

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** July 3, 2013

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

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

**Docket No.:** 2012-2017-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 106, Permits by Rule  
Maintenance, Startup, and Shutdown (MSS) for Oil and Gas  
Rule Project No. 2012-030-106-AI

### **Background and reason(s) for the rulemaking:**

Historically, the rules of the commission and its predecessor agencies have not specifically required authorization of MSS activities. However, in December 2005, the commission established deadlines for different facility types to submit an application to authorize planned MSS emissions or lose the ability to claim an affirmative defense for unauthorized emissions during those activities. Senate Bill (SB) 1134, 82nd Legislature, 2011, created Texas Health and Safety Code (THSC), §382.051962, which extended the deadline for certain oil and gas facilities to submit an application to authorize planned MSS from January 5, 2012 to January 5, 2014. This rulemaking will provide applicants a streamlined authorization mechanism for planned MSS to meet the statutory deadline.

### **Scope of the rulemaking:**

This rulemaking adds a new permit by rule (PBR) under Chapter 106 to authorize emissions from planned MSS activities at oil and gas handling and production facilities. It is intended that this PBR will be used in addition to a construction authorization at an oil and gas site.

**A.) Summary of what the rulemaking will do:** This rulemaking adds new PBR §106.359, to authorize emissions from planned MSS at oil and gas handling and production facilities. This PBR requires that the permit holder develop and implement a maintenance program and use best management practices (BMPs) to minimize emissions. This PBR includes appropriate recordkeeping requirements in the maintenance program and in §106.8, Recordkeeping, to verify compliance, but does not require notification, registration, or certification.

**B.) Scope required by federal regulations or state statutes:** The legislation and corresponding THSC, §382.051962 authorizes the commission to adopt or amend PBRs or standard permits to authorize planned MSS activities. The THSC also establishes actions the commission is required to take to adopt new or revised rules for oil and gas facilities. Specifically, for any new or revised PBRs or standard permits, THSC, §382.051961 requires that the commission: conduct a regulatory analysis in accordance with the government code; conduct an evaluation of credible air quality monitoring data to determine if

Re: Docket No. 2012-2017-RUL

emission limits or emissions-related requirements are needed to ensure protection of public health; use credible air quality monitoring data and credible air quality modeling that is not based on worst-case scenarios to determine emissions limits; and consider whether the requirements of the permit should be imposed on particular geographic regions of the state.

**C.) Additional staff recommendations that are not required by federal rule or state statute:** None.

**Statutory authority:**

The new PBR is adopted under Texas Water Code (TWC), §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 TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The PBR 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; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt PBRs for certain types of facilities; §382.051961, which establishes specific requirements and analyses that must be conducted before the commission may adopt a new or amend an existing PBR or standard permit for oil and gas facilities; §382.051962, which extended the deadline for owners or operators of oil and gas facilities to submit an application to authorize MSS emissions to January 5, 2014; and §382.057, concerning Exemption, which authorizes exemptions from permitting. This new PBR implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, 382.051961, 382.051962, and 382.057.

**Effect on the:**

This PBR should have a minimal effect on the regulated community and the public. The use of the PBR is not mandatory, although staff anticipates that owners and operators of eligible oil and gas facilities will find the PBR a more attractive option than a case-by-case permit or revision of existing standard permit or PBR application. The PBR does not create a group of affected persons who were not affected previously, as owners and operators of oil and gas facilities are already required to authorize emissions under existing rules.

**A.) Regulated community:** Owners and operators of oil and gas facilities will have a streamlined method for authorizing planned MSS. The PBR requires that the permit holder keep records, develop and implement a maintenance program, and use industry

Re: Docket No. 2012-2017-RUL

BMPs to minimize emissions. The commission does not anticipate a fiscal impact because BMPs are already used at oil and gas sites, and the PBR will not require registration. Companies who choose to register will be required to pay the standard PBR fees.

**B.) Public:** The PBR is not expected to directly affect the general public. Planned MSS activities will be authorized and BMPs will be required to ensure protection of public health and the environment.

**C.) Agency programs:** The PBR will not have a significant effect on agency programs. Voluntary registration, certification, or recertification for sites may result in a minimal increase in workload for the Air Permits Division. The commission does not anticipate a significant fiscal impact because the PBR does not require registration.

**Stakeholder meetings:**

The commission conducted four stakeholder meetings prior to drafting the PBR. Over 150 people participated in the stakeholder process, including representatives from industry, environmental groups, and the general public. The agency held open discussions so that stakeholders could both ask questions and inform the commission about MSS activities. Information learned during the stakeholder process was used in rule development. A public hearing on the proposed rule was held on April 4, 2013.

**Public comment:**

The commission received comments from: Devon Energy Corporation (Devon), Eagle Rock Energy (Eagle Rock), an individual, the Lone Star Chapter of the Sierra Club (Sierra Club), Marathon Oil Company (Marathon), Plains All American (Plains), Pioneer Natural Resources (Pioneer), the Texas Oil and Gas Association (TXOGA), and the Texas Pipeline Association (TPA). One commenter was unsupportive, and the other commenters were generally supportive, but many suggested revisions to the proposed rule language.

**Significant changes from proposal:**

The effective date of the rule was changed to September 10, 2013, in order to ensure the deadline to authorize planned MSS remains January 5, 2014. This change was made in response to comments from TXOGA and Plains.

Subsection 106.359(a) was changed to authorize any associated emission capture and control facilities used to control emissions from any planned MSS activity. The proposed rule language only authorized control of emissions from activities in Subsection (b)(9) related to tanks. This change was made in response to a comment from Plains.

