

The Texas Commission on Environmental Quality (commission) proposes amendments to §§106.147, 106.261, and 106.262.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Based on the results of protectiveness reviews, the commission is developing a standard permit for asphalt plants under 30 TAC Chapter 116, Subchapter F, Standard Permits. Use of a standard permit will allow the authorization of a greater variety of asphalt plants without the necessity of obtaining a new source review (NSR) permit. The standard permit is intended to replace the applicable permit by rule. The general public typically expresses concerns over nuisance dust, odor, ambient air quality, and potential negative health impacts from these types of facilities. These issues are the focus of the conditions of the asphalt plant standard permit. The commission is proposing to amend §106.147, Asphalt Concrete Plants, prohibiting registration under the permit by rule once a standard permit is effective. The commission will retain the permit by rule to allow reference to the conditions under which existing asphalt plants were authorized. These amendments do not revoke current registrations under these permits by rule held by existing asphalt facilities. Section 106.261, Facilities (Emission Limitations) and §106.262, Facilities (Emission and Distance Limitations) (Previously SE 118) would also be amended to state that once a standard permit for a type of facility is effective, no construction or change to the facility would be allowed under these sections. In addition to affecting asphalt plants, amendments to §106.261 and §106.262 would affect other types of facilities that operate under a standard permit. Currently, there are standard permits for pollution control projects, installation/modification of oil and gas facilities, municipal solid waste landfills, temporary rock

crushers, concrete batch plants, and electric generating units. A standard permit for asphalt plants is currently proposed.

SECTION BY SECTION DISCUSSION

Subchapter E: Aggregate and Pavement

The proposed amendment to §106.147 would state that registrations for asphalt plants under this section would no longer be accepted by the commission upon the effective date of an asphalt plant standard permit. The conditions of the permit by rule protect the public from the effects of emissions. One of these conditions is a separation distance of 1/2 mile between the plant and any residence or recreation area. However, this distance does not prevent new residences or recreation areas from being constructed within the separation distance after the plant is built. The best available control technology (BACT) in the standard permit will ensure that air quality standards are met at the property line of the plant.

Subchapter K: General

The proposed amendments to §106.261 and §106.262 would add a new subsection (b) to each section and add language prohibiting the use of these permits by rule in certain circumstances if there is a standard permit available for the type of facility being modified or undergoing operational changes. The commission has adopted by rule under Chapter 116, Subchapter F, standard permits for pollution control projects, installation/modification of oil and gas facilities, and municipal solid waste landfills. Standard permits have also been issued for temporary rock crushers, concrete batch plants, and electric generating units. A standard permit for hot mix asphalt plants is currently proposed. The proposed

amendments to §106.261 and §106.262 would incorporate into rule the current agency practice of restricting the use of these permits by rule for construction or facility changes by facilities for which a standard permit is in effect.

Existing language in §106.261 and §106.262 restricting the use of these specific permits by rule where other permits by rule are available would also be moved to the newly created subsections. This is being done for consistency in rule structure and will not change the effect of the rule language being moved. The proposed change to §106.262 would continue to allow the use of the provisions of the section to add or increase certain chemical emissions once a facility has qualified under a standard permit or permit by rule. The proposed changes to §106.262 also remove an obsolete title of the section for consistency with other section titles in this chapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist in the Strategic Planning and Appropriations Section, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed amendments. The commission anticipates that there will not be many units of local government directly affected by the prohibition on the use of the asphalt plant permit by rule. The specific costs for those units of government affected are the same as those costs presented in the PUBLIC BENEFITS AND COSTS section of this preamble.

The proposed rulemaking is intended to require any owner or operator of a new or existing hot mix asphalt plant that has been modified to operate under a standard permit or obtain an NSR preconstruction authorization, instead of claiming a permit by rule as is currently allowed. However, all previously issued permits by rule are still valid, provided that the facility is not modified.

