

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners

**Date:** February 8, 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 Proposed Rulemaking  
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 from January 5, 2012 to January 5, 2014. This proposed rulemaking will provide applicants a streamlined authorization mechanism for planned MSS to meet the extended statutory deadline.

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

This proposed rulemaking will add 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 proposed 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 proposed rulemaking will add a new PBR §106.359, to authorize emissions from planned MSS at oil and gas handling and production facilities. The proposed PBR requires that the permit holder develop and implement a maintenance program and use best management practices (BMPs) to minimize emissions. The proposed PBR includes appropriate recordkeeping requirements 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 legislation 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 emission limits or emissions-related requirements are needed to ensure

Re: Docket No. 2012-2017-RUL

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 proposed 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 proposed PBR is also proposed 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. The proposed 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:**

The proposed PBR should have a minimal effect on the regulated community and the public. The use of the proposed PBR is not mandatory, although staff anticipates that owners and operators of eligible oil and gas facilities will find the proposed PBR a more attractive option than a case-by-case permit or revision of existing standard permit or PBR application. The proposed 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 proposed PBR requires that the permit holder keep records, develop and implement a maintenance program, and use

Re: Docket No. 2012-2017-RUL

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

**B.) Public:** The proposed 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 proposed 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 proposed 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. No additional stakeholder meetings are planned, however a public hearing will be held during the public comment period.

**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.

Re: Docket No. 2012-2017-RUL

**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 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 proposal rulemaking schedule:**

**Anticipated proposal date:** February 27, 2013

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

**Public hearing date (if any):** April 4, 2013

**Public comment period:** March 15 – April 15, 2013

**Anticipated adoption date:** July 24, 2013

Commissioners  
Page 5  
February 8, 2013

Re: Docket No. 2012-2017-RUL

**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:** None

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