

The commission adopts new §106.231, concerning the exemption of wood products manufacturing, restoring, and refinishing operations from the preconstruction air permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act, §382.0518. The new section is adopted with changes to the proposed text as published in the March 4, 1997, issue of the *Texas Register* (22 TexReg 2416).

The commission has regulated facilities that manufacture, restore, and refinish wood products for many years under standard exemptions now codified at 30 TAC §§106.433, 106.222, and 106.265. This experience has shown that these facilities do not make a significant contribution of air contaminants to the atmosphere when the facilities use common emission control equipment, have no visible emissions released from the property, and use coatings, solvents, and stripping agents in amounts that are consistent with the limits specified in exemption §106.231. The commission concludes that the adopted standard exemption will ensure that these characteristics are met, and at a level of regulatory oversight that is not unduly burdensome to the operator of the facility.

EXPLANATION OF ADOPTED RULE

The new §106.231 will create an exemption for wood products manufacturers, restorers, or refinishers that conduct surface coating operations and woodworking operations such as grinding, sanding, and sawing. The exemption provides common sense, technically sound methods for wood product manufacturers, refinishers, or restorers to comply with air permit requirements. This new section is intended to simplify the control requirements, recordkeeping requirements, and calculation methods and will eliminate the need for multiple exemptions to cover all operations at these sites. Specifically, the

new section will: protect public health and provide businesses with flexibility to use different pollution control devices based upon the volume and type of work performed; allow businesses to minimize detailed records previously needed to calculate emission rates; and allow businesses to quantify volatile organic compound emissions with purchase and usage records instead of mathematical equations.

Standard Exemptions 40 and 75 continue to be available to this industry, but it is anticipated that businesses will use this new section due to the simplified requirements. Standard Exemption 105 is also currently available to this industry, but the executive director intends to propose deletion of this standard exemption in future rulemaking. Standard Exemptions 40, 75, and 105 (formerly in 30 TAC §116.211) have been recently recodified into 30 TAC Chapter 106 as §§106.433, 106.222, and 106.265.

The agency is currently offering an amnesty period for small businesses that manufacture, restore, or refinish wood products from obtaining a permit. The amnesty period is scheduled to expire in September 1997. After September 1997, if investigated, these businesses will be cited for a violation if they cannot meet an exemption or do not have a permit. The new section should be in effect before September 1997 to allow these businesses an opportunity to use an exemption specific to their industry.

TAKINGS IMPACT STATEMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043, and has determined that this rule will have no effect on private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking action is 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.), the rules of the Coastal Coordination Council (31 TAC Chapters 501-506), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies.

PUBLIC HEARING

A public hearing on this proposal was held on April 3, 1997, in Austin. The comment period closed on April 3, 1997. Oral comments were received from the following: an individual, the Texas Department of Criminal Justice (TDCJ), Planto Manufacturing (Planto), and the San Antonio Manufacturers Association (SAMA). Written comments were received from several small businesses and individuals through the Small Business Assistance Program. Represented were SAMA, Planto, Arlington Auto Body (Arlington), International Exterminator Corp. (International), and Self Serv Fixture Co., Inc. (Self Serv). The comments received were generally supportive of the proposal, noting how easy the rule was to understand. International and Self Serv did not suggest any changes to the proposal.

SAMA expressed concern that companies would be required to install filter systems when current dust collection systems were adequate. SAMA stated that requiring a filter system would cause great

expense with no improvement in the results. Planto commented that requiring a filter on the pneumatic sawdust collection system would cause the company to shut down. Planto suggested that many alternatives other than the addition of a filter were available. TDCJ commented that it would prefer that the rule specify a control device or a control method for pneumatic sawdust collection systems rather than requiring that a filter be used.

The commission is confident that any filter (fabric or cartridge) system installed in this type of facility will have a high collection efficiency and therefore will be protective of the public. Based on the commission's experience, other types of control systems do not consistently provide high collection efficiencies. There have been cases in which water-curtain type collection systems have shown only 30% removal efficiency for particulate matter from an exhaust stream. Therefore, the commission prefers to review systems other than those with a filter on a case-by-case basis.

Additionally, the adopted rules do not require companies to install pneumatic collection systems. However, if a pneumatic collection system is used, a filter is required. Wood products manufacturers can design and build their own systems to meet the exemption if they so desire.

Planto asked why wood dust is being regulated, since it is not harmful and does not cause cancer.

Planto further commented that if there are visible emissions of dust, city and/or county codes as well as Occupational Safety and Health Administration (OSHA) regulations will apply to those emissions.

Planto commented that it creates a hardship if state requirements are different than these other regulations.

The commission believes that emissions of all constituents including wood dust are of enough concern to warrant evaluation of public exposure. Depending on the exposure concentration of hardwood dust, acute respiratory health effects can include dryness of the nose, eye irritation, nasal obstruction, prolonged colds, and frequent headaches. Respiratory hypersensitivity, acute airway obstruction, and asthma are also possible. Long-term exposure to hardwood dust can result in cancer in humans (e.g., nasal cancer). Softwood dusts are mainly respiratory irritants. Sensitive members of the general public could experience transient respiratory irritation as a result of short-term exposure to wood dusts.

