

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §106.4, concerning Requirements for Exemption from Permitting.

EXPLANATION OF THE PROPOSED RULE

The Federal Clean Air Act (FCAA), §182(b)(1) and (f) specifies that required measures for volatile organic compounds (VOCs) (including reasonably available control technology (RACT) and nonattainment new source review (NNSR)) must also be applied for nitrogen oxides (NO_x), unless a demonstration is made that NO_x reductions would not contribute to attainment of the ozone standard. The FCAA, §182(f) allows the following federally required NO_x measures to be waived if the state demonstrates that NO_x reductions do not contribute to ozone attainment: RACT, NNSR, vehicle inspection/maintenance, and general and transportation conformity. On April 12, 1995, the United States Environmental Protection Agency (EPA) approved a temporary §182(f) exemption from these NO_x measures in Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA). EPA's approval was based on the state's preliminary demonstration, using Urban Airshed Model (UAM) modeling, that NO_x reductions in HGA and BPA would not lower ozone levels, and in fact could make them worse ("NO_x disbenefit"). The temporary exemption allowed more time to conduct UAM modeling, using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study. These UAM results were judged critical in determining whether, and to what extent, NO_x reductions are needed to attain the ozone standard. The EPA specified that the temporary exemption would expire on December 31, 1996. On May 23, 1997, the EPA approved a one-year extension of the §182(f) temporary exemption, which now expires on December 31, 1997. This additional year allows the

UAM modeling, using COAST data, to accommodate improvements in the modeling process, and to allow the development of better substantiated control programs.

As a result of the original exemption and extension, the agency revised certain rules, including §106.4, to be consistent with the §182(f) waiver. In the Fall of 1997, the TNRCC staff completed a major modeling analysis of the airshed of the upper Texas Gulf Coast. This study indicated that NO_x reductions are a necessary step toward the area's attaining the federal air quality standard for ozone. Because of the modeling and the need to continue steady reductions of the pollutants that contribute to ozone smog, on November 24, 1997, the commission determined not to seek further federal §182(f) waivers from the NO_x reduction requirements of the 1990 FCAA for the HGA and BPA areas.

This amendment to Chapter 106, regarding Exemptions from Permitting, would require a source seeking standard exemption to instead undergo full NNSR if the project constitutes a new major source or major modification for NO_x. These NNSR requirements will be reflected, as applicable, in all permits issued after the §182(f) exemption expires on December 31, 1997.

FISCAL NOTE

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

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect, the anticipated public benefit will be reductions of NO_x, ozone, and other air pollutants. This rulemaking would affect new major stationary sources of NO_x or major modifications in the HGA and BPA areas. The commission cannot estimate the cost per facility for compliance with the amendment due to wide variability of project costs. The related amendments to Chapter 116 being proposed concurrently with this rulemaking would add flexibility by allowing certain NNSR projects to substitute less costly best available control technology for lowest achievable emission rate.

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, while meeting the definition of a “major environmental rule” as defined in the Code, it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this proposed section under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this amendment is to remove an existing waiver for NO_x NNSR. If adopted, some new or modified sources located in in the HGA and BPA ozone nonattainment areas will no longer qualify for an exemption and instead be subject to a review of their NO_x emissions and possibly new control

measures. However, there is no restriction or taking of private real property associated with this proposed amendment.

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. Adoption of the proposed amendment should result in reductions of ambient NO_x and ozone concentrations.

PUBLIC HEARING

A public hearing on this proposal will be held January 20, 1998, at 10:00 a.m. in Room 5108 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 97182-116-AI. Comments must be received by 5:00 p.m., January 20, 1998. For further information or questions concerning this proposal, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

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 amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.017, 382.012, 382.051, 382.054, and 382.057, which provide the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.012.

SUBCHAPTER A : GENERAL REQUIREMENTS

§106.4. Requirements for Exemption from Permitting.

(a) To qualify for an exemption, the following general requirements must be met.

(1) (No change.)

(2) Any [Except as noted in paragraph (3) of this subsection, any] facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter. Persons claiming an exemption under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) to ensure that any applicable netting requirements have been satisfied.

[(3) Any facility or group of facilities, which constitute a stationary source, as defined in §116.12 of this title, that emits NO_x and is located in the Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties)

or the Beaumont/Port Arthur ozone nonattainment area (Hardin, Jefferson, and Orange Counties) can exceed the major source/major modification level listed in Table 1 of §116.12 of this title (relating to Nonattainment Review Definitions) if the following conditions are met.]

[(A) Any new facility or group of facilities, which constitute a new stationary source, as defined in §116.12 of this title, and emit NO_x in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO_x listed in Table 1, shall register by submitting a Form PI-8.]

[(B) The registration shall be submitted prior to commencement of construction, but not later than December 31, 1997.]

[(C) No other applicable limits contained in this section shall be exceeded.]

(3) [(4)] Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(4) [(5)] Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO_x; or 25 tpy of VOC or SO₂ or PM₁₀; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(5) [(6)] Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(6) [(7)] A proposed facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(7) [(8)] There are no permits under the same Texas Natural Resource Conservation Commission account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(b) - (d) (No change.)

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 December 4, 1997.