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**Notice of Intent to Propose**

**Hart Creosoting**

for listing on the

**Texas Superfund Registry**

as published in the

***Texas Register***

**(22 TexReg 8311-8312)**

on

**August 19, 1997**

**A portion of the records for this site, including documents pertinent to the TNRCC determination of eligibility, is available for viewing with the site repository records**

at

**Jasper Public Library**

**175 E. Water Street**

**Jasper, Texas**

**and/or**

**TNRCC Records Management Center**

**Austin, Texas**

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Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapters 116 and 126 and the SIP.

The commission proposes amendments to Chapter 116, Subchapters A-F, concerning State-only Requirements for Control of Air Pollution by Permits for New Construction or Modification. In addition, the commission proposes new Chapter 126, Subchapters A-K, concerning Federal New Source Review Requirements for Control of Air Pollution. The proposed amendments to Chapter 116 and the proposed new Chapter 126 would distinguish the requirements of federal new source review (NSR) from the requirements of state NSR. As a part of the proposed rulemaking, the commission is also proposing a revision to the SIP that would replace Chapters 116 and 106 (concerning Exemptions From Permitting) with Chapter 126.

An issue paper which discusses in greater detail the background and rationale for the reorganization of Chapter 116 and the corresponding SIP revision has also been prepared by TNRCC staff. The issue paper is available for review at the TNRCC, 12100 Park 35 Circle, Austin, and can also be obtained on request by calling the Operating Permits Division, Office of Air Quality, (512) 239-1334.

A public hearing on the proposal will be held September 11, 1997, at 10:00 a.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 the hearing and answer questions before and after the hearing.

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 97130-116-AI. Comments must be received by 5:00 p.m., September 22, 1997. For further information or questions concerning this proposal, please contact Shanon DiSorbo of the Operating Permits Division, Office of Air Quality, (512) 239-1149.

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.

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

TRD-9710466

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: August 11, 1997



## Public Notice

The Texas Natural Resource Conservation Commission (TNRCC or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code Chapter 361, as amended, to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the

environment. Pursuant to Section 361.184(a), the commission must publish in the *Texas Register* those facilities which are identified as eligible for listing on the registry of state Superfund sites. The most recent registry listing was published in the *Texas Register* on April 18, 1997 (22 TexReg 3631).

The following is a facility or area that the executive director of the TNRCC has determined eligible for listing and which the executive director proposes to list on the state registry. Also specified is the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director.

The facility known as the Hart Creosoting Company (the "site") is located on the west side of U.S. Highway 96 and is approximately 1 mile south of the intersection of U.S. Highway 96 and U.S. Highway 190, Jasper, Jasper County, Texas. The site consists of three contiguous tracts of land: a 1.66 acre tract next to Highway 96, on which the office is located; a 8.832 acre tract on which the former production facility was located; and a 432.79 acre tract, located to the north of the 8.832 tract. The site is adjacent to a drainage ditch which discharges into the Walnut Run Creek. Walnut Run Creek, a tributary of the Neches River, is intermittent and flows southerly.

Hart Creosoting Company was owned and operated by Andrew P. (Dewey) Hart. It began operation as a wood treatment facility in 1958 and remained in operation until May 1993. Site operations included steam conditioning and pressure treatment of lumber and other timber products using creosote. The by-product of this operation included creosote sludge, creosote-contaminated waste water and waste oil. The production process required the use of several surface impoundments, tanks and other solid waste management units which were used for the on-site storage and treatment of hazardous and non-hazardous waste. While in operation, several other processes operated concurrently with the wood preservation treatment: a pole peeling plant operated at the site from 1968 through 1978; and a pipe threading operation was conducted from 1982 through 1985. A sawmill preceded the wood treatment operations at this location. The sawmill opened in 1950 but was shutdown in the late 50's.

Between 1984 and 1993, Hart Creosoting Company was cited for numerous violations of the Resource Conservation and Recovery Act (RCRA) and Texas Administrative Codes. Although Hart Creosoting Company made some effort to contain releases of hazardous substances while in operation, through the construction of soil dikes and onsite treatment of waste water, routine investigations by the U.S. Environmental Protection Agency (U.S. EPA) and the TNRCC and its predecessor agencies documented releases at the site.

In July 1988, the U.S. EPA conducted a Resource Conservation and Recovery Act Facility Assessment (RFA). The RFA involved the preliminary review of the site records and a visual site inspection. The TNRCC and its predecessor agencies also conducted numerous inspections and sampling activities at the site from 1984 through 1993. These investigations consistently confirmed the presence of creosote constituents in the soil, groundwater monitor wells and surface water runoff. Sediment samples collected immediately downstream of several solid waste management units in 1993 repeatedly showed high concentration of creosote constituents and an absence of benthic organisms. Laboratory analysis for polynuclear aromatics (PNA), consistent with the presence of creosotes, have also been identified in the aforementioned three media (soil, groundwater,

surface water). Creosote is defined per 40 CFR Part 261 as a listed hazardous constituent (K001, U051).

