

The commission proposes 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.

#### EXPLANATION OF PROPOSED RULE

Section 106.376 will create 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 will be 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 proposed 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 proposed 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 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 operation to increase its emissions by using the proposed exemption for decorative chrome plating facilities. It does not prohibit a decorative chrome plating operation from adding more than one rectifier unit 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. The commission welcomes comments on the language of the anti-stacking aspect of the proposed exemption in order to achieve the intent expressed in this preamble while avoiding unintentional ramifications.

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five years this section as proposed is in effect there are no significant fiscal implications anticipated for state or local governments as a result of enforcement or administration of the section.

#### PUBLIC BENEFIT

Mr. Minick also has determined that for the first five-year period the section as proposed is in effect the public benefit anticipated as the result of enforcement of and compliance with the section will be more

cost-effective regulation and control of air emissions. The effect of the section as proposed will be to reduce the costs of obtaining authorization to operate small facilities for decorative chrome plating. The proposed exemption will enable many of the decorative chrome plating facilities, currently not permitted or exempted, to comply with air quality requirements without the requirement to obtain an air permit. It is anticipated that the majority of affected facilities will be small businesses and that the potential cost savings will average a minimum of \$7,500 for a typical facility in application fee and public notice costs. The additional costs of preparation of an application have not been estimated, but these cost savings could be even greater. There are no economic costs identified for any person subject to the section as proposed.

#### 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.

#### PUBLIC HEARING

A public hearing on this proposal will be held on September 16, 1997 at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur 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.

#### SUBMITTAL OF COMMENTS

Written comments regarding this proposal may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97128-106-AI. Comments must be received

by 5:00 p.m., September 18, 1997. For further information, please contact Terry Leifeste, Air Policy and Regulations Division, (512) 239-1873.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### STATUTORY AUTHORITY

The new section is proposed 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.

The proposed new section implements Texas Health and Safety Code, §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 where other chrome plating operations are conducted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 6, 1997.