The commission does not anticipate significant fiscal implications for units of state government because units of state government generally do not operate the types of facilities affected by this rulemaking. Additionally, the commission does not anticipate significant impacts to agency operations due to the switch from review of a permit by rule to a standard or NSR permit for an asphalt plant. The NSR permit would be necessary in those cases where the applicant could not meet the requirements of the standard permit. The commission also does not anticipate a significant increase in revenue as a result of issuing standard permits at \$900 each versus the permit by rule with a cost ranging from \$100 to \$450. The cost of the permit by rule for small and micro businesses is \$100, while those applicants not qualifying as small or micro businesses pay \$450. The agency anticipates that the volume of permit actions will stay the same, approximately 100 asphalt plant authorizations annually. To estimate the maximum increase in revenue, assuming all of the applicants were small businesses, the increase in revenue could be \$80,000/year. In the event that an NSR permit is required, the permit application fee is calculated as the greater of \$900 or .3% of the capital cost of the facility. For example, a brand new asphalt plant costs approximately \$2 million; therefore, the permit fee would be \$6,000.

The type of facilities which are authorized under standard permit and most likely to be operated by local government are municipal solid waste landfills, and the commission does not anticipate adverse

economic effects resulting from the prohibition on the use of §106.261 and §106.262 at facilities authorized by standard permit. The commission issues standard permits for more complex facilities with potential for significant emissions. The commission believes that modifications or emission increases at these more complex facilities justify the case-by-case authorization of NSR and does not currently allow the use of §106.261 and §106.262 at facilities authorized by standard permit.

PUBLIC BENEFITS AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments will be increased environmental protection because owners and operators of asphalt plants will be required to meet stricter environmental standards in order to receive authorizations to operate these types of facilities in Texas. Additionally, the stricter environmental standards will relieve asphalt plants from the permit by rule limitation requiring the plant to be 1/2 mile from receptors.

The proposed rulemaking is intended to require any owner or operator of a new or existing asphalt plant that has been modified to operate under a standard permit or obtain an NSR preconstruction authorization, instead of applying for a permit by rule as is currently allowed. However, all previously issued permits by rule are still valid, provided that the facility is not modified. Existing sites would be allowed to continue to operate under an existing permit by rule unless: 1) modifications are made to facility operations that would no longer meet the requirements of the existing permit by rule; or 2) the operation moves to a different site. Some of the regulatory changes include: additional restrictions on plant size and operating procedures; specific property line requirements; elimination of distance-to-

nearest-receptor requirements; recordkeeping requirements; new BACT requirements; and equipment restrictions on the facility. The commission estimates that there are currently 400 asphalt plants operating in Texas. Additionally, the commission receives applications for a permit by rule from approximately 40 asphalt plants annually. All sites that were granted a permit by rule prior to implementation of the new standard permits would only have to apply for a standard or NSR permit if they moved or modified their current operations. However, all new applications for asphalt plants subsequent to the implementation of the new standard permits, (estimated to occur in Fiscal Year 2003), will have to apply for either a standard or NSR permit.

The commission anticipates that there could be significant additional costs to comply with the new permit requirements for existing facilities that either move or modify their operations. These costs consist of two components, the permit fee and the filter required to comply with the more stringent standard permit. Under the existing permit by rule, a permit by rule registration fee is \$450 or \$100 (for small or micro business) while the standard permit fee is \$900. Additionally, existing sites are only required to meet an outlet grain loading of 0.04 grain per dry standard cubic foot (gr/dscf). This outlet loading can be achieved via the use of a venturi (wet) scrubber. The new standard permit has a stricter outlet grain loading requirement and requires a baghouse as the control device. To meet these requirements, the applicant will be required to use a fabric filter baghouse to meet the lower outlet grain loading requirement for pollution control. The first year cost to install and operate a fabric filter baghouse is estimated to be approximately \$350,000, compared to approximately \$150,000 for a wet scrubber; however, new plants are consistently using the fabric filters. The difference in operation and maintenance costs for the two types of pollution control options is not anticipated to be significant in

subsequent years. Based on a review of records, the commission estimates that approximately 70% (280) of existing asphalt plants currently use fabric filters to control particulate emissions. This leaves 120 plants that could potentially be affected by a requirement to retrofit fabric filters if they choose to relocate or modify their facility. At \$350,000 per filter, this results in a maximum potential cost to the industry of \$42 million. This figure represents a mathematical potential cost, and the commission believes it is not an accurate indicator of the expected fiscal significance of the rules. The commission's records also show that 15 plants moved over a three-year period (2000, 2001, 2002). Of these 15 plants, 13 plants already used the fabric filter. Based on these facts, the commission estimates that the requirement to use the fabric filter will affect one or two relocated or modified plants each year with a resulting annual cost of \$350,000 to \$700,000.

