

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 16, 2011

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2011-0893-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 106 - Permits by Rule
Non-rule Air Quality Standard Permit for Oil and Gas Handling and
Production Facilities
Oil and Gas Permit by Rule and Standard Permit Corrections
Rule Project No. 2011-014-106-PR

Background and reason(s) for the rulemaking:

On January 26, 2011, the commission adopted a new permit by rule (PBR) §106.352 (February 18, 2011 issue of the *Texas Register* (36 *TexReg* 943)) which extensively revised requirements for oil and gas facilities. Subsections (a)-(k) of the new PBR apply to counties in the Barnett Shale region. Subsection (l) applies to oil and gas facilities in the rest of the state. Subsection (l) consists of the language and conditions that existed in §106.352 prior to the January 26, 2011, adoption. However, a paragraph of that language which requires sour oil and gas facilities to be located at least one-quarter mile from receptors was mistakenly omitted, and this rule amendment would restore that paragraph. Additionally, this rulemaking will correct a typographical error in §106.352.

Also, on January 26, 2011, the TCEQ issued a non-rule standard permit for oil and gas production facilities. The standard permit became effective on April 1, 2011, and applies only in the Barnett Shale region of the state. The standard permit would also be amended to correct a typographical error.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The amendment to the PBR would add §106.352(l)(3) which states that any facility handling sour gas shall be located at least one-quarter mile from any recreational area or residence or other structure not occupied or used solely by the owner or operator of the facility or the owner of the property upon which the facility is located. The subsequent paragraphs of subsection (l) would be re-numbered. This is not a new requirement, but a restoration of the requirement that has existed in §106.352 since 1986 to the January 26, 2011 adoption. The intent of this requirement is to provide a set-back distance or separation between wells producing hydrogen sulfide emissions and receptors.

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B.) Scope required by federal regulations or state statutes:

The addition of §106.352(l)(3) to the PBR is authorized by new Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.051963 established by Senate Bill 1134, 82nd Legislature, 2011.

C.) Additional staff recommendations that are not required by federal rule or state statute: Staff proposes to correct typographical errors in §106.352 and the non-rule standard permit.

Statutory authority:

The statutory authority for this rulemaking includes Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amended section is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a PBR for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.0513 concerning permit conditions which requires permit conditions of general applicability to be adopted by rule; §382.05195 concerning standard permits, which authorizes the commission to issue standard permits; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

Effect on the:

A.) Regulated community:

The addition of §106.352(l)(3) is not a new requirement but a restoration of the requirement that has existed in §106.352 from 1986 to the January 26, 2011 adoption. A review of permit records indicates that no facility has been constructed within one-quarter mile from a receptor since the inadvertent omission of the paragraph at the oil and gas adoption on January 26, 2011. Consequently, this change will have no effect on industry.

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B.) Public:

Restoration of the one-quarter mile separation between sour gas facilities and receptors will ensure continued protection of public health and welfare.

C.) Agency programs: No effect.

Stakeholder meetings:

While no stakeholder meetings were held, a public comment period extending from the newspaper publication on August 22, 2011, until the public hearing on October 3, 2011, was offered.

Public Comment:

The commission held a public hearing on October 3, 2011 and no comments were submitted. The comment period closed on October 3, 2011. The commission received written comments from the Texas Oil & Gas Association.

Significant Changes from Proposal: None.

Potential controversial concerns and legislative interest:

None expected.

Does this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward?

The one-quarter mile distance requirement for sour gas sites will not exist and receptors within one-quarter mile of the facility may be exposed to some amount of sulfur compounds.

Are there alternatives to rulemaking?

Require the one-quarter mile distance setback for sour gas sites by policy.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal date:** September 2, 2011

Anticipated *Texas Register* publication date: January 27, 2012

Anticipated effective date: January 31, 2012

Six Month *Texas Register* filing deadline: March 2, 2012

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