

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** August 3, 2012

**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 Proposed Rulemaking  
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:**

There is currently no standard permit or permit by rule (PBR) for medium-sized batch mixing equipment used in construction and repair operations. The current PBR used for small mixers, 30 TAC §106.141, Batch Mixers is 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 specific jobs designed for rapid production. The production limit in the air quality standard permit for concrete batch plants could conceivably cover a typical batch mixing operation, but the standard permit registration and public notice process was not designed for a medium-sized batch mixer used in temporary construction and repair operations.

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 to meet the operational needs or environmental concerns associated with medium-sized batch mixers used in temporary construction and repair operations.

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

#### **A.) Summary of what the rulemaking will do:**

The proposed amendment would expand §106.141, which currently authorizes drums of five cubic feet capacity and smaller, to also include batch mixing operations that use equipment larger than a five cubic feet capacity drum, but would not be considered a concrete batch plant.

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

N/A.

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

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

**Statutory authority:**

The amended section is proposed 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 proposed 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 would have a method of permitting that would be more appropriate for their processes. There would potentially 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 would be most appropriate with a PBR rather than a standard permit or case-by-case permit.

**B.) Public:**

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

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**C.) Agency programs:**

Although owners or operators of these operations currently require a standard permit or case-by-case new source review permit, which would require extensive staff review and a permit fee, the Air Permits Division has never received an application. From this perspective, this PBR amendment would have no fiscal implications to the agency. The Air Permits Division finds these operations better suited for a non-registered PBR, because they do not have a major affect on air quality and do not generate public health concerns.

**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 amendment was generally favorable. There was some discussion about increasing the limit on 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 and that volumetric trucks that operate on a site as stationary sources will continue to be required to obtain authorization using either §106.144, Bulk Mineral Handling, air quality standard permit for concrete batch plants, or case-by-case NSR permit.

**Potential controversial concerns and legislative interest:**

Staff expects the public to have questions about nuisance issues regarding dust and noise. Staff expects the industry to generally support the PBR amendment 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 would be used in short construction and repair jobs, the regulated community would prefer a PBR that did not require registration. Because batch mixers do not have a major effect on air quality, they are only in one area for a short period of time, and do not generate public health concerns, staff does not expect legislative concern regarding this amendment.

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

Currently, these facilities are required to apply for a standard permit or case-by-case permit. If this proposal were to be adopted, the Air Permits Division would need to communicate the availability of the amended PBR and its applicability requirements.

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**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 and owners or operators of larger concrete batch plants would be required to come in for a standard permit or case-by-case permit.

An 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 of more than five cubic feet, but would not be considered a concrete batch plant.

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 of more than five cubic feet, but would not be considered a concrete batch plant.

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

**Anticipated proposal date:** August 22, 2012

**Anticipated *Texas Register* publication date:** September 7, 2012

**Public hearing date:** October 2, 2012

**Public comment period:** September 7, 2012- October 8, 2012

**Anticipated adoption date:** February 13, 2013

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