The commission does not anticipate adverse economic effects resulting from the prohibition on the use of §106.261 and §106.262 at facilities authorized by standard permit. The commission issues standard permits for more complex facilities with potential for significant emissions. The commission believes that modifications or emission increases at these more complex facilities justify the case-by-case authorization of NSR and does not currently allow the use of §106.261 and §106.262 at facilities authorized by standard permit.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be adverse fiscal implications, which may be significant, for small or micro-businesses as a result of implementation of the proposed amendments, which are intended to require any owner or

operator of a new or existing asphalt plant that is modified in Texas to operate under a standard permit or obtain an NSR permit, instead of claiming a permit by rule as is currently allowed.

The commission anticipates that many of the sites affected by the proposed amendments will be small or micro-businesses. There could be significant additional costs to comply with the new permit requirements for existing facilities that either move or modify their operations. Under the existing permit by rule, a permit by rule registration of \$100 is required; however, the fee for a standard permit will be \$900. Existing facilities are only required to meet an outlet grain loading of 0.04 gr/dscf. This outlet loading can be achieved via the use of a venturi (wet) scrubber. The new standard permit has a stricter outlet grain loading requirement and requires a baghouse as the control device. To meet these requirements, the applicant will be required to use a fabric filter baghouse to meet the lower outlet grain loading requirement for pollution control. The first year cost to install and operate a fabric filter baghouse is estimated to be approximately \$350,000, compared to approximately \$150,000 for a wet scrubber; however, new plants are consistently using the fabric filters. The difference in operation and maintenance costs for the two types of pollution control options is not anticipated to be significant in subsequent years. Based on a review of records, the commission estimates that approximately 70% (280) of existing asphalt plants currently use fabric filters to control particulate emissions. This leaves 120 plants that could potentially be affected by a requirement to retrofit fabric filters if they choose to relocate or modify their facility. At \$350,000 per filter, this results in a maximum potential cost to the industry of \$42 million. This figure represents a mathematical potential cost, and the commission believes it is not an accurate indicator of the expected fiscal significance of the rules. The commission's records also show that 15 plants moved over a three-year period (2000, 2001, 2002). Of

these 15 plants, 13 plants already used the fabric filter. Based on these facts, the commission estimates that the requirement to use the fabric filter will affect one or two relocated or modified plants each year with a resulting annual cost of \$350,000 to \$700,000.

The following is an analysis of the cost per employee for small or micro-businesses affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. A small or micro-business with an existing asphalt plant that decides to apply for a standard permit would have to pay an additional \$350,000 for a fabric filter baghouse (assuming the site is currently utilizing a wet scrubber) to comply with the proposed amendments. The cost per employee for a small business would be approximately \$3,500, and the cost per employee at a micro-business would be approximately \$17,500.

The commission does not anticipate adverse economic effects resulting from the prohibition on the use of §106.261 and §106.262 at facilities authorized by standard permit. The commission issues standard permits for more complex facilities with potential for significant emissions. The commission believes that modifications or emission increases at these more complex facilities justify the case-by-case authorization of NSR and does not currently allow the use of §106.261 and §106.262 at facilities authorized by standard permit.

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 rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed amendments do not meet the definition of a “major environmental rule” as defined in that statute. According to §2001.0225(g)(3), a “major environmental rule” is a rule which is specifically intended 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. The intent of this proposed rulemaking is to simplify the agency’s regulatory structure and provide standard permits as a replacement method to authorize plant operations other than the existing permits by rule. The rulemaking is prospective and would not significantly affect facilities currently registered under the existing permits by rule. For example, the standard permit will streamline the approval process for asphalt plants that follow public works projects to provide asphalt exclusively to those projects for a specified time period. The proposed amendments to Chapter 106 do not meet the definition of “major environmental rule” because they do 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. The commission estimates that there are currently 400 asphalt plants operating

