

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations). The amendments are adopted with changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6386).

EXPLANATION OF ADOPTED RULES

The commission initiated a protectiveness review of the exemptions in §106.261 and §106.262. This rulemaking addresses several areas of concern found in that review. It should be noted, however, that the proposed changes are not reflective of a full protectiveness review of the exemption, which cannot be performed until sufficient data have been collected. A full protectiveness review will be initiated after data collection.

The first concern is that the commission does not have the data to determine whether §106.261 is protective in practice. There is no current requirement for a company to submit to the commission any information on chemicals emitted under the exemption. Without such data, the commission cannot fully evaluate the protectiveness of the exemption as used in practice. Therefore, this amendment will require registration, with Forms PI-7-261 or PI-7-261(a), for the use of §106.261. Forms PI-7-261 and PI-7-261(a) will be developed by staff with input from outside the agency. This registration will enable the commission staff to assess how the exemption is used in practice, track multiple uses of the exemption at a facility, and gather information in order to consider future changes to the rule.

The second concern is that the current §106.262 references outdated toxicological information.

Generally speaking, Limit values (L-values) contained in §106.262 are based on Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH). TLVs are health threshold limits for occupational workers. The current §106.262 relies on *Threshold Limit Values for Chemical Substances in the Work Environment Adopted by ACGIH with Intended Changes for 1985-1986* (1985-1986 ACGIH Guide) for toxicological data to determine maximum emissions allowed under this exemption. This amendment updates §106.262 to reference the *1997 TLVs and BEIs: Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* (1997 ACGIH Guide) rather than the 1985-1986 ACGIH Guide. These L-values are combined with modeling data in a formula to calculate an emission rate for a single use that would be expected to result in ground level concentrations that are protective of sensitive members of the general public.

The third concern is that Table 262 in the current §106.262 needs to be updated to address specific compounds that have odor, vegetation damage, and health effects concerns not adequately addressed in the TLVs of the 1997 ACGIH Guide. Because the Guide is directed only toward health impacts on occupational workers, the values reflect many, but not all, effects of concern. This amendment updates the compounds specifically listed in Table 262. Sixteen compounds are deleted from the table because they are now adequately referenced in the 1997 ACGIH Guide. In addition, 30 compounds are modified or added to the table because they are not adequately addressed in the 1997 ACGIH Guide.

As background, §106.262 was formerly Standard Exemption 118 (SE 118). When SE 118 was originally established, modeling was conducted to assure that adverse health effects would not be expected to occur in the general public as a result of emissions authorized by single uses of SE 118. The TLVs in the 1985-1986 ACGIH Guide were the primary, but not the only, source of L-values in SE 118. This standard exemption contained a table (Table 118A, now Table 262) of substances with alternate L-values which were not based on the TLVs in the 1985-1986 ACGIH Guide. L-values on Table 118A were set to prevent odor nuisance, vegetation damage, and other health effects not specifically or adequately addressed in the final 1985-1986 ACGIH Guide.

Changes to alternate L-values in Table 262 can be grouped into three categories that consider nuisance odors, vegetation damage, and human health effects not specifically or adequately addressed in the 1997 ACGIH Guide. The following is a more detailed explanation of the changes.

The first category of changes considers nuisance odors. The substances in this category are methyl t-butyl ether (MTBE), cumene, 5-ethylidene-2-norbornene, -amyl acetate, butyric acid, cresol, diisobutyl ketone, ethyl mercaptan, 1,6-hexanediamine, isoamyl acetate, methyl acrylate, methyl amyl ketone, methyl isoamyl ketone, methyl mercaptan, methyl sulfide, propyl acetate, and propyl mercaptan.

An example justification for an alternate L-value based on odor follows. Emissions of MTBE were not authorized by §106.262. A TLV for MTBE was not published in the 1985-1986 ACGIH Guide, nor was it listed in Table 262. The 1997 ACGIH Guide contains a TLV for MTBE of 144 mg/m³. An L-value based on this TLV could potentially lead to nuisance odor conditions, because the odor-threshold

for MTBE is significantly lower than concentrations that are of concern for potential health effects. Specifically, from a short-term standpoint, the limited epidemiological and controlled exposure studies conducted to date indicate that MTBE exposure levels typically experienced by motorists refueling cars with reformulated gasoline ($\sim 3 \text{ mg/m}^3$) would not increase acute health effects above background levels (Agency for Toxic Substances and Disease Registry (ATSDR), 1996). This level, however, is well above the MTBE odor threshold (American Petroleum Institute (API), 1994). Thus, the alternate L-value is set to address the odor potential of MTBE. This alternate L-value adequately addresses odor nuisance, as well as short- and long-term health effects (ATSDR, 1996; U.S. Environmental Protection Agency (USEPA), 1997). It should be noted that the proposed alternate L-value of 60 mg/m^3 was determined to be in error. Thus, the corrected alternate L-value of 45 mg/m^3 is listed in the amended Table 262.

