

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations).

#### EXPLANATION OF PROPOSED RULES

The commission has conducted a protectiveness review of the exemptions in §106.261 and §106.262. This rule proposal addresses several areas of concern uncovered in that review.

The proposed amendment to §106.261 requires registration and submittal of documentation substantiating the claim of exemption. Currently, under §106.261, a facility can emit one pound per hour of any chemical not specified or referenced in §106.262. Because there is currently no requirement for the company to give the commission any information on what chemicals are actually being emitted under the exemption, the commission does not have the data to determine whether the exemption is protective in practice. Therefore, the commission proposes to require registration, with Form PI-7, for the use of the §106.261 exemption. This registration will enable the commission to collect sufficient information to more fully evaluate the protectiveness of the exemption.

The changes in §106.261 will provide increased scrutiny which should improve compliance with the rule, while allowing collection of data regarding its use. Subsequently, commission staff will review these registrations to assess how the exemption is used in practice, track multiple uses of the exemption at a facility, and gather information for future changes to the rule.

The American Conference of Governmental Industrial Hygienists (ACGIH) Guide establishes health threshold limits for occupational workers. The current §106.262 relies on the 1985 ACGIH Guide for toxicological data used to determine maximum emissions allowed under this exemption. These limits are combined with modeling data in a formula to calculate an emission rate that provides a higher level of conservatism so that sensitive individuals are protected. Beyond establishing a conservative formula, the exemption provides a table (Table 262) which identifies specific compounds that have odor, chronic, vegetation or corrosive effects not accounted for in the 1985 ACGIH Guide.

Section 106.262 is amended in two ways. First, the toxicological data is updated to reference the 1997 ACGIH Guide rather than the 1985 Guide. Second, this amendment modifies the list of compounds specifically listed in Table 262. Sixteen compounds are deleted from the table since they are now referenced in the 1997 version and 32 compounds are modified or added to the table because they are not adequately addressed in the 1997 ACGIH guide. Since the guide is directed toward only health impacts, more conservative values have been included to address the effects of the 32 compounds on odor, corrosiveness, vegetation, and nuisance.

The commission also proposes amendments to the table to expand the categories of threshold limit values (TLVs) used in this exemption. The exemption originally referenced only the time-weighted average TLV, but will now allow use of the short-term exposure level (STEL) and the ceiling limit for compounds which do not have a time weighted average TLV listed.

Section 106.262(5) restricts 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.

#### 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 improved protectiveness by improved tracking of actual use of the §106.261 exemption and by using more recent toxicological data. The effects on small businesses will be the added registration requirements for new authorizations. The proposed changes are not retroactive. Facilities previously authorized under this exemption will remain authorized. There is minimal economic cost to persons who are required to comply with the sections as proposed. Since persons must currently be able to demonstrate compliance with the exemption, the additional burden will be the submittal of the registration information.

#### 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. The proposal 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 proposal 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 commission and the federal government concerning standard exemptions.

These rules are 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 increase the ability of the commission to

evaluate the protectiveness of the exemption in §106.261 and to increase protectiveness by reducing allowable emissions of more toxic compounds. This proposal does not constitute a taking of private, real property.

#### COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking 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 will not cause any increase in emissions.

The commission requests public comment on the consistency of this proposal with the Coastal Management Plan.

#### PUBLIC HEARING

A public hearing on this proposal will be held July 14, 1998, at 2:00 p.m. in Room 2210 of Texas Natural Resource Conservation Commission 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 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

Comments may be submitted to Lisa Martin, 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 98019-106-AI. Comments must be received by 5:00 p.m., July 20, 1998. For further information, please contact Susana Hildebrand, New Source Review Permitting Division, (512) 239-1562, Dale Beebe-Farrow, New Source Review Permitting Division, (512) 239-1310, or Jim Dodds, Air Policy and Regulations Division, (512) 239-0970.

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 amendments are 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 amendments implement Texas Health and Safety Code, §382.057.

#### **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) - (6) (No change.)

(7) Notification must be provided using Form PI-7 within ten days following the installation of, or physical or operational changes requiring authorization under this section to, the facilities, after October 1, 1998. The notification shall include a description of the project, calculations, and data identifying specific chemical names, L values, and a description of pollution control equipment, if any.