in Texas. All sites that were granted a permit by rule prior to implementation of the new standard permits would only have to apply for a standard or NSR permit if they moved or modified their current operations. Only new applications for asphalt plants subsequent to the implementation of the new standard permits will have to apply for either a standard or NSR permit. To meet the requirements of the standard permit, an applicant will be required to use a fabric filter baghouse. A fabric filter baghouse is BACT. The commission receives applications for a permit by rule from approximately 40 asphalt plants annually. This figure includes both new plants and relocating plants. New plants are consistently using the fabric filters as this technology is now common throughout the industry. Therefore, new plants registering under the standard permit should not incur additional cost to meet the more stringent control requirements. Based on a review of records, the commission estimates that approximately 70% of existing asphalt plants currently use fabric filters to control particulate emissions. Based on the number of existing asphalt plants in Texas (400), this leaves about 120 plants that use a scrubber control device and thus would incur an additional \$350,000 cost to install a fabric filter baghouse if they modified or changed locations. However, there is no data to suggest all 120 plants will modify operations or change locations. The commission's records also show that 15 plants moved over a three-year period (2000, 2001, 2002) and authorized the move by the permit by rule. Of these 15 plants, 13 plants already used the fabric filter. Based on these facts, the commission estimates that the requirement to use the fabric filter will affect one or two relocated or modified plants each year and result in an additional \$700,000 cost to the asphalt industry. Therefore, the commission does not anticipate that prohibiting use of the permit by rule for new or relocated asphalt plants will adversely affect the economy or the asphalt industry of the state in a material way. The commission does not anticipate adverse economic effects resulting from the prohibition on the use of §106.261 and §106.262

at those facilities authorized by standard permit, listed in the SECTION BY SECTION DISCUSSION section of this preamble, as this proposed action will incorporate into rule current agency practice. The commission issues standard permits for more complex facilities with potential for significant emissions. The commission believes that modifications or emission increases at these more complex facilities justify the case-by-case authorization of NSR and does not currently allow the use of §106.261 and §106.262 at facilities authorized by standard permit. In addition, §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 proposed rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements. Specifically, the proposed amendments implement the requirements of Texas Health and Safety Code (THSC) and Texas Clean Air Act (TCAA), §382.05196 and §382.05195. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking action and performed an analysis of whether this action would constitute a takings under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. The proposed rules do not affect private property in a manner which restricts or limits an

owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, these proposed amendments do not meet the definition of a takings under Texas Government Code, §2007.002(5). These rules are specifically proposed to amend §106.147 so that newly constructed hot mix asphalt plants would be required to operate under a standard permit, once issued and effective, or obtain preconstruction authorization under 30 TAC Chapter 116, Subchapter B, New Source Review Permits. These rules are also specifically proposed to amend §106.261 and §106.262 to add a new subsection (b) to each section that would prohibit the use of these permits by rule if there is another applicable permit by rule or standard permit available for the type of facility being modified or undergoing operational changes. These facilities would not be precluded from obtaining an air quality permit. Therefore, these amendments to Chapter 106 would not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on the takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has determined the rulemaking is subject to the Texas Coastal Management Program (CMP) and has reviewed the rules for consistency in accordance with the Coastal Coordination Act Implementation Rules, 31 TAC Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and in particular, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program, and has identified the rules as potentially affecting an action or authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2).

The commission has conducted a preliminary consistency review of the rulemaking. Applicable goals contained in 31 TAC §501.12, Goals, include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; 5) to balance the benefits from economic development and multiple human uses of the coastal zone; the benefits from protecting, preserving, restoring, and enhancing CNRAs; the benefits from minimizing loss of human life and property; and the benefits from public access to and enjoyment of the coastal zone; 6) to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; and 9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the Texas CMP.

The policy that is specifically applicable to the emission of air pollutants is 31 TAC §501.14(q), relating to Emission of Air Pollutants, which requires that rules under THSC, Chapter 382, governing emissions of air pollutants, shall comply with regulations in 40 Code of Federal Regulations, adopted under Federal Clean Air Act, 42 United States Code, §§7401 *et seq.*, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare.

The proposed amendments would state that registrations for asphalt plants would no longer be accepted by the commission on the effective date of an asphalt plant standard permit. This rulemaking is procedural and does not authorize any new air emissions. Therefore, the rulemaking would have no significant effect on the activities governed by the rulemaking, nor would it result in any significant adverse impacts to coastal resources.