The justification for the alternate L-value for 5-ethylidene-2-norbornene is also provided. Emissions of 5-ethylidene-2-norbornene were authorized by §106.262; the 1985-1986 TLV of 25 mg/m^3 was the L-value originally used. The TLV published on the 1997 list is still 25 mg/m^3 and was set to minimize the potential for irritation of the eyes and nose (ACGIH, 1991). However, an L-value based on this TLV could potentially lead to nuisance odor conditions, since the odor-threshold for 5-ethylidene-2-norbornene is several times lower than concentrations that are of concern for irritant effects (Amoore, 1983; Ruth, 1986). Thus, the proposed alternate L-value of 7 mg/m^3 is based on the odor threshold, and is set to prevent odor nuisance. The proposed alternate L-value is protective of health effects, as well.

The L-values for the other substances listed in this category are similarly based on the odor thresholds for each of the substances. The values are also protective of both short- and long-term health effects.

The second category of changes considers vegetation damage. The substances in this category are hydrogen fluoride and boron trifluoride.

Justification for alternate L-values based on vegetation damage follows. The 1997 ACGIH Guide lists TLVs of 2.3 mg/m³ for hydrogen fluoride and 2.8 mg/m³ for boron trifluoride. An L-value based on these TLVs, though protective of human health, could potentially lead to adverse effects in vegetation, because some species of plants are very sensitive to water-soluble forms of fluoride (McCune, et al., 1976; National Academy of Sciences, 1971; McCune, 1969). The listed L-value of 0.5 mg/m³ is protective of both vegetation damage and human health.

The third category of changes considers human health effects not specifically or adequately addressed in the 1997 ACGIH Guide. L-values for butyl chromate, chromic acid, chromium VI compounds, ethylene dibromide, nitropropane, and propylene oxide were set based on carcinogenic potential. L-values for chromium metal, chromium II, and chromium III; amorphous silica compounds; silicon carbide; and ethylene glycol were set based on their potential for respiratory effects. The L-value for n-butyl alcohol was set based on its potential for irritation and nervous system effects. The L-value for halothane was set based on its potential for reproductive effects.

An example justification for an alternate L-value based on human health effects not specifically or adequately addressed in the 1997 ACGIH Guide follows. Emissions of halothane were not authorized by §106.262 because a TLV for halothane was not published in the 1985-1986 ACGIH Guide or listed in Table 262. Halothane is included in the universe of substances authorized by this amendment, however, because the 1997 ACGIH guide contains a TLV (404 mg/m³) for halothane. This value does not specifically reflect the potential for adverse reproductive effects (e.g., spontaneous abortions) in exposed females, or the potential for increased risk of birth defects that have been associated with exposure to halothane (Dixon, 1986; ACGIH, 1991). The references cited suggest that the air concentration resulting from an alternate L-value of 16 mg/m³ would consider these effects. The alternate L-value is listed in Table 262.

Cyanogen chloride and isophorone were originally proposed to be listed in the amended Table 262, but are not included in this adoption. The alternate L-value for cyanogen chloride was based on an error in a source reference. The alternate L-value for isophorone was not significantly different from the L-value listed in the 1997 ACGIH Guide. Therefore, the proposed alternate L-values have been removed from the amended Table 262, and L-values for these compounds will be found in the 1997 ACGIH Guide.

Table 262 is also amended to expand the categories of TLVs used in this exemption. The Table referenced only the Time-Weighted Average (TWA) TLV. This amendment will allow use of the Short-Term Exposure Level (STEL) and the Ceiling Limit for compounds which do not have a TWA TLV listed.

Section 106.262(5) restricted storage of compounds with potential for disasters. This section is amended to rename two and add four compounds to the list. These revisions incorporate updates made in the disaster potential list since 1985.

