

The Texas Commission on Environmental Quality (commission, agency, or TCEQ) adopts the repeal of §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413. The repeals are adopted *without changes* as published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2091) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

The 76th Legislature passed Senate Bill (SB) 766 in 1999. Prior to the revisions by SB 766, the Texas Clean Air Act authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule (PBRs), for authorization of certain types of facilities that would not make a significant contribution of air contaminants into the atmosphere. Finally, the commission was authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization.

30 TAC §116.119, De Minimis Facilities or Sources, was subsequently adopted by the commission and became effective in September 2000. Section 116.119 establishes four categories of facilities that do not require authorization. The first category is defined as those facilities or sources included on the list entitled, "De Minimis Facilities or Sources."

As stated in §116.119(c), the executive director may amend the list of De Minimis Facilities or Sources as necessary, taking into consideration the following: typical operating scenarios; typical design and

location; the types and rates of air contaminants emitted; engineering judgment and experience; and toxicological or health impacts. A proposal to amend the list of De Minimis Facilities or Sources was published in the *Texas Register* on December 21, 2007 (32 TexReg 9839). The proposal added facilities authorized by certain PBRs that have no control, recordkeeping, or registration requirements. In May 2008, the list of De Minimis Facilities or Sources was amended to include nine types of facilities permitted by rule. This rulemaking action eliminates duplication and provides a clear regulatory structure by repealing the nine PBRs listed under §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413, since they are currently listed as De Minimis Facilities or Sources under §116.119.

SECTION BY SECTION DISCUSSION

Subchapter C: Domestic and Comfort Heating and Cooling, §106.101 and §106.103

The commission adopts the repeal of §106.101, Domestic Use Facilities and §106.103, Air Conditioning and Ventilation Systems. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.101 and §106.103 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under one of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter D: Analysis and Testing, §106.121 and §106.123

The commission adopts the repeal of §106.121, Hydraulic and Hydrostatic Testing Equipment and §106.123, Vacuum-producing Devices for Laboratory Use. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.121 and §106.123 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under one

of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter I: Manufacturing, §106.228

The commission adopts the repeal of §106.228, Platen Presses for Laminating. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.228 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter L: Feed, Fiber, and Fertilizer, §106.282 and §106.291

The commission adopts the repeal of §106.282, Feed Grinding Facilities and §106.291, Cotton Gin Stands. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.282 and §106.291 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under one of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter M: Metallurgy, §106.312

The commission adopts the repeal of §106.312, Wax Melting and Application. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.312 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter R: Service Industries, §106.413

The commission adopts the repeal of §106.413, Bond Lining to Brake Shoes. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, the repeal of §106.413 eliminates duplication and provides a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, 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, 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 adopted repeals are intended to more effectively focus commission resources by eliminating duplication and providing a clear regulatory structure. This rulemaking will not negatively impact the environment or increase risks to human health from environmental exposure. However, the adopted repeals generally tend to improve regulatory flexibility and reduce costs to regulated facilities and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking 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, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of a "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission prepared a takings impact assessment for these repeals under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission has determined that the promulgation and enforcement of the repeals will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted repeals also will not affect private real 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. The adopted repeals are administrative and do not impose any new regulatory requirements. The

adopted repeals of §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413 are intended to eliminate duplication and provide a clear regulatory structure. This change does not impact existing authorization under these exemptions. The adopted repeals are reasonably taken to fulfill requirements of state law. Therefore, the adopted repeals will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission 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 commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this adopted rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The adopted repeals will indirectly benefit the environment because repealing the PBRs eliminates duplication and provides 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.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Most facilities affected by this rule change are minor sources and not subject to the Federal Operating Permits Program. However, if a facility was authorized by §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, or 106.413 and is located at a site with a federal operating permit, the permit holder may need to conduct an evaluation and determine if a revision to a federal operating permit is needed to update the applicable requirements.

PUBLIC COMMENT

The commission held a public hearing on April 27, 2009, at 10:00 a.m. in Building C, Room 131E, at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle in Austin. The comment period closed on April 30, 2009. The commission received no comments on the rulemaking. One individual attended the public hearing, but did not present an oral statement for the record on the proposed rulemaking.

Subchapter C: Domestic and Comfort Heating and Cooling

§106.101, §106.103

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.101. Domestic Use Facilities.

§106.103. Air Conditioning and Ventilation Systems.

Subchapter D: Analysis and Testing

§106.121, §106.123

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.121. Hydraulic and Hydrostatic Testing Equipment.

§106.123. Vacuum-producing Devices for Laboratory Use.

Subchapter I: Manufacturing

§106.228

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.228. Platen Presses for Laminating.

Subchapter L: Feed, Fiber, and Fertilizer

Division 1: Feed

§106.282

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.282. Feed Grinding Facilities.

Subchapter L: Feed, Fiber, and Fertilizer

Division 2: Fiber

§106.291

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.291. Cotton Gin Stands.

Subchapter M: Metallurgy

§106.312

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.312. Wax Melting and Application.

Subchapter R: Service Industries

§106.413

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The adopted repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.413. Bond Lining to Brake Shoes.