Subsection (a)(2) was changed to clarify that there could be no increase in hourly emissions when §106.359 is used to supersede a previous authorization for planned MSS which required control of emissions. This change was made in response to a comment from TPA.

Re: Docket No. 2012-2017-RUL

Proposed subsection (a)(3) was deleted to reduce redundancy regarding the general requirements to claim a PBR in §106.4, Requirements for Permitting by Rule. This change was made in response to a comment from TXOGA.

Subsections (b)(1) and (4) were changed to clarify the commission's intent regarding the activities authorized under these subsections, and to utilize terminology more familiar to permit holders. These changes were made in response to comments from TXOGA.

Subsection (b)(9) was changed to provide additional flexibility requested by commenters, and clarify the commission's intended requirements for emptying, purging, degassing, or refilling of process equipment, storage tanks and vessels. The requirement in proposed subsection (b)(9)(A) regarding liquid and solid removal being directed to covered containment was deleted because the removal of the liquids and solids is authorized in subsection (b)(2), and covering the containers is considered a BMP and thus is not appropriate as a rule requirement. These changes were made in response to comments from TXOGA.

Proposed subsections (b)(9)(C) and (D) were changed to clarify permit holders have three options for the emptying or degassing of tanks using forced ventilation. Adopted subsection (b)(9)(C)(i) requires that degassing by forced ventilation is limited to the use of a single vacuum truck at any time. Adopted subsection (b)(9)(C)(ii) requires that emissions are directed out the top of the tank. Adopted subsection (b)(9)(C)(iii) requires that emissions are routed through a closed system to a control device. The rule language changes clarify the commission's intended requirements for forced ventilation emptying or degassing tanks, and authorize the use of a single vacuum truck at any time. These changes were made in response to comments from Plains, Pioneer, and TXOGA.

Proposed subsection (b)(9)(E) was incorporated into adopted subsection (b)(9) and the wording was changed to clarify that the commission's intent is to prohibit the authorization of the landing of floating roof tanks for convenience purposes under §106.359. The commission did not intend to prohibit the emptying of fixed roof tanks. This change was made in response to comments from TPA and TXOGA.

Subsection (c) was changed to maintain consistency with other commission rules. Subsection (c)(1) was changed to be consistent with §106.4 to reference good condition and operating properly, and subsections (c)(2)(A)-(C) were changed to update references to facilities instead of equipment. These changes were made in response to comments from Plains, Pioneer, and TXOGA.

Proposed subsection (d) was deleted to reduce redundant requirements regarding the general requirements to claim a PBR in §106.8, Recordkeeping. This change was made in response to a comment from Plains.

Re: Docket No. 2012-2017-RUL

**Potential controversial concerns and legislative interest:**

There will likely be legislative interest in this rule package because development of the rule is affected by the requirements of THSC, §382.051961, Permit for Certain Oil and Gas Facilities (SB 1134, 82nd Legislative Session). Adherence to each of the statutory requirements will likely be scrutinized by industry, environmental, and legislative interests. Specifically, THSC §382.051961 requires the following for adoption of a new, or revision of an existing, PBR or standard permit:

1. A regulatory analysis conducted in accordance with the government code.
2. Evaluation of credible air monitoring data.
3. Use of credible air modeling not based on a worst case scenario and that reflects air monitoring data.
4. Consideration of limiting application to a certain geographic region of the state.

**Will 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?** Without this rulemaking, oil and gas operators will be without a streamlined authorization mechanism for planned MSS activities by the statutory application deadline of January 5, 2014. Alternatives to this rulemaking include:

1. Do not establish a new PBR, but allow sites to authorize planned MSS emissions under their current authorization mechanism via permit amendment, revision to standard permit representations, or claiming the emissions under an existing PBR which may not cover all planned MSS activities. For oil and gas facilities authorized under a standard permit or case-by-case new source review permit, this approach will result in substantial and potentially unnecessary permit actions and reviews, creating a significant workload increase for the Air Permits Division. Taking this approach will also make enforcement more difficult because there will be no consistent approach to MSS requirements for different oil and gas facilities.
2. Propose changes to PBR §106.263, Routine Maintenance, Start-up and Shutdown of Facilities, and Temporary Maintenance Facilities to authorize planned MSS from oil and gas sites. This approach would differ from the proposal by relying on established emission limits in §106.263 rather than BMPs, thus reducing the flexibility that the proposed PBR will provide through a site-specific maintenance program.
3. Propose changes to 30 TAC §106.352(i) and the Air Quality Standard Permit for Oil and Gas Handling and Production Facilities to expand the requirements for planned MSS activities for sites within the Barnett Shale counties to the rest of the state. This action would require compliance with the stipulations in SB 1134 and HB 1, Rider 33 (82nd Legislature). The legislation prohibits the expenditure of funds to expand the requirements of the PBR §106.352(a) – (k) and standard permit until the agency

Commissioners

Page 6

July 3, 2013

Re: Docket No. 2012-2017-RUL

conducts a study and files a report with the Legislature on the economic impact of extending the provisions to other areas of the state. HB 1, Rider 33 also places strict limitations on the sources of funding that can be used for such a study. No expansion of the Barnett Shale requirements is anticipated and this study has not been conducted.

4. Propose changes to 30 TAC §106.352(l) to include planned MSS activities and facilities. However, this would limit the potential users. For example, sites authorized under 30 TAC §106.353, Temporary Oil and Gas Facilities and 30 TAC §106.492, Flares would not be eligible to claim planned MSS under 30 TAC §106.352(l).

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** March 15, 2013

**Anticipated *Texas Register* adoption publication date:** August 23, 2013

**Anticipated effective date:** September 10, 2013

**Six-month *Texas Register* filing deadline:** September 15, 2013

**Agency contacts:**

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**Attachments:** None

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