

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 13, 2008

Mr. Larry Starfield
Deputy Regional Administrator
United States Environmental
Protection Agency Region 6
1445 Ross Avenue Suite 1200
Dallas, Texas 75202

Re: Use of Permits By Rule to Modify an Existing New Source Review Permit

Dear Mr. Starfield:

I'm writing in response to the letters from U. S. Environmental Protection Agency (EPA) Region 6 and ongoing discussions between EPA and the Texas Commission on Environmental Quality (TCEQ) staff regarding Texas' flexible permit program. This response addresses the use of Permits by Rule (PBR) as an authorization mechanism to modify an existing New Source Review (NSR) permit. The concerns expressed by the EPA are broader in applicability than the flexible permit program. The concerns have consequences for other parts of the NSR permitting programs in Texas and have the potential to affect both major NSR and minor NSR permit reviews. The issue of PBR use will need to be resolved before the concerns which are specific to the flexible permitting program can be addressed.

The Federal Rules provide flexibility for a state to develop its own minor NSR program. The PBRs are an authorization mechanism under Texas' Minor NSR program. The use of PBRs has been a long-standing authorization mechanism within the TCEQ's rules. Initially contained within Chapter 116 as "Standard Exemptions," these authorizations were later moved into their own chapter within the TCEQ's rules. They are now codified in Chapter 106 (since 1996) and are called Permits by Rule.

The PBRs implement §382.05196 (and previously §382.057) of the Texas Clean Air Act, which provides that certain types of facilities or changes within facilities which will not make a significant contribution of air contaminants to the atmosphere may be exempt from obtaining a construction permit or amending an existing construction permit if certain conditions are met. Significant contribution of air contaminants is described in Subchapter A (General Requirements) of Chapter 106, which is State Implementation Program approved. The specific conditions (the actual PBR language and requirements) are in Subchapters B - X.

Mr. Larry Starfield

Page 2

June 13, 2008

New facilities or changes to facilities which make a significant contribution of air contaminants to the atmosphere are not eligible to use PBRs. The PBRs cannot authorize a new major source, nor can a PBR be used to authorize a major modification of an existing major source. Likewise, the PBRs cannot be used to authorize a new facility which is subject to case-by-case maximum available control technology reviews under Federal Clean Air Act §112(g).

The TCEQ, in some cases, has limited the use of PBRs when off property impact concentrations and the condition of the surrounding area (related to the pollutant of concern), warrant such a measure. These limitations are usually placed within the special conditions of an NSR permit and usually apply to the entire plant site. An example would be for benzene use in areas considered to be "watch areas."

For TCEQ to consider changing its rules, TCEQ needs EPA to provide a detailed legal basis for excluding PBR usage at major sources, using PBRs to modify existing NSR permits, or using PBRs to authorize limited categories of maintenance, startup, and shutdown emissions. Changes to TCEQ rules may require statutory changes which would need to be presented to the Texas Legislature.

The TCEQ is willing to work with the EPA to gain an understanding of EPA's specific concerns as they relate to and affect our air permitting program as a whole. After we have reached an understanding regarding the overall best available control technology approach, we can then begin to address concerns that are specific to the flexible permitting program.

We appreciate the opportunity to discuss these concerns and look forward to reaching a position of clarity so that we can proceed in addressing your questions related to the flexible permit program.

Sincerely,



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

cc: Mr. Dan Eden, Deputy Director, Office of Permitting, Remediation and Registration
Ms. Stephanie Bergeron Perdue, Deputy Director, Office of Legal Services
Mr. John Sadlier, Deputy Director, Office of Compliance and Enforcement
Mr. Richard A. Hyde, P. E., Director, Air Permits Division