rule.

The proposed amendment is intended to preclude registration under the permit by rule of newly purchased or modified small internal combustion engines or turbines that are configured to generate electricity. These units are currently required to be permitted but qualify for the permit by rule. After amendment, there would be two permit choices for these facilities: a new source review permit or a standard permit that is being developed by the commission which should become effective in 2001.

The units anticipated to be affected by this rulemaking may be used on a standby or backup basis by hospitals, the telecommunications industry, the transportation industry, small independent power producers, and suppliers to the power grid. Generators providing only emergency backup power are not affected by this rulemaking. There are approximately 1,000 small internal combustion engines and turbines that are currently being used to generate electricity in Texas, some of which are owned and

operated by units of state and local government. These pieces of equipment are currently required to be permitted but qualify for the permit by rule. If units of state and local government modify these sources or purchase new equipment affected by the proposed amendment, they would have to apply for a new source review or standard permit prior to operating the new equipment.

In order to receive the standard permit, an applicant must provide the required information along with a \$450 registration fee. Registrations under the standard permit will not require public notice and will take approximately 45 days to process. The new source review permit, which is a more involved and costlier process, usually requires six to nine months to process. The average minimum application fee for these units is \$450; however, there is a public notice requirement that would cost an applicant an average of \$3,000. Additional expenses include approximately \$300 for facility signs and potentially expensive air dispersion modeling if required, which could cost over \$10,000. The commission estimates that if given the choice between a standard and new source review permit, units of state and local government that are required to have their facilities permitted will choose to pursue the standard permit because it is less expensive, not as complicated, and is processed quicker.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined for each of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of implementing the proposed amendment will be that new or modified small electric generating units will have to comply with stricter emissions limitations than currently required which should result in improved air quality.

The proposed amendment is intended to preclude registration under the §106.512 permit by rule of newly purchased or modified small internal combustion engines or turbines that are configured to generate electricity. These units are currently required to be permitted but qualify for the permit by rule. There would be two permit choices for these facilities: the new source review permit or a standard permit that is being developed by the commission which will become effective in 2001.

There are approximately 1,000 small internal combustion engines and turbines that are currently being used to generate electricity in Texas, some of which are owned and operated by individuals and businesses. These pieces of equipment are currently required to be permitted but qualify for the permit by rule. If individuals and businesses modify these sources or purchase new equipment affected by the proposed amendment, they would have to apply for a new source review permit or standard permit prior to construction and operation of the new or modified equipment.

In order to receive the standard permit, an applicant must provide the required information along with a \$450 registration fee. Registrations under the standard permit will not require public notice and will take approximately 45 days to process. The new source review permit, which is a more involved and costlier process, usually requires six to nine months to process. The average minimum permit application fee for these units is \$450; however, there is a public notice requirement that would cost an applicant an average of \$3,000. Additional expenses include approximately \$300 for facility signs and potentially expensive air dispersion modeling if required, which could cost over \$10,000. The commission estimates that given the choice between a standard and new source review permit, individuals and businesses that are required to have their facilities permitted will choose to pursue the

standard permit because it is less expensive, not as complicated, and is processed quicker. There will be no cost to individuals or businesses, due to implementation of the proposed amendment, if they do not buy new or modify existing equipment currently registered under the permit by rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse economic effects to small or micro-businesses which purchase new or modify certain small electrical generating units as a result of the implementation of the proposed amendment; however, the commission does not anticipate the effects to be significant. The proposed amendment would preclude registration under the §106.512 permit by rule of newly purchased or modified small internal combustion engines or turbines that are configured to generate electricity. There will be no adverse fiscal implications to small and micro-businesses which do not own or do not modify certain small electrical generating units.

There are approximately 1,000 small internal combustion engines and turbines that are currently being used to generate electricity in Texas, some of which are owned and operated by small or micro-businesses. If individuals and businesses modify these sources or purchase new equipment affected by the proposed amendment, they would have to apply for a new source review permit or standard permit prior to construction and operation. The registration fee for a standard permit, and the average minimum permit application fee for a new source review permit, is \$450; however, the new source review permit has additional costs and requirements including: public notification which costs an average of \$3,000; facility signs which cost approximately \$300; and air dispersion modeling, if required, which could cost over \$10,000. The commission estimates that given the choice between a