Based on this review, the commission has determined that the rulemaking would not have direct or significant adverse effect on any CNRAs, nor would the rulemaking have a substantive effect on commission actions subject to the CMP. The commission seeks public comment on this preliminary consistency determination.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because minor new source review is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised NSR authorizations for their facility, or revise their operating permit application to reflect the new authorizations.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on July 28, 2003 at 10:00 a.m. in Building F, Room 2210, at the commission's central office, 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, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2002-057-106-AI. Copies of the proposed rules can be obtained from the commission's website at <http://www.tceq.state.tx.us/oprd>. Comments must be received by 5:00 p.m. on August 4, 2003. For further information, please contact Debra Barber, Office of Environmental Policy, Analysis, and Assessment, (512) 239-0412.

SUBCHAPTER E: AGGREGATE AND PAVEMENT

§106.147

STATUTORY AUTHORITY

The amendments are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which would not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which would not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.147. Asphalt Concrete Plants.

(a) Any asphalt concrete facility that complies with 40 Code of Federal Regulations Part 60, Subparts A and I and operates according to the following conditions of this section is permitted by rule.

(1) A New Source Performance Standard pretest meeting concerning the required stack sampling shall be held with commission personnel before the required tests are performed. Air contaminants to be tested for will be determined at the pretest meeting. Stack sampling requirements will not be required by the executive director, provided that:

(A) the applicant submits adequate documentation (including copies of previous test results of the model hot mix plant proposed, including a description of the aggregate materials used in previous tests) demonstrating compliance with the 0.04 grain per dry standard cubic feet allowable;

(B) visible emissions from the exhaust stack are documented at 5.0% or less opacity averaged over six consecutive minutes.

(2) Fuel for dryers shall be sweet natural gases as defined in Chapter 101 of this title (relating to General Air Quality Rules) or liquid petroleum gas, diesel, or fuel oil with a maximum sulfur content of 1.5%.

(3) All aggregate stockpiles shall be sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions.

(4) All permanent in-plant roads shall be watered, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions.

(5) The plant is located at least 1/2 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.

(6) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7, including a current Table 22.

(7) Emissions of particulate matter, sulfur dioxide, or organic compounds shall not exceed 25 tons per year each.

(b) On the effective date of a standard permit for hot mix asphalt plants, registrations under this section will no longer be accepted.

SUBCHAPTER K: GENERAL

§106.261, §106.262

STATUTORY AUTHORITY

The amendments are proposed under THSC, TCAA, §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.057, which authorizes the commission to exempt from permitting, changes within any facility which would not make a significant contribution of air contaminants to the atmosphere; §382.051, which authorizes the commission to issue permits for construction of facilities which emit air contaminants; and §382.05196, which authorizes the commission to adopt permits by rule for types of facilities which would not make a significant contribution of air contaminants to the atmosphere.

The proposed amendments implement §382.011, concerning General Powers and Duties; §382.017, concerning Rules; §382.057, concerning Exemption; §382.051, concerning Permitting Authority of the Commission; and §382.05196, concerning Permits by Rule.

§106.261. Facilities (Emission Limitations).

(a) Except as specified under subsection (b) of this section, facilities, [Facilities,] or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.

~~(1)~~ This section shall not be used to authorize construction of or any change to a facility authorized in another section of this chapter (see §106.262(1) of this title (relating to Facilities (Emission and Distance Limitations)).]

(1) ~~(2)~~ The facilities or changes shall be located at least 100 feet from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.

(2) ~~(3)~~ Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.

(3) ~~(4)~~ Total new or increased emissions, including fugitives, shall not exceed 1.0 lb/hr of any chemical having a limit value (L) greater than 200 milligrams per cubic meter (mg/m³) as listed and referenced in Table 262 of §106.262 of this title (relating to Facilities (Emission and Distance

Limitations) or of any other chemical not listed or referenced in Table 262. Emissions of a chemical with a limit value of less than 200 mg/m³ are not allowed under this section.

(4) [(5)] For physical changes or modifications to existing facilities, there shall be no changes to or additions of any air pollution abatement equipment.

