

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §106.226, concerning Paints, Varnishes, Ink, and Other Coating Manufacturing and §106.375, concerning Aqueous Solutions for Electrolytic and Electroless Processes, and amendments to §106.351, concerning Salt Water Disposal (Petroleum), §106.435, concerning Classic or Antique Automobile Restoration Facility, and §106.477, concerning Anhydrous Ammonia Storage. The commission also proposes the repeal of the existing §106.226 and §106.375.

EXPLANATION OF PROPOSED RULES

The commission proposes the repeal and of and the promulgation of new §106.226 and §106.375 and has restructured and reorganized the new sections for easier understanding and use. In the new §106.226, restrictions on emissions would be accomplished through limits on rates of raw material use rather than stating emission limits. The commission is also adding recordkeeping requirements to aid enforcement. New §106.375 is revised to reduce the risk of potentially harmful exposure to heavy metals and hydrochloric acid.

The proposed new §106.226 prohibits the use, under exemption, of the heavy metals strontium and cobalt in concentrations of more than 0.1% by weight. These metals, used to add color to paints and inks, are added to the existing list of heavy metals within the section which already have percentage weight restrictions. Heavy metals have low effects screening levels and can be toxic with sufficient concentration or exposure. To be protective of human health, use of the metals in concentrations above 0.1% would require a detailed review of the facility's operation, making the use of an exemption from permitting inappropriate.

The proposed amendment to §106.351 requires that new salt water disposal facilities register with the commission using the PI-7 form unless the facility processes the water without exposing it to the atmosphere or processes 540,000 gallons or less of salt water per day. This restriction will prevent users of the exemption from exceeding the 25 ton per year emission limit of volatile organic compounds. The restriction should also assure compliance with the hydrogen sulfide emission limits contained in 30 TAC §112.31, concerning Allowable Emissions - Residential, Business, or Commercial Property and §112.32, concerning Allowable Emissions - Other Property. Registration of the larger facilities will allow the commission to better track and inventory emissions.

The proposed new §106.375 prohibits the use of chromic acid in solutions to prevent emissions of chromium, a heavy metal with exposure limits that would need a more thorough analysis than that allowed by an exemption from permitting. The commission would add new language to the section requiring emissions from authorized operations be vented through a vertical stack to provide good dispersion. A further restriction would be placed on the concentrations and temperature of hydrochloric acid used in aqueous solutions. These new restrictions are proposed to reduce the risk of human health effects from operations authorized under the exemption from permitting.

The proposed amendment to §106.435 is purely administrative and changes a reference to the Texas Traffic Laws to the Texas Transportation Code, recognizing recent changes in the Texas Civil Statutes.

The proposed amendment to §106.477 adds clarification that the restrictions in the section apply to permanent ammonia storage tanks and nurse tanks to help prevent nuisances. This section is primarily used by agricultural operations, and the nurse tanks are those carried to the field and used to inject ammonia into the soil to increase nitrogen levels. These restrictions are proposed to protect human health.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the sections are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the sections are in effect, the anticipated public benefit will be a reduced risk of exposure to potentially harmful concentrations of heavy metals, hydrochloric acid fumes, and ammonia. There will be minimal costs to persons or small businesses who are required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as

defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

This proposal does not exceed a standard set by federal law and is not specifically required by state law. Exemptions from permitting are not addressed in federal law.

This proposal falls within the commission's authority under Texas Health and Safety Code, §382.057, to establish conditions to allow an exemption from permitting.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the TNRCC and the federal government concerning standard exemptions.

This rule is proposed under a specific state law. The commission has the statutory authority to propose and adopt rules concerning exemptions from permitting under Texas Health and Safety Code, §382.057.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The specific purpose of this proposal is to reduce the chance of exposure to potentially harmful levels of certain metals and compounds. This proposal does not constitute a taking of private, real property.

COASTAL MANAGEMENT PLAN

The commission has 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 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, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. These amendments should not cause any increase in emissions.

PUBLIC HEARING

A public hearing on this proposal will be held March 16, 1998, at 2:00 p.m. in Room 2210 of 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 each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments 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 97180-106-AI. Comments must be received by 5:00 p.m., March 23, 1998. For further information, please contact Kerry Drake, New Source Review Permitting Division, (512) 239-1112, Dale Beebe-Farrow, New Source Review Permitting Division, (512) 239-1310, or Beecher Cameron, Air Policy and Regulations Division, (512) 239-1495.

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

STATUTORY AUTHORITY

The repeal is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed repeal implements Texas Health and Safety Code, §382.057.

SUBCHAPTER I : MANUFACTURING

§106.226

§106.226. Paints, Varnishes, Ink, and Other Coating Manufacturing (Previously SE 125).

SUBCHAPTER I : MANUFACTURING

§106.226

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed new section implements Texas Health and Safety Code, §382.057.

§106.226. Paints, Varnishes, Ink, and Other Coating Manufacturing (Previously SE 125).

Coating manufacturing operations including raw material storage, weighing, mixing, milling, grinding, thinning, and packaging are exempt, provided the conditions of this section are met. Coating manufacturing is defined as combining ingredients that are manufactured off-site to make paints, varnishes, sealants, stains, adhesives, inks, pigments, maskants, and paint strippers, etc. Resin manufacturing is not exempt under this section.

(1) Materials usage shall not exceed the following rates:

(A) 345,000 gallons per year of solvent for all operations at a site; and

(B) 200,000 pounds of dry powder per year for all operations at a site.