standard and new source review permit, small or micro-businesses that are required to have their facilities permitted will choose to pursue the standard permit because it is less expensive, not as complicated, and is processed quicker. There will be no cost to small or micro-businesses, due to implementation of the proposed amendment, if they do not buy new or modify existing equipment currently registered under the §106.512 permit by rule.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225. The commission determined that this proposed amendment to §106.512 does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225. "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, 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. Although the specific intent of the rule is to protect the environment or reduce risks to human health from environmental exposure, the proposed amendment to §106.512 will not have an adverse material impact. The adverse impact is not material because the owners or operators of sources which meet the requirements of this rule will be subject only to a regulatory cost of a registration fee of \$450, rather than also subject to additional costs associated with the other permitting option for these sources (a new source review permit), such as the cost of notice and air dispersion modeling, which may cost \$3,000 and \$10,000, respectively. Therefore, this amendment does not constitute a "major environmental rule." In addition, Texas Government Code, §2001.0225, only applies 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 is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed amendment does not meet any of the four applicability requirements. Specifically, the amendment will eliminate the opportunity for registrations under this section for engines or turbines used to generate electricity upon the issuance of a standard permit for small electric generating units, except for engine or turbine-driven generators used to provide power for the operation of facilities registered in the Air Quality Standard Permit for Concrete Batch Plants or satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E. The commission does not believe that the emission limitations contained in §106.512 are sufficient to allow small electric generating units to operate as distributed generation units. Distributed generation is the concept that small electric generating units, placed near a load that will use all or most of the electricity generated, have the ability to export electricity to the electrical grid. This rulemaking is being coordinated with the development of a standard permit for small electric generating units in accordance with Chapter 116. This new standard permit will contain emission limitations comparable to those which apply to recently permitted or constructed central station generating units.

The rulemaking was not developed solely under the general powers of the agency, but was specifically developed under Texas Clean Air Act (TCAA), §§382.011, 382.017, 382.051 and 382.05196.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed a preliminary analysis of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The following is a summary of that analysis. The specific purpose of the proposed rule is to ensure that emissions from the new use of small electric generating units for distributed generation do not undermine the emission reductions achieved with recently permitted combined cycle power plants. This would be accomplished by eliminating the opportunity for registrations under §106.512 for engines or turbines used to generate electricity upon the issuance of a standard permit for small electric generating units, except for engine or turbine-driven generators used to provide power for the operation of facilities registered in the Air Quality Standard Permit for Concrete Batch Plants or satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E. This rulemaking is being coordinated with the development of a standard permit for small electric generating units in accordance with Chapter 116. The standard permit will contain emission limitations comparable to those which apply to recently permitted or constructed central station generating units. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. This amendment is intended to provide notice that upon issuance of the standard permit for small electric generating units, registrations under this permit by rule will no longer be accepted by the

commission. The amendment does not impact existing authorizations under this permit by rule. Consequently, this proposed amendment does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this proposed revision is reasonably taken to fulfill requirements of state law to control the quality of the state's air and will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Coastal Management Program (CMP) be considered during the rulemaking process.

The commission prepared a preliminary consistency determination for the proposed rules under 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is 31 TAC §501.12(1). This goal requires the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas.

The CMP policy applicable to the proposed rulemaking is 31 TAC §501.14(q), concerning policies for specific activities and coastal natural resource areas. This policy requires commission rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, to comply with the regulations in 40 Code of Federal Regulations (CFR), adopted under the Clean Air Act, 42 United

States Code, §§7401 et seq., to protect and enhance air quality in the coastal areas so as to protect coastal natural resource areas and promote public health, safety, and welfare. The proposed amendment will state that, upon issuance of a standard permit for small electric generating units, registrations under §106.512 for engines or turbines used to generate electricity will no longer be accepted, except for engine or turbine-driven generators used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants or satisfying the conditions for facilities permitted by rule under Chapter 106, Subchapter E. The proposed amendment is consistent with the previously stated goals and policies of the CMP. The standard permit for small electric generating units being developed by the commission contains emission limitations more stringent than those contained in §106.512. The commission seeks public comment on the consistency of the proposed rule amendment with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 23, 2001, at 10:00 a.m. at the Texas Natural Resource Conservation Commission Complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are

planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-050-106-AI. Comments must be received by 5:00 p.m., February 5, 2001. For further information, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560 or Robby Abarca, Air Permits Division, at (512) 239-6378.

STATUTORY AUTHORITY

The amendment is proposed under Texas Health and Safety Code, TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA; §382.051, which authorizes the commission to issue permits; and §382.05196, which authorizes the commission to adopt permits by rule for certain types of facilities.

The proposed amendment implements TCAA, §382.011, General Powers and Duties; §382.017, Rules; §382.051, Permitting Authority of Commission; Rules; and §382.05196, Permits By Rule.

SUBCHAPTER W: TURBINES AND ENGINES

§106.512

§106.512. Stationary Engines and Turbines.

Gas or liquid fuel-fired stationary internal combustion reciprocating engines or gas turbines that operate in compliance with the following conditions of this section are permitted by rule.

(1) - (6) (No Change.)

(7) Upon issuance of a standard permit for small electric generating units, registrations under this section for engines or turbines used to generate electricity will no longer be accepted, except for engine or turbine-driven generators used to provide power for the operation of facilities registered under the Air Quality Standard Permit for Concrete Batch Plants or satisfying the conditions for facilities permitted by rule under Subchapter E of this title (relating to Aggregate and Pavement).