

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §106.141 *without change* to the proposed text as published in the September 7, 2012, issue of the *Texas Register* (37 TexReg 7048) and will not be republished.

### **Background and Summary of the Factual Basis for the Proposed Rule**

Prior to this rulemaking action, there was no standard permit or permit by rule (PBR) specifically designed for medium-sized batch mixing operations commonly used in construction and repair activities. Before the adoption of this amendment, §106.141 authorized equipment with a mixing drum of up to a five cubic feet in capacity. Medium-sized batch mixing operations use drums with a capacity larger than five cubic feet, but are considerably smaller than the facilities authorized by the air quality standard permit for concrete batch plants. The concrete batch plant standard permit authorizes facilities with a production rate of up to 300 cubic yards per hour. Medium-sized batch mixing operations are portable, brought to a site for specific jobs, and designed for rapid production. Because of the small size of these operations, it is appropriate for owners or operators to use this authorization for both temporary and permanent projects. The standard permit registration and public notice process required by Texas Health and Safety Code (THSC), §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, was not designed for a medium-sized batch mixer used in temporary construction and

repair operations.

The PBR amendment expands the applicability of §106.141 to include batch mixing operations with drum capacities up to 27 cubic feet. The PBR may not be used to authorize concrete batch plants, which can be authorized under the air quality standard permit for concrete batch plants or a case-by-case new source review (NSR) permit under 30 TAC §116.111, General Application.

### **Section Discussion**

The commission adopts changes to §106.141 that allow medium-sized batch mixers to be authorized with the PBR. In this section, the commission also adopts the addition of specific example products that owners or operators can make with these mixers. The amendment adds paragraphs that include engine size restrictions and best management practices for dust control. As in all PBRs, owners or operators are required to comply with Chapter 106, Subchapter A, General Requirements.

Stakeholders suggested including volumetric trucks in the amendment, but after careful consideration, the commission decided to continue considering volumetric trucks to be mobile sources. Volumetric (or compartmentalized) trucks are prevalent in the concrete industry. These trucks are equipped with a water tank and individual bins for aggregate, cement, and cement supplements (flyash, etc.). These trucks are mainly used for small

repair jobs that do not require large amounts of concrete. The agency continues to consider the transporting and mixing by these trucks to be a mobile source activity. However, the loading equipment (cement or cement supplement storage silos) at the home site of these trucks is considered a stationary source, and is subject to permitting requirements. These sources can be authorized using an NSR permit or a PBR. This PBR amendment does not restrict owners or operators from claiming §106.144, Bulk Mineral Handling, when appropriate.

### **Final Regulatory Impact Determination**

The commission reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the amendment does not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, a major environmental rule means "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." While the purpose of this rulemaking is to increase protection of the environment and reduce risk to human health, it is not expected that this rulemaking will adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, or the public health and

safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

Furthermore, even if the amendment constituted a major environmental rule, a regulatory impact analysis would not be required because the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the rulemaking is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the rulemaking is authorized by specific sections of the THSC, Chapter 382 (also known as the Texas Clean Air Act), cited in the Statutory Authority section of this preamble.

The purpose of the PBR amendment is to expand the applicability of §106.141 to more facilities. Before the adoption of this amendment, the PBR authorized batch mixer drums of five cubic feet capacity and smaller. The amended PBR includes batch mixing operations that use equipment larger than a five cubic feet capacity drum but that the commission does not consider concrete batch plants.

The commission invited public comment on the draft regulatory impact analysis determination and received no comments during the public comment period.

### **Takings Impact Assessment**

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043, Takings Impact Assessment. The primary purpose of the rulemaking is to expand a PBR authorization for batch mixers that use equipment larger than a five cubic feet capacity drum but that the commission does not consider concrete batch plants. The expansion of the PBR authorization does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. This rulemaking will not revoke the authorizations of previously authorized facilities. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5), Definitions.

### **Consistency with the Coastal Management Program**

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201, *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, and found the rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone. The amendment will balance economic development with other concerns by limiting batch mixer capacity, limiting engine size, and requiring dust control measures.

The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32 Policies for Emission of Air

Pollutants). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the rule is consistent with these CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program and did not receive comments during the public comment period.

#### **Effect on Sites Subject to the Federal Operating Permits Program**

Chapter 106 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 106, Permits by Rule requirements into their operating permit.

#### **Public Comment**

The commission held a public hearing on October 2, 2012. The comment period closed on October 8, 2012. The commission did not receive any comments.

## **SUBCHAPTER E: AGGREGATE AND PAVEMENT**

### **§106.141**

#### **Statutory Authority**

The amendment is adopted under Texas Water Code, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under Texas Health and Safety Code, §382.002, 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, General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, 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, Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, Exemption, which authorizes exemptions from permitting.

The adopted amendment implements Texas Health and Safety Code, §§382.002,

382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

**§106.141. Batch Mixers.**

Batch mixers with rated capacity of 27 [five] cubic feet or less for mixing cement, sand, aggregate, lime, gypsum, additives, and/or water to produce concrete, grout, stucco, mortar, or other similar products; and that comply with the following conditions; [or similar materials] are permitted by rule.

(1) An internal combustion engine rated at 25 horsepower or less may be used to power the mixer.

(2) The owner or operator shall use best management practices for dust control by:

(A) cleaning up spilled raw materials, waste products, or finished products on a daily basis; and

(B) controlling dust in transfer systems, stockpiles, work areas, storage, and truck unloading areas.