While city and county codes or OSHA regulations protect workers from occupational exposure, emissions are often vented to the outside to minimize worker exposures, where members of the public would be exposed. The commission regulates these exposures to the surrounding community and to the general public. Sensitive subpopulations within the general public include the very young and the very old, and people with preexisting respiratory conditions. The wood dust Effects Screening Levels which were used to evaluate this exemption, are set to protect these sensitive individuals from the described effects and were used by the commission to evaluate the protectiveness of the exemption.

An individual was concerned that methylene chloride was being singled out as being a dangerous stripping agent. In the individual's experience, other stripping agents in use, specifically Preprite Coating, pose a greater threat to human health. The commenter would like to see Preprite listed along

with methylene chloride in the exemption and for methylene chloride to be treated as any other noncarcinogenic chemical.

The commission has reviewed the Material Safety Data Sheet for Preprite Coating Remover, which was submitted by the commenter. Preprite is a mixture of three compounds, all with Effects Screening Levels (ESLs) greater than that of methylene chloride. A lower ESL indicates a greater toxicity on a per unit basis. Thus, methylene chloride, a probable human carcinogen, is more toxic than the components of Preprite. In addition, methylene chloride, when used as a solvent, is generally not present in a mixture. Therefore, emissions from an equal volume of methylene chloride would result in a higher ground level concentration than those resulting from any of the constituents in an equal volume of Preprite. The commission concludes that methylene chloride remains the only solvent which requires special consideration in the exemption.

Planto commented on the agency's handling of this proposed rule and the amnesty period that was offered. Planto stated that it had spent thousands of dollars to comply with the first proposed rule (January 1, 1996), since it had understood that small businesses had a one-year amnesty period to comply with those requirements. Planto later found out that the initial proposed rule had changed, which would not have required the company to spend the money that it had, and the amnesty period had been extended. Planto further stated that small businesses should be given one year to comply once the rules are in place. An individual commented that the amnesty period should follow the promulgation of the regulation.

The commission has coordinated the current amnesty program with the development of this rule so that comments from the regulated community, trade groups, and other interested parties could be taken into account before the rule was finalized. The amnesty period has lasted for almost 18 months, during which time the Small Business Assistance Program conducted outreach and education seminars. The commission did not act on the first proposal because of concerns that the exemption was overly restrictive. The commission recognizes the efforts made by Planto to comply with the first proposal, but believes that not taking action on the first proposal was in the best interests of the industry affected by this rule.

The commission extended the amnesty period so that businesses would have time to comply with the control measures established by this proposal. In the future, the commission will strive to inform affected individuals and include sufficient compliance schedules for all amnesty programs.

Arlington asked if the requirements of this exemption should parallel Standard Exemption 124 for the auto body repair industry, but supports the approach the commission has taken with this exemption.

The control requirements for the wood products industry are different than those of the autobody painting industry, because the typical usage rates and type of materials used by each industry are not the same.

The phrase “leaving the property” was added to paragraph (2) to make the distinction that the requirement for no visible emissions in this paragraph is intended to ensure good general housekeeping

practices on-site, while the requirement for no visible emissions in paragraph (1) speaks to the performance of the pneumatic collection system. The commission has added the phrase “peak of the” roof line to paragraph (3) of this section to clarify the intent of this requirement.

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA, and under Texas Health and Safety Code, §382.057, which provides the commission with the authority to exempt certain types of facilities from the requirements of Texas Health and Safety Code, §382.0518.

SUBCHAPTER I : MANUFACTURING

§106.231

§106.231. Manufacturing, Refinishing, and Restoring Wood Products.

Facilities, including drying or curing ovens, and hand-held or manually operated equipment, used for manufacturing, refinishing, and/or restoring wood products that meet the following requirements are exempt from obtaining an air quality permit.

(1) If a pneumatic sawdust collection system is used, it must be followed by a filter with no visible emissions.

(2) Waste materials shall be stored and disposed of properly. There shall be no visible emissions leaving the property.

(3) If the total coatings, solvents, and stripping agents used exceeds six gallons per day (gpd) or one gpd of methylene chloride, the following requirements must be met:

(A) the application area must be exhausted using forced air through a stack with an unobstructed vertical discharge above the peak of the roof line; and

(B) in addition to the requirements of subparagraph (A) of this paragraph, if application is made by spraying, the application area must also be vented through a filter system with a minimum particulate removal efficiency of 95%.

(4) Purchase receipts for total coatings, solvents, and stripping agents for the most recent 24 months must be kept on site and be made immediately available upon request of personnel from the agency or any other air pollution control agency having jurisdiction. If the total materials purchased exceeds 550 gallons in any one month, records of the amount of materials used per month must be kept on-site to demonstrate that total emissions do not exceed 25 tons per year in any consecutive 12 months.

This agency hereby certifies that the section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 25, 1997.