**§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	L = value as listed or referenced in Table 262.
500	81	
600	65	
700	54	K = value from the table on this page. (interpolate intermediate values)
800	46	
900	39	
1,000	34	D = distance to the nearest off-plant receptor.
2,000	14	
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.
[Adiponitrile]	[18.]
[Aldrin]	[0.15]
<u>N-Amyl Acetate</u>	<u>2.7</u>
Sec-Amyl Acetate	1.1
[Arsenic]	[0.01]
Benzene	3.
Beryllium and Compounds	0.0005
<u>Boron Trifluoride, as HF</u>	<u>0.5</u>
<u>Butyl Alcohol, n-</u>	<u>76.</u>
Butyl Acrylate	19.
<u>Butyl Chromate</u>	<u>0.01</u>
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	<u>1.8</u> [7.3]
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	<u>0.01</u> [0.05]
[Chromium and Compounds]	[0.025]
<u>Chromium Metal, Chromium II and III Compounds</u>	<u>0.1</u>
<u>Chromium VI Compounds</u>	<u>0.01</u>

Table 262. Cont'd.

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Creosote	0.1
Cresol	<u>0.5</u> [0.12]
Cumene	<u>50.</u> [43.]
<u>Cyanogen Chloride</u>	<u>0.06</u>
[o-Dichlorobenzene]	[180.]
[p-Dichlorobenzene]	[108.]
[1,2-dichlorobenzene]	[79.]
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5
Diisobutyl Ketone	<u>63.9</u> [140.]
Dimethyl Aniline	6.4
[Dimethylhydrazine]	[0.15]
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	<u>0.38</u> [1.]
<u>Ethylene Glycol</u>	<u>26.</u>
Ethylene Glycol Dinitrate	0.1
[Ethylene Oxide]	[0.18]
<u>Ethylidene-2-norbornene, 5-</u>	<u>7.</u>
Ethyl Mercaptan	<u>0.08</u> [0.15]
Ethyl Sulfide	1.6
[Fibrous Glass Dust]	[5.]
<u>Glycolonitrile</u> [Gylcolonitrile]	5.
<u>Halothane</u>	<u>16</u>
Heptane	350.
<u>Hexanediamine, 1,6-</u>	<u>0.32</u>
[Hydrazine]	[0.04]
Hydrogen Chloride	1.
<u>Hydrogen Fluoride</u>	<u>0.5</u>
Hydrogen Sulfide	1.1
Isoamyl Acetate	<u>133.</u> [13.]
Isoamyl Alcohol	15.

Table 262. Cont'd.

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Isobutyronitrile	22.
[Isophorone Diisocyanate]	[0.045]
<u>Isophorone</u>	<u>23.</u>
Kepone	0.001
Kerosene	100.
Malononitrile	8.
[Mercury, Inorganic]	[0.05]
Mesityl Oxide	40.
Methyl Acrylate	<u>5.8</u> [1.7]
Methyl Amyl Ketone	<u>9.4</u> [5.8]
<u>Methyl-t-butyl ether</u>	<u>60.</u>
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-Chloroaniline) (MOCA)	0.003
[Methylenebis (Phenyl isocyanate)]	[0.05]
Methylene Chloride	26.
[Methylhydrazine]	[0.08]
Methyl Isoamyl Ketone	<u>5.6</u> [5.8]
Methyl Mercaptan	<u>0.2</u> [0.3]
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	<u>0.3</u> [0.5]
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	<u>5.</u> [36.]
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
[Phenyl Glycidyl Ether]	[5.]

Table 262. Cont'd.

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
[Phenylhydrazine]	[0.6]
Phenyl Mercaptan	0.4 <u>Compound</u>
Propionitrile	14.
Propyl Acetate	<u>62.6</u> [281.]
Propylene Oxide	<u>20.</u> [5.]
Propyl Mercaptan	<u>0.23</u> [0.08]
<u>Silica-amorphous- precipitated, silica gel</u>	<u>4.</u>
<u>Silicon Carbide</u>	<u>4.</u>
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.

For compounds not included in the table, the time weighted average threshold limit values (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH) (1997 Edition) shall be used. The Short Term Exposure Level or Ceiling Limit may be used for compounds that do not have a published time weighted average. This exemption cannot be used if the compound is not listed in the table or does not have a published TLV in the 1997 ACGIH Guide.

[NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), (1985-1986 Edition) shall be used for compounds not included in the table. This section cannot be used if the compound is not listed in the table or does not have a published TLV in the ACGIH.]

(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.)