The following sources were referred to in the development of the L-values:

Agency for Toxic Substances and Disease Registry (ATSDR), 1996. Toxicological Profile for Methyl t-Butyl Ether. Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia.

American Conference of Governmental Industrial Hygienists (ACGIH), 1991. Documentation of the Threshold Limit Values and Biological Exposure Indices, 6th Edition. ACGIH, Cincinnati, Ohio.

American Conference of Governmental Industrial Hygienists (ACGIH), 1997. Guide to Occupational Exposure Values--1997. ACGIH, Cincinnati, Ohio.

American Conference of Governmental Industrial Hygienists (ACGIH), 1986. Documentation of the Threshold Limit Values and Biological Exposure Indices, 5th Edition. ACGIH, Cincinnati, Ohio.

American Petroleum Institute (API), 1994. Odor Threshold Studies Performed with Gasoline and Gasoline Combined with MTBE, ETBE, and TAME. API Publication Number 4592. API, Washington, D.C.

Amoore, J.E. and Hautala, E., 1983.

"Odor as an Aid to Chemical Safety: Odor Thresholds Compared with Threshold Limit Values and Volatilities for 214 Industrial Chemicals in Air and Water Dilution," *J. Applied Toxicology*, 3 (6): 272-290.

Deutsche Forschungsgemeinschaft (DFG), 1997. List of MAK and BAT Values, 1997. Commission for the Investigation of Health Hazards of Chemical Compounds in the Work Area, Report No. 33. Wiley-VCH Publishers, Weinheim, Germany.

Dixon, R.L., 1986. "Toxic responses of the reproductive system," in *Casarett and Doull's Toxicology The Basic Science of Poisons, 3rd Edition*. C.D. Klaassen, M.O. Amdur, and J. Doull, Editors. Macmillan Publishing Company, New York, New York.

U.S. Environmental Protection Agency (USEPA), 1997a. 1,2,-Dibromoethane. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

U.S. Environmental Protection Agency (USEPA), 1997b. Methyl t-butyl ether. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

U.S. Environmental Protection Agency (USEPA), 1997c. Propylene Oxide. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

International Agency for Research on Cancer, 1987. IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Volume 42, Silica and some Silicates. Lyon, France.

McCune, D.C., MacLean, D.C. and Schneider, R.E., 1976. "Experimental approaches to the effects of airborne fluoride on plants," in *Effects of Air Pollutants on Plants*. T.A. Mansfield, Editor. Cambridge University Press.

McCune, D.C., 1969. "Fluoride criteria for vegetation reflect the diversity of plant kingdom," *Environmental Science & Technology*. 8: 720-735.

Biological Effects of Atmospheric Pollutants: Fluorides, 1971. National Academy of Sciences (NAS), Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1994. Recommended Exposure Limits (RELs). Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1989. Current 51: Carcinogenic Effects of Exposure to Propylene Oxide. Publication No. 89-111. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1980. Health Hazard Alert--2- Nitropropane. Publication No. 80-142. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1977. Criteria for a Recommended Standard...Occupational Exposure to Ethylene Dibromide. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

Occupational Safety and Health Administration, 1989. Final Rule. 29 CFR Part 1910. *Federal Register* 54 (12): 2332-2724; Ruth, J.H., 1986. "Odor Thresholds and Irritation Levels of Several Chemical Substances: A Review," *American Industrial Hygiene J.* 47: A142-A151.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government 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 Texas Government Code.

The commission received comments, however, that the requirement for persons to register all emission increases under §106.261, within ten days after the increase, would be excessively burdensome to businesses which use the §106.261 exemption frequently. After additional analysis, the commission has determined that annual registration of increases of less than five tons per year will be sufficient to meet the intent of this amendment, which is to allow the commission to better evaluate the protectiveness of §106.261. The commission has modified the registration requirements in the adopted amendment to allow annual registrations for emission increases of less than five tons per year. Increases of five tons or more must still be registered within ten days. The commission estimates that it will cost a person between \$75 and \$330 to file a registration, based on labor expenses and postage. This is not a significant or overly burdensome expense for an annual registration. More frequent registration would likely indicate increased production and growth of the business and the ability to absorb registration expenses more readily.

The commission concludes that, while the registration requirements will have an adverse effect on some individual businesses, the effect is small. Therefore, this amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety.

The amendment does not meet any of the four applicability requirements listed in §2001.0225(a).

