

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 28, 2012

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

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

Docket No.: 2012-0501-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 106, Permits by Rule
Non-Rule Air Quality Standard Permit
Oil and Gas Revisions - Scope
Rule Project No. 2012-020-106-AI

Background and reason for the rulemaking: On January 26, 2011, the commission adopted the current §106.352, Oil and Gas Handling and Production Facilities, and issued a non-rule Air Quality Standard Permit for Oil and Gas Handling and Production Facilities (OGSP). Subsections (a) - (k) of §106.352 and the OGSP consist of updated control, monitoring, and reporting requirements that apply in 23 counties of North Central Texas commonly known as the Barnett Shale Region.

Implementation of this rule and the OGSP in the Barnett Shale region gave the commission an opportunity to evaluate its administration in the area of the state that presented the most immediate challenge. The current version of §106.352 and the OGSP have been in effect since April 1, 2011, and the Air Permits Division (APD) has had the opportunity to evaluate the effectiveness of these authorizations. This evaluation has resulted in proposed amendments to the list of counties where §106.352(a) - (k) and the OGSP apply and proposed amendments to the methods of complying with the required setback of oil and gas facilities from receptors. Another proposed amendment to §106.352 is extension of the deadline for notifying the TCEQ about facility location and method of authorization from January 1, 2013 to January 5, 2015. This is consistent with the statutory due date for maintenance, startup, and shutdown emissions authorization.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do: Based on the staff's evaluation which considered population density, the total number and concentration of Barnett Shale formation drilling and producing oil and gas facilities near population centers, and monitoring and compliance records, APD recommends that the following counties be removed from the requirements of §106.352(a) - (k) and the OGSP: Archer, Bosque, Clay, Comanche, Coryell, Eastland, Shackelford, and Stephens. APD further recommends that both authorizations be amended to allow compliance with a local ordinance requiring a setback of 50 feet or greater between an oil and gas facility and a receptor to meet all TCEQ separation requirements, including separation from a property line.

Re: Docket No. 2012-0501-RUL

B.) Scope required by federal regulations or state statutes: None

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

Statutory authority: 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 Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §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 permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; §382.057, concerning Exemption, which authorizes exemptions from permitting; and §382.051961, which restricts the conditions, under which permits for oil and gas facilities may be amended.

Effect on the:

A.) Regulated community: Oil and gas facilities located in the counties removed from the Barnett Shale requirements have to comply with other existing regulations that are more appropriate for the types of oil and gas wells in those counties. Facilities located in the remaining Barnett Shale counties could gain additional flexibility in complying with the required distance limitations under the revisions. Additionally, facilities in the Barnett Shale counties have more time to comply with the historical notification deadline in §106.352.

B.) Public: Public health and welfare will continue to be protected because wells drilled in the removed counties are required to comply with §106.352(l) or §116.620. For the 50-foot minimum distance revision, public health and welfare will also continue to be protected because this change only applies where an existing municipal ordinance is in place to ensure that emission points are a minimum distance from receptors. There is no effect on the public from the extension of the historical notification deadline.

C.) Agency programs: There should be a workload reduction in the number of §106.352(a) - (k) and OGSP registrations as a result of the removal of counties from the

Re: Docket No. 2012-0501-RUL

Barnett Shale requirements and there is no effect on Agency programs due to the distance measurement clarification. The extension of the deadline for submission of historical notification information benefits the agency because it allows additional time for: development of tools such as the ePermitting system; more accessible and user-friendly guidance; coordination with the Texas Railroad Commission regarding well data; effective use of limited agency resources; and additional outreach where needed.

Stakeholder meetings:

No stakeholder meetings were held. A public hearing on the proposed PBR and the OGSP was held on July 10, 2012, and no comments were received at the meeting.

Public comment:

The commission received comments from: State Representative Lon Burnam; Duggins, Wren, Mann & Romero, LLP; an individual; the Texas Alliance of Energy Producers; the Texas Oil & Gas Association; and the Texas Pipeline Association. General concerns included justification for removal of the counties and whether the rulemaking met the definition of a Major Environmental Rule in Sec. 2001.0225(g)(3), Government Code.

Significant changes from proposal: None.

Potential controversial concerns and legislative interest: Environmental groups, legislators and some oil and gas producers may object to the removal of counties from the applicability of §106.352(a) - (k) and OGSP because they may see it as a relaxation of necessary regulatory requirements for oil and gas facilities. Environmental groups, individuals, and organizations within individual counties may object to the delay in historic notification claiming TCEQ should know about existing oil and gas facilities as soon as possible. Alternatively, some oil and gas producers may ask that additional counties be removed or for further elimination of distance setbacks from the Barnett Shale requirements. Additionally, this rulemaking is subject to Texas Health and Safety Code §382.051961, Permit for Certain Oil and Gas Facilities (SB 1134, 82nd Legislative Session), which was the subject of legislative and industry interest.

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? Are there alternatives to rulemaking? None of the proposed revisions is dependent on another, therefore the commission could adopt all, none, or any combination of the proposed changes without affecting any other. Without this rulemaking, oil and gas operators would be without the additional flexibility that the executive director has determined provides greater usefulness and reasonableness to the industry while remaining protective of public health and the environment. Facilities in the removed counties would remain subject to the Permit By Rule, and Standard Permit for the Barnett Shale Region. Additionally,

Commissioners
Page 4
September 28, 2012

Re: Docket No. 2012-0501-RUL

facilities in the entire Barnett Shale Region would be required to submit notification information by January 1, 2013, and thus the agency would need to take additional steps to prepare for collection of the data.

Key points in the proposal rulemaking schedule:

Texas Register proposal publication date: June 15, 2012

Anticipated Texas Register publication date: November 2, 2012

Anticipated effective date: November 8, 2012

Six-month Texas Register filing deadline: December 17, 2012

Agency contacts:

Tasha Burns, Rule Project Manager, 239-5868, Air Permits Division

Betsy Peticolas, Staff Attorney, 239-1439

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments: Senate Bill 1134, 82nd Legislative Session

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Michael Wilson, P.E.
Erin Selvera
Tasha Burns
Bruce McAnally