

The Texas Natural Resource Conservation Commission (commission) adopts new §106.376, concerning the exclusion of decorative chromium electroplating facilities from the preconstruction air permitting requirements of the Texas Health and Safety Code, the Texas Clean Air Act, §382.0518. The section is adopted with changes to the proposed text as published in the August 19, 1997, issue of the *Texas Register* (22 TexReg 8034).

EXPLANATION OF ADOPTED RULE

Section 106.376 creates for decorative chrome platers a new specific permitting exemption for facilities that otherwise would require a permit or authorization by a general exemption. This exemption will protect public health and provide businesses with an alternative to permitting, especially when the minimum 100-foot distance requirement of general exemption 30 TAC §106.262 (previously Standard Exemption (SE) 118) cannot be met. Creation of this exemption is complementary to the adoption of the new Maximum Achievable Control Technology (MACT) standard for chrome under 30 TAC §113.190.

The mechanism provided by the adopted exemption will allow the operation of decorative chrome plating facilities in compliance with state law without the expense in time and money of obtaining a permit, while continuing to be protective of public health and the environment. A focus group composed of representatives of the New Source Review Permits Division, Toxicology and Risk Assessment, Small Business Assistance Program, Office of Policy and Regulatory Development, Field Operations, and Legal Division evaluated the scope of the affected facilities, effects on the regulated community, health effects, and protectiveness of the exemption. Modeling of the potential fugitive

chromium emissions using a conservative approach indicated that the emissions were insignificant and were not expected to pose a health threat to adjacent sensitive receptors. The engineering analysis concluded that the 5,000 ampere rectifier cumulative ceiling was protective of public health. In order to prevent the stacking of processes by the use of a standard exemption, this exemption may not be used at any site in conjunction with other chrome plating operations such as hard chrome plating, or chromic acid anodizing operations. In other words, the commission will not authorize an existing permitted, exempted, or grandfathered chrome plating or chromic acid anodizing operation to increase its emissions at any site by using the adopted exemption for decorative chrome plating facilities. It does not prohibit a decorative chrome plating operation from adding more than one rectifier unit at a site as long as the 5,000 ampere cumulative ceiling is not exceeded. All associated background materials for this review, including the technical review, computer modeling, responses to requests for comment, calculations, and technical assumptions, are available for public review by contacting the New Source Review Permits Division.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule according to Texas Government Code, §2007.043, and has determined that this rule will not create a burden on private real property. The Texas Health and Safety Code, Texas Clean Air Act, Chapter 382, requires facilities to obtain a permit or qualify for a standard exemption prior to construction or modification. Through the creation of the standard exemption for chrome plating operations, the commission is not creating a regulatory burden, but is simplifying compliance with an existing statutory requirement for a class of facilities that do not make a significant contribution of air contaminants to the atmosphere.

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 goals and policies of the CMP to protect and enhance air quality in the coastal area. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that this rule is consistent with CMP goals and policies, in that the emissions allowed by this exemption will have a negligible impact upon the air quality in the coastal area.

HEARING AND COMMENTERS

A public hearing on this exemption was held on September 16, 1997, at 10:00 a.m. in Austin. During the public comment period, which closed September 18, 1997, the United States Environmental Protection Agency submitted a letter stating that on the basis of its evaluation, it had no items of concern. In response to staff comments, the rule was changed to add the words, "or chromic acid anodizing" in the last sentence as the phrase was inadvertently omitted from the initial publication, but was included in the discussion in the published preamble with regard to which operations at a site would result in the unavailability of the exemption. No other comments were received.

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; §382.011, which provides the commission with the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general comprehensive plan for the proper control of the state's air; and §382.057, which provides the commission with the authority to exempt certain types of facilities that will not make a significant contribution of air contaminants to the atmosphere from the requirements of Texas Health and Safety Code, §382.0518. This exemption covers only facilities with insignificant emissions and thus complies with §382.057.

CHAPTER 106

EXEMPTIONS FROM PERMITTING

SUBCHAPTER P : PLANT OPERATIONS

§106.376

§106.376. Decorative Chrome Plating.

Decorative chromium electroplating operations that have a maximum combined rated capacity for all decorative chrome plating rectifiers of not more than 5,000 amperes and which use a fume suppressant or other equivalent control as sufficient to meet §113.190 of this title (relating to Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N)) are exempt. This exemption may not be used at any site where other chrome plating or chromic acid anodizing operations are conducted.

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 November 5, 1997.