This amendment 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 amendment falls within the commission's authority under Texas Health and Safety Code, §382.057, to exempt certain changes or types of facilities from permitting if it is found on investigation that such changes or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

This amendment 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 commission and the federal government concerning exemptions from permitting.

This amendment is adopted 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 this amendment under Texas Government Code, §2007.043. The specific purpose of this amendment is to increase the ability of the commission to evaluate the protectiveness of the exemption in §106.261 and to amend §106.262 by updating the L-values upon which emission limits in the exemption are based. This amendment does not affect private real property in a manner that requires the commission to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article 1, §17 or §19. The amendment is not the producing cause of a reduction of at least 25% in the market value of any private real property.

This amendment affects existing exemptions from permitting by requiring industries to report emission changes made under the authority of §106.261 and by updating and expanding Table 262 to reflect more current toxicological information. The cost to affected entities will be between \$75 and \$330 per registration, based on labor costs to fill out the registration form and postage. This amendment will only apply to those who choose to use an exemption in lieu of obtaining a permit. The cost of obtaining a permit is typically orders of magnitude above the cost of obtaining authorization by exemption. This amendment likewise will not have an adverse impact on industries operating under the current or prior §106.261 and §106.262 or their predecessor exemptions.

Moreover, Texas Government Code, Chapter 2007, does not apply to this amendment because this amendment constitutes a modification of a regulation that “provides a unilateral expectation that does not rise to the level of a recognized interest in private real property” as provided in Texas Government Code, §2007.003(b)(5). Texas Health and Safety Code, §382.0518 requires persons to obtain a permit from the commission to authorize the emission of contaminants into the atmosphere. Texas Health and Safety Code, §382.057 authorizes the commission to create exemptions from the statutory requirement to have a permit. This amendment modifies two such exemptions. A person does not have a vested legal right or interest guaranteeing that an exemption will never change in the future. Finally, the amendment of §106.262 is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public nuisance as defined by background principles of nuisance and property law of this state. The L-values are changed to prevent nuisance odors, vegetation damage, and damage to human health.

COASTAL MANAGEMENT PLAN

The commission has determined that this amendment 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 CMP goal applicable to this amendment is 31 TAC §501.21: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions and values of Coastal Natural Resource Areas (CNRAs). The CMP policy applicable to this amendment is 31 TAC §501.14(q): to comply with Title 40, Code of Federal Regulations (CFR), in order to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare. The commission has reviewed this amendment for consistency with these CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this amendment is consistent with the applicable CMP goals and policies. This amendment will not cause any significant increases in emissions and is consistent with 40 CFR Part 51, Subpart I, concerning Review of New Sources and Modifications. No persons submitted comments regarding the consistency of the amendments with the CMP during the comment period.

HEARING AND COMMENTERS

A public hearing was held in Austin on July 14, 1998, and the public comment period closed on August 3, 1998. Oral testimony was received from Mobil Oil Corporation at the hearing. Written comments were received from: Mobil Oil Corporation (Mobil), Sanden International (Sanden), Amoco Corporation (Amoco), and Baker & Botts, on behalf of the Texas Industry Project (TIP).

ANALYSIS OF TESTIMONY

Mobil, Amoco, and TIP opposed the registration requirements proposed for §106.261. They commented that the additional requirement of registration for all §106.261 claims would be an excessive requirement for small emission increases and that the requirement would strain industry resources as well as the commission staff, who would be required to handle the paperwork for these changes.

The commenters suggested that the collection of data on an annual basis would be more efficient.

Mobil suggested that records of changes made under this exemption be kept on site. In addition, a commenter at agenda requested simplification of the PI-7 form used for exemption registration.

The commission agrees that, for small increases of emissions, annual registration would be sufficient to satisfy the need to track emission increases under this exemption. Section 106.261(7) and (8) has been revised to require registration with a PI-7-261 form and to allow annual registration with a PI-7-261(a) form. With the revisions, a person may register emission increases of less than five tons per year (tpy) by either submitting a PI-7-261 within ten days of the change or submitting a PI-7-261(a) form on an annual basis. Emission increases of five tpy and greater

must still be registered using a PI-7-261 form within ten days of the change or installation of a new facility under this exemption. Upon adoption, annual registrations shall be submitted on a calendar-year basis by March 31 for the previous calendar year. Registration requirements for §106.261 shall be effective January 1, 1999. These forms will be developed by staff with input from outside the agency.