(2) Operations involving powders which contain more than 0.1% by weight of chromium, cadmium, asbestos, lead, arsenic, cobalt, or strontium are not authorized by this section.

(3) The following conditions must be met to prevent and control emissions.

(A) There shall be no visible emissions from any emission point.

(B) Bags or sacks of dry powders shall be opened within an enclosed bag slitter or within an enclosed area.

(C) Material transfer, storage operations, or other similar operations shall be conducted in enclosed or covered containers which are opened only as necessary for transfer of ingredients.

(D) Mixing, milling, packaging, and filling operations shall be conducted under a hood or within an enclosure designed to capture emissions, which shall then be vented externally or through a carbon adsorption system.

(E) Operations which involve dry powders or pigments shall be vented through a filter.

(F) Any spills of dry powders or solvents shall be cleaned up promptly in a manner designed to control emissions.

(G) Waste materials shall be stored in covered containers and disposed of properly.

(4) Emissions from any operation which are vented externally shall be exhausted using forced air through a stack with an unobstructed vertical discharge. The stack must be, at a minimum, four feet above the peak of the roofline.

(5) The owner or operator of the facility shall keep records of all liquid and solid material usage rates on a monthly basis to demonstrate compliance with paragraph (1) of this section. The usage data shall be maintained for the most recent 24-month period.

SUBCHAPTER O : OIL AND GAS

§106.351

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.057.

§106.351. Salt Water Disposal (Petroleum) (Previously SE 65).

Salt water disposal facilities used to handle aqueous liquid wastes from petroleum production operations and water injection facilities are exempt, provided that the following conditions of this section are met.

(1) - (3) (No change.)

(4) Before construction of the facility begins, the facility shall be registered with the Texas Natural Resource Conservation Commission's New Source Review Permitting Division using Form PI-7, unless one of the following exceptions applies:

(A) all delivery, storage, and handling of salt water at the facility is enclosed so that the salt water is not exposed to the atmosphere; or

(B) delivery of salt water to the facility in any calendar day will not exceed 540,000 gallons.

SUBCHAPTER P : PLANT OPERATIONS

§106.375

STATUTORY AUTHORITY

The repeal is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed repeal implements Texas Health and Safety Code, §382.057.

§106.375. Aqueous Solutions for Electrolytic and Electroless Processes (Previously SE 41).

SUBCHAPTER P : PLANT OPERATIONS

§106.375

STATUTORY AUTHORITY

The new section is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed new section implements Texas Health and Safety Code, §382.057.

§106.375. Aqueous Solutions for Electrolytic and Electroless Processes (Previously SE 41).

Equipment using aqueous solutions is exempt, providing the conditions of this section are met.

(1) This section authorizes the following operations:

(A) anodizing, alodining, electrodeposition, electroless plating, electrolytic polishing, and electrolytic stripping, as follows.

(i) For plating onto or stripping from any basis substrate, only brass, bronze, cadmium, copper, iron, lead, nickel, tin, zinc, and precious metals may be used.

(ii) Chromic acid shall not be used.

(B) cleaning, electroless stripping, etching, or other surface preparation and finishing, not including chemical milling or electrolytic metal recovery and reclaiming systems.

(2) Operating conditions.

(A) The hydrochloric acid tank temperature shall not exceed 100 degrees

Fahrenheit.

(B) The hydrochloric acid tank concentration shall not exceed 19.0%.

(C) Aqueous solutions shall be used in an enclosed building. If the doors and windows of the building are open for ventilation, emissions shall either be controlled with a fume suppressant or be captured and exhausted using forced air through a stack with an unobstructed vertical discharge. The stack must be, at a minimum, four feet above the peak of the roofline.

SUBCHAPTER S : SURFACE COATING

§106.435

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.057.

§106.435. Classic or Antique Automobile Restoration Facility (Previously SE 116).

“Classic” or “Antique” vehicle restoration facilities (the terms “classic” and “antique” vehicle as determined by the Texas Department of Public Safety Vehicle Inspection and Registration Section under Texas Transportation Code, Chapter 502, §502.274 (concerning Classic Motor Vehicles) or §502.275 (concerning Certain Antique Vehicles; Offense) [pursuant to Texas Traffic Laws (Texas Civil Statutes, Article 6675a-5n. CLASSIC MOTOR VEHICLES: REGISTRATION AND LICENSE

PLATES)) qualify for this exemption from permitting if all of the following conditions of this section are met.

(1) - (6) (No change.)

SUBCHAPTER U : TANKS, STORAGE, AND LOADING

§106.477

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.057.

§106.477. Anhydrous Ammonia Storage (Previously SE 84).

Anhydrous ammonia storage tanks and distribution facilities that meet the following conditions are exempt.

(1) All valves, connectors, and hoses, associated with permanent storage tanks and any nurse tanks stored on-site, shall be properly maintained in leak-proof condition at all times.

(2) The capacity of each permanent [the] storage tank [tanks] is 30,000 gallons or less.

(3) (No change.)

(4) When relieving pressure from hoses associated with permanent storage tanks and any nurse tanks [from connectors and hoses], all vapors shall be bled into an adequate volume of water and never to the atmosphere.

(5) Each permanent storage tank and any nurse tanks stored on-site are [is] equipped to prevent unauthorized operation.

(6) (No change.)

(7) Each permanent storage [The] tank is located at least 1/4 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the property upon which the facility is located.