Records available to the TNRCC demonstrate that as of January 19, 1995, the Hart Creosoting site was inactive and all structures associated with the wood treatment process had been removed.

The TNRCC referred the site to U.S. EPA in May 1995 for an immediate removal action after all Resource Conservation and Recovery Act enforcement actions had failed. From July 1995 to October 1995, the U.S. EPA stabilized and consolidated all the surface impoundment sludge, stockpiled the stabilized waste in a constructed on-site clay lined storage pit and graded the site as part of the immediate removal action. This storage pit was covered with a clay cap, top-soiled and seeded to grow low vegetation as an erosional control for the capped storage pit. The capped storage pit which includes the former surface impoundments, is fenced round with a non-gated barb-wire fence.

It is presently believed that while the source contamination from the soil and surface impoundments may have been considerably mitigated by the immediate removal action by the U.S. EPA, and preceding remedial actions, groundwater contamination remains a concern. Available toxicological information indicates that creosote is carcinogenic. This site demonstrates a potential imminent and substantial endangerment to human health, safety and the environment as the site is situated on the Jasper Aquifer, the source of drinking water to the residents of Jasper and Newton Counties.

A public meeting has been scheduled regarding the proposed listing of the site. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Chapter 2001, Government Code). Persons desiring to comment on the proposed listing of this site may do so in the context of the public meeting either orally or in writing. Written comments may also be submitted to the attention of Emmanuel Ndam, Superfund Investigation Section, TNRCC, Pollution Cleanup Division, MC-143, P. O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the commission by the end of the public meeting on September 25, 1997.

The public meeting has been scheduled for Thursday, September 25, 1997, beginning at 7:00 p.m. in Council Chambers of Jasper City Hall, 465 Main Street, Jasper, Texas.

The executive director of the TNRCC prepared a brief summary of the commission's records regarding this site. This summary, as well as a portion of the records for the site, are available for inspection and copying during the hours of 10:00 a.m. to 6:00 p.m. Monday through Friday and 10:00 a.m. to 5:00 p.m. on Saturday at the Jasper Public Library, 175 East Water, Jasper, Texas. Telephone (409) 384-3791.

Copies of the complete public record file may be obtained during regular business hours at the TNRCC, Central Records Center, Building D, North entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone 1-800-633-9363 (within Texas only) or (512) 239-2920. Copying of file information is subject to payment of a fee.

Issued in Austin, Texas, on August 12, 1997.

TRD-9710535

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: August 12, 1997

## Texas Department of Protective and Regulatory Services

### Correction of Error

The Texas Department of Protective and Regulatory Services proposed amendments to 40 TAC §§710.1-710.3, 710.7, 710.8. The rules appeared in the August 5, 1997, issue of the *Texas Register*, (22 TexReg 7213).

The title of the chapter should read "Protection of Clients and Staff."

On page 7215, §710.8(e)(1) should read:

"(1) If the head of a facility disagrees with the department's review, the head of the facility may appeal the finding to the director of mental health or the director of mental retardation at the Texas Department of Mental Health and Mental Retardation, as appropriate."

The Texas Department of Protective and Regulatory Services proposed new 40 TAC §§725.1001, 725.1805-725.1807, 725.2047, 725.1403, 725.1405, 725.1407, 725.1801, 725.2008, 725.2012, and 725.2046. The rules appeared in the August 5, 1997, issue of the *Texas Register*, (22 TexReg 7217).

In the preamble, §725.1407 was listed as a new section and as an amendment. It should be an amendment.

On page 7220, the following information in §725.2008(b) should have been bold to indicate new text:

"(b) A person whose license, [or] certification, **registration, or listing** is revoked may not apply for any license, [or] certification, **registration, or listing** under this chapter before the second anniversary of the date on which the revocation by TDPRS or court order takes effect. The cost of reimbursing TDPRS for publishing the notice of revocation, as required by the Human Resources Code, Chapter 42, §42.077, must be added to the application fee at the time the facility reapplies."

## Public Utility Commission of Texas

### Correction of Error

The Public Utility Commission of Texas submitted an Open Meeting Notice. The notice appeared in the August 15, 1997, issue of the *Texas Register*, (22 TexReg 3542).

The applicant name for PUC Docket Number 17315 was incorrectly published as "Time Warner Communications of Austin, L.P." it should read "Time Warner Communications of Houston, L.P."

### Notice of Application For Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 8, 1997, for a service provider certificate of operating authority (SPCOA), pursuant