Because the intent of this rulemaking is to collect data to examine the uses of the exemption, it is necessary for the registrations to be sent to the commission rather than allowing on-site retention as proposed by Mobil.

TIP commented that the proposed §106.261 does not address several types of dust. TIP suggested adding “rubber dust, wood dust, Hydrocarbon resin dust, Polymer dust and PM-10” to the lists of substances (chemicals, compounds, constituents) included in §106.261(3). If the commission cannot accomplish such listings, TIP requested discussion in the preamble stating that those substances can be authorized by §106.261(4) rather than nuisance dust criteria in the 1997 ACGIH Guide.

The commission’s intent with this rulemaking is to begin the collection of information on the uses of §106.261 and to update the L-values of the substances authorized by §106.262. The substances included in the L-value update process were limited to those listed in the 1985-1986 ACGIH Guide, the 1997 ACGIH Guide, and Table 262 in §106.262. Therefore, these comments are outside the scope of this rulemaking. The substances referenced in the comments will be considered for possible addition at a later date. The substances referenced can be authorized

under §106.261 and §106.262; however, the emissions are restricted based on L-values listed in the 1997 ACGIH Guide or alternate L-values listed in Table 262.

In addition, Sanden and TIP recommended that certain other compounds be added to §106.261(3). Sanden suggested that fluorocarbon 134a be added because it is used in all new vehicle air conditioning systems and that fluorocarbon 141b be added because it is used for cleaning applications. TIP suggested that acetone, “isomers of hexane other than n-hexane,” and methyl ethyl ketone be added to the list because propyl alcohol has a lower TLV and is already included in the exemption. Similarly, TIP suggested that toluene be added to the list because styrene has a lower TLV and is already included in the exemption.

These comments are outside the scope of this rulemaking. The commission’s intent with this rulemaking is to begin the collection of information on the uses of §106.261 and not to substantially change the substances authorized in the current exemption. The substances referenced in the comment will be considered for possible addition or clarification at a later date.

Sanden commented that §106.261(3) puts a limit on helium despite the fact that helium is inert and unreactive. Ethane and methane are relatively far less safe than helium, but are exempted by §106.4(a)(5). Helium is not exempted by that section. All three are simple asphyxiants. Sanden requested that helium be removed from §106.261 and added as an exemption, like ethane and methane, to §106.4(a)(5).

The commission agrees that helium should be removed from §106.261(3) and added to the list of exempted compounds under §106.4(a)(5). However, §106.4(a)(5) should be amended first to include helium prior to its removal from §106.261(3). Future rulemaking will address this comment. In researching the request from Sanden, staff also identified hydrogen in the list of compounds under §106.261(3). Because hydrogen is already exempted under §106.4(a)(5), it is being removed from §106.261(3).

TIP commented that cumene should be deleted from Table 262 because the 1997 ACGIH list contains a new listing for this chemical.

A TLV for cumene of 246 mg/m³ was published in the 1997 ACGIH Guide, and was set to prevent nervous system depression in workers. This level, however, is well above the odor threshold (Amoore, 1983). Thus, the alternate L-value is set to address the odor potential of cumene. This alternate L-value considers odor nuisance, as well as short- and long-term health effects.

TIP commented that explanation is needed to clarify the discrepancy between the ACGIH TLV-based L-values and the proposed ESL-based L-values for the substances listed in the updated Table 262 of §106.262. TIP cannot determine why there is a discrepancy between the L-value it would expect and the L-value proposed by the commission, using 5-ethylidene-2-norbornene as an example. TIP commented that it is not sufficient to simply state that “more conservative values have been included to address the effects of the 32 compounds on odor, corrosiveness, vegetation, and nuisance.” TIP

requested that the commission identify the bases for specific chemical L-values in both this adoption and in future rulemaking proposals.

The preamble has been expanded to explain in more detail the reasoning behind the new alternate L-values in Table 262. Specifically highlighted is the process used to develop the alternate L-value for 5-ethylidene-2-norbornene. Additionally, a list of references consulted in developing alternate L-values is included in the preamble.

TIP commented that changes were needed to clarify the interaction of §106.261 and §106.262 with the exemption for large storage tanks in §106.478. The commenter stated that the actual language of the exemptions does not clearly state that §106.261 and §106.262 can be used simultaneously with §106.478 to qualify storage of liquids not listed in Table 478 in §106.478, particularly known impurities in an otherwise authorized chemical. The commenter requested that such clarification be made in the adoption preamble or in appropriate guidance memoranda on the Texas Natural Resource Conservation Commission (TNRCC) Web site.