(5) [(6)] Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any five-minute period.

(6) [(7)] For emission increases of five tons per year or greater, notification must be provided using Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(7) [(8)] For emission increases of less than five tons per year, notification must be provided using either:

(A) Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or

(B) Form PI-7-261(a) by March 31 of the following year summarizing all uses of this permit by rule in the previous calendar year. This annual notification shall include a description

of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(b) The following are not authorized under this section:

(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and

(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.

§106.262. Facilities (Emission and Distance Limitations) [(Previously SE 118)].

(a) Facilities, or physical or operational changes to a facility, are permitted by rule provided that all of the following conditions of this section are satisfied.

[(1) This section shall not be used to authorize construction or any change to a facility specifically authorized in another section of this chapter, but not meeting the requirements of that section. However, once the requirements of a section of this chapter are met, paragraphs (3) and (4) of this section may be used to qualify the use of other chemicals at the facility.]

(1) [(2)] Emission points associated with the facilities or changes shall be located at least 100 feet from any off-plant receptor. Off-plant receptor means any recreational area or residence

or other structure not occupied or used solely by the owner or operator of the facilities or the owner of the property upon which the facilities are located.

(2) [(3)] New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tons per year nor in a quantity greater than E as determined using the equation $E = L/K$ and the following table.

Figure 1: 30 TAC §106.262(a)(2)

[Figure 1: 30 TAC §106.262(3)]

<u>D, Feet</u>	<u>K</u>	
100	326	E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.
200	200	
300	139	
400	104	L = value as listed or referenced in Table 262
500	81	
600	65	
700	54	K = value from the table on this page. (interpolate intermediate values)
800	46	
900	39	
1,000	34	D = distance to the nearest off-plant receptor.
2,000	14	
3,000 or more	8	

Figure 2: 30 TAC §106.262(a)(2)

[Figure 2: 30 TAC §106.262(3)]

TABLE 262
 LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262

The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, -	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	0.01
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01
Coal Tar Pitch Volatiles	0.1
Creosote	0.1
Cresol	0.5
Cumene	50.

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5
Diisobutyl Ketone	63.9
Dimethyl Aniline	6.4
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08
Ethyl Sulfide	1.6
Glycolonitrile	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133.
Isoamyl Alcohol	15.
Isobutyronitrile	22.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
Mesityl Oxide	40.
Methyl Acrylate	5.8
Methyl Amyl Ketone	9.4
Methyl-t-butyl ether	45.
Methyl Butyl Ketone	4.

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Methyl Disulfide	2.2
Methylenebis (2-chloroaniline) (MOCA)	0.003
Methylene Chloride	26.
Methyl Isoamyl Ketone	5.6
Methyl Mercaptan	0.2
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	5.
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
Phenyl Mercaptan	0.4
Propionitrile	14.
Propyl Acetate	62.6
Propylene Oxide	20.
Propyl Mercaptan	0.23
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), in its TLVs and BEIs guide (1997 Edition) shall be used for compounds not included in the table. The Short Term Exposure Level (STEL) or Ceiling Limit (annotated with a "C") published by the ACGIH shall be used for compounds that do not have a published TWA TLV. This section cannot be used if the compound is not listed in the table or does not have a published TWA TLV, STEL, or Ceiling Limit in the ACGIH TLVs and BEIs guide.

(3) [(4)] Notification must be provided using Form PI-7 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, and data identifying specific chemical names, L values, D values, and a description of pollution control equipment, if any.

(4) [(5)] The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl

mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluoride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosgene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine, liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.

(5) [(6)] For physical changes or modifications to existing facilities, there shall be no changes or additions of air pollution abatement equipment.

(6) [(7)] Visible emissions, except uncombined water, to the atmosphere from any point or fugitive source shall not exceed 5.0% opacity in any five-minute period.

(b) The following are not authorized under this section except as noted in subsection (c) of this section:

(1) construction of a facility authorized in another section of this chapter or for which a standard permit is in effect; and

(2) any change to any facility authorized under another section of this chapter or authorized under a standard permit.

(c) If a facility has been authorized under another section of this chapter or under a standard permit, subsection (a)(2) and (3) of this section may be used to qualify the use of other chemicals at the facility.