

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: January 25, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2012-0822-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 106, Permits by Rule
Batch Mixers Permit by Rule (PBR) Amendment
Rule Project No. 2012-007-106-PR

Background and reason(s) for the rulemaking:

Under current rules, there is no standard permit or PBR that is appropriate for medium-sized batch mixing equipment used in construction and repair operations. The PBR used for small mixers, 30 Texas Administrative Code (TAC) §106.141, Batch Mixers is currently limited to equipment with a five cubic feet capacity drum and smaller. Medium-sized batch mixing operations use drums larger than five cubic feet in capacity, but are considerably smaller than the facilities authorized by the air quality standard permit for concrete batch plants. Owners or operators bring this portable equipment to a site for short-term jobs.

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, is not designed to meet the operational needs or environmental concerns associated with medium-sized batch mixers used in temporary construction and repair operations. The amendments to §106.141 would provide an appropriate and efficient method of authorization for medium-sized batch mixers.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The amendments expand the applicability of §106.141 to authorize batch mixing operations with drum capacities of 27 cubic feet or less. The PBR excludes 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 permit under §116.111, General Application.

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

N/A.

C.) Additional staff recommendations that are not required by federal rule or state statute:

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The amendments to the PBR will only be applicable to specific small construction or repair equipment that mixes materials such as concrete, grout, mortar, gunite, and stucco. New requirements include higher capacity limits, engine horsepower limits, and dust control provisions.

Statutory authority:

The amended section is adopted under Texas Water Code (TWC), §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 TWC; and under THSC, §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 THSC, §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 PBR 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 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:

Owners or operators of batch mixing operations will have a method of permitting that is more appropriate for their processes. There will be a small cost savings to the regulated community who elect to use the non-registered PBR with no fee, compared to the fees associated with a standard permit or case-by-case air permit. Also, the ability to comply with the technical requirements and operate efficiently will be most appropriate with a PBR rather than a standard permit or case-by-case permit.

B.) Public:

The public will not be formally notified of new batch mixing operations, but facilities will be required to follow limits that would more strictly minimize the potential for nuisance conditions. The PBR amendments encourage project efficiency and use of smaller, more fuel efficient engines, resulting in reduced emissions.

C.) Agency programs:

Although owners or operators of medium-sized batch mixers were required to use a standard permit or case-by-case new source review permit before the amendments, which

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would have required extensive staff review and a permit fee, the agency never received an application. From this perspective, these PBR amendments will have no fiscal implications for the agency. The agency finds these operations better suited for a non-registered PBR, because they do not have a major effect on air quality and do not present a public health concern.

Stakeholder meetings:

Since there is not one concentrated location for these facilities throughout the state, one stakeholder meeting was held at the Texas Commission on Environmental Quality (TCEQ) headquarters in Austin, Texas on January 19, 2012, at 9:00 am. The meeting was announced on the TCEQ website and was open to the public. Those represented at the meeting were from the construction and consulting industries and from municipalities. Response concerning the permit amendments was generally favorable. There was some discussion about increasing the number of days allowed at a site. Since limiting time at a site for various types of applications was problematic, the TCEQ did not include it as a limitation. Stakeholders also voiced concerns about volumetric mixing trucks operating at a site for long periods of time as a batch mixer rather than for transporting materials. After careful consideration, the commission decided that volumetric trucks would continue to be considered mobile sources. However, the cement supplement storage silos and material transfer equipment at the home site of these trucks are considered stationary sources and are subject to the permitting requirements of 30 TAC Chapter 116.

Public comment:

TCEQ did not receive any comments.

Significant changes from proposal:

There have been no changes from proposal.

Potential controversial concerns and legislative interest:

The public may have questions about nuisance issues regarding dust and noise. Industry should generally support the PBR amendments since they would otherwise need to get a standard permit or case-by-case permit, but they may have concerns about capacity limits and dust control requirements. Since these batch mixers are used in short construction and repair jobs, the regulated community prefers a PBR that does not require registration. Because batch mixers do not have a major effect on air quality, they are in one area for a short period of time, and they do not present a public health concern, the agency does not expect legislative concern regarding these amendments.

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking will require the agency to communicate a different permitting method for medium-sized batch mixers, but it will not require development of new permitting policies. Before the amendments, these facilities were required to apply for a standard permit or

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case-by-case permit. The Air Permits Division will communicate the availability of the amended PBR and its applicability requirements.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rulemaking does not go forward, owners or operators of medium-sized batch mixers would be required to apply for a standard permit or case-by-case permit.

One alternative would be to move batch mixers with a capacity of five cubic feet or less to the De Minimis Facilities list. In place of the current authorization, §106.141 could be amended to only include batch mixers with a capacity between five cubic feet and 27 cubic feet.

Another alternative would be to leave §106.141 as it currently is and create a separate new PBR that would authorize batch mixers with a capacity between five cubic feet and 27 cubic feet.

Key points in the proposal rulemaking schedule:

Texas Register proposal publication date: September 7, 2012

Anticipated Texas Register publication date: March 1, 2013

Anticipated effective date: March 7, 2013

Six-month Texas Register filing deadline: February 22, 2013

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