A memorandum regarding the interaction of these exemptions entitled "Interpretation of Standard Exemptions 106 and 118" dated August 1, 1990, is available on the TNRCC Web site. This memorandum clarifies the use of §106.261 (formerly SE 106) and §106.262 (formerly SE 118) in combination with each other and other exemptions. Specifically, the memo states that SE 106 (now §106.261) and SE 118 (now §106.262) can be used to authorize specific chemicals where the facility meets all of the conditions of another exemption except the chemical specification.

TIP commented that clarification is required for §106.478 with respect to the storage of complex chemicals composed of molecules of liquids already listed in Table 478 in §106.478, and requested that the clarification be issued on the TNRCC Web site. TIP requested that, if such guidance is not provided, the commission authorize such storage of combination compounds through §106.261 and §106.262.

This comment is outside the scope of this rulemaking. As noted earlier, the commission's intent in this rulemaking is to begin collection of information on the uses of §106.261, and to update the L-values in the amended Table 262 in §106.262. As a matter of record, the compounds specifically listed in the comment are authorized for storage and loading/unloading under §106.472(9). Amendments to §106.478 will be proposed as necessary at a future date.

STATUTORY AUTHORITY

The amendments are adopted 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.

SUBCHAPTER K : GENERAL

§106.261, §106.262

§106.261. Facilities (Emission Limitations) (Previously SE 106).

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

(1) - (2) (No change.)

(3) Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.

(4) - (6) (No change.)

(7) For emission increases of five tons per year or greater, notification must be provided using Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(8) For emission increases of less than five tons per year, notification must be provided using either:

(A) Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or

(B) Form PI-7-261(a) by March 31 of the following year summarizing all uses of this exemption in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(9) This exemption is effective January 1, 1999. The registration requirements in paragraphs (7) and (8) of this section begin January 1, 1999. Registration under paragraph (8)(B) of this section is due beginning March 31, 2000, for exemptions claimed in calendar year 1999.

§106.262. Facilities (Emission and Distance Limitations) (Previously SE 118).

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

(1) - (2) (No change.)

(3) New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tons per year nor in a quantity greater than E as determined using the equation $E = L/K$ and the following table. Figure: 30 TAC §106.262(3)

Figure: 30 TAC §106.262(3)

<u>D, Feet</u>	<u>K</u>	
100	326	E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.
200	200	
300	139	
400	104	
500	81	L = value as listed or referenced in Table 262
600	65	
700	54	
800	46	K = value from the table on this page. (interpolate intermediate values)
900	39	
1,000	34	
2,000	14	D = distance to the nearest off-plant receptor.
3,000 or more	8	

TABLE 262
LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262

The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, -	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	0.01
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01
Coal Tar Pitch Volatiles	0.1
Creosote	0.1
Cresol	0.5
Cumene	50.
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5

Table 262 (Con't)

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Diisobutyl Ketone	63.9
Dimethyl Aniline	6.4
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08
Ethyl Sulfide	1.6
Glycolonitrile	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133.
Isoamyl Alcohol	15.
Isobutyronitrile	22.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
Mesityl Oxide	40.
Methyl Acrylate	5.8
Methyl Amyl Ketone	9.4
Methyl-t-butyl ether	45.
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-chloroaniline) (MOCA)	0.003
Methylene Chloride	26.
Methyl Isoamyl Ketone	5.6
Methyl Mercaptan	0.2

Table 262 (Con't)

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	5.
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
Phenyl Mercaptan	0.4
Propionitrile	14.
Propyl Acetate	62.6
Propylene Oxide	20.
Propyl Mercaptan	0.23
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), in its TLVs and BEIs guide (1997 Edition) shall be used for compounds not included in the table. The Short Term Exposure Level (STEL) or Ceiling Limit (annotated with a "C") published by the ACGIH shall be used for compounds that do not have a published TWA TLV. This section cannot be used if the compound is not listed in the table or does not have a published TWA TLV, STEL, or Ceiling Limit in the ACGIH TLVs and BEIs guide.

(4) (No change.)

(5) The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluoride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosgene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine, liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.

(6) - (7) (No change.)