

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Air Permits Division (APD) Staff
Field Operations (FO) Division Staff
Interested Applicants

Date: September 10, 2008

From: Richard A. Hyde, P.E., Director, 
Air Permits Division,
Office of Permitting, Registration, and Remediation

Subject: Guidance Memo for the Relocations and Change of Locations of Portable Facilities

The purpose of this memo is to provide guidance on the proper procedures for movement of portable facilities and compliance with statutes relating to public notice.

The Texas Health and Safety Code (THSC) § 382.056(r) states that the requirements for public notice do not apply to:

- (1) The relocation or change of location* of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years; or
- (2) A facility located temporarily in the right-of-way, or contiguous to the right-of-way of a public works project.

* Note: The terms relocation and change of location are defined below.

Definitions:

Change of location (CLOC) is the process of moving a permitted facility, and associated sources, to a new location where public notice is required pursuant to THSC § 382.056(r). The CLOC requires a review of best available control technology (BACT) and a health impacts review. Once public notice is completed and the plant is determined to meet all the state and federal regulations, an authorization letter and a new permit are issued. A CLOC application requires the submittal of a Form PI-1 and the applicable documents required by the PI-1. All CLOC applications should be mailed to the Air Permits Division, c/o Air Permits Initial Review Team (APIRT), MC-163, P. O. Box 13087, Austin, Texas 78711-3087. There is no fee required for this type of application, unless there is a requested amendment to the permit in conjunction with the CLOC. A CLOC application will not be processed by a TCEQ regional office.

Permit Consummation A permit is said to be consummated when the facility has occupied the site for which public notice was accomplished for a minimum of 180 consecutive days. The 180-day period starts on the date the company's start of operations notification is received by the TCEQ.

Companies may use a temporary standard permit for industrial processes that will occupy a site for less than 180 days. Those companies that don't qualify for a standard permit must apply for a new source review construction permit or a change of location permit. If a construction permit or change of location permit is used then the company must identify its need for less than 180 days at the site in its permit application. An exception to the 180-day consummation period may be approved during the initial permit review and prior to issuance of the permit. Companies that cannot demonstrate sufficient exception criteria will be issued a permit without relocation instructions.

Portable Facilities are facilities authorized by the Air Permits Division. These facilities are designated with a portable permit number, a portable registration number, or a portable account number to facilitate the relocation of these types of plants under specific criteria. A portable permit or registration number is typically a five digit number followed by an L and additional digits (e.g., 50000L001). A portable account number begins with a 9 (e.g. 94-1234-X). Any facility that does not have one of the above types of identification is not considered a portable facility by the Air Permits Division and § 382.056(r)(1) does not apply. A permit by rule (PBR) or standard permit authorization shall not be used for waiver of public notice regardless of the registration number or account code assigned, except for a concrete batch plant standard permit or PBR that has gone to public notice at the proposed site.

Portable facility designations will only be assigned by APIRT upon initial application for a temporary facility or request for a CLOC. Requests for conversion of a permanent facility permit number to a portable designation when the plant is not actually relocating shall be denied. Additionally, any change in an existing permit number will be associated with a public notice event identifying the new permit number and proposed location.

Relocation (RLOC) is the process of moving a permitted portable facility, and associated sources, to an approved site when no public notice is required pursuant to THSC § 382.056(r). For an applicant to get approval for a RLOC, the applicants permit shall have current special conditions to provide guidance on the proper procedures to get approval to construct and operate at the new site. The applicant must request approval to start construction and operate pursuant to the terms of its permit. The appropriate TCEQ regional office will provide written approval before the applicant starts construction at the new site. No modifications shall be made to a facility applying for relocation authorization.

Right-of-way of a Public Works Project means any public works projects that are associated with a right-of-way. Examples of right of way projects would be public highways and roads, water and sewer pipelines, electrical transmission lines, and other similar works. A facility must be in or contiguous to the right-of-way of the public works project to be exempt from the public notice requirements listed in the THSC § 382.056.

Temporary Facility is a facility that will occupy a designated site for not more than 180 consecutive days or supply material (i.e., concrete, hot mix asphalt, crushed rock, etc.) for a single project (single contract or same contractor for related project segments), but not other unrelated projects.

Relocation Approvals:

The RLOC applications will be processed by the appropriate TCEQ regional office provided that one of the following occurs:

- (1) A permitted plant and associated equipment are moving to a site for support of a public works project when the proposed site is located in or contiguous to the right-of-way of the public works project, or
- (2) A portable facility is moving to a site where a portable facility has been located at the site at any time during the previous two years.

If the permit holder intends to relocate under either (1) or (2) above, then the holder shall submit a request letter containing all 12 elements as appropriate for the move to the TCEQ regional office having jurisdiction over the new site. Start of construction and commencement of operations at the new site is not authorized without written TCEQ regional office approval. Proof of submittal is required for all request letters. The intent of proof of submittal is to authenticate that the relocation request was received by the appropriate TCEQ regional office. Examples of proof of submittal include, but are not limited to, an agency date stamp on the application, receipt from a "return receipt requested," a copy of a certified letter with the certification number annotated, etc. Approval of the request shall be granted if notice of denial from the TCEQ regional office is not received within 12 working (business) days after receipt of the request. Presumed approval (by default) applies only to the TCEQ criteria for the relocation request and does not imply approval for other federal, state, or local requirements. It is suggested that the permit holder confirm via telephone that the TCEQ regional office received the request to construct and operate, and whether the region intends to respond. It is the permit holder's responsibility to ensure that it is in compliance with the existing permit requirements and failure to confirm with the TCEQ regional office prior to relocation is to do so at the permit holder's own risk.

Under (2) above, a RLOC will not be approved to start construction at a site where there has never been public notice accomplished regardless of how the existing facility was authorized to operate at the site. A permit holder's RLOC request letter under (2) above must identify, by permit or registration number, the authorization at the proposed site that has undergone public notice.

Note: If the holder of the permit does not meet the conditions of (1) or (2) above, then a relocation approved by the TCEQ regional office is not allowed. Instead, an application must be submitted under the requirements defined by the Change of Location (CLOC) above.

When applying for a RLOC through the TCEQ regional office, the permit holder shall submit a letter containing the following information:

- (1) Company name, address, company contact, and telephone number;
- (2) Copy of existing permit conditions and maximum allowable emission rates table (MAERT) that are in effect for the permitted facility;
- (3) Regulated entity number (RN), customer reference number (CN) and applicable permit or registration numbers, and if available, TCEQ account number;
- (4) Location the facility is moving from (current location);
- (5) Location description of the proposed site (city, county, and exact physical location description);
- (6) A scaled plot plan that identifies the location of all equipment and stockpiles; and also indicates the required distances to the property lines can be met;
- (7) A scaled area map that identifies the distance and direction to the closest off-property receptor (if required) and clearly indicates how the proposed site is contiguous or adjacent to a public works project (if required);
- (8) Proposed date for start of construction and expected date for start of operation;
- (9) Expected time period at the proposed site;
- (10) If applicable, the permit or registration number of the facility that was located at the proposed site during the last two years and the date the facility was last located there;
- (11) The permit or registration number of the facility that has accomplished public notice at the proposed site and the date notice was published; and
- (12) The time (days, months, years) the facility operated at the site being vacated.

RLOC Exceptions:

A company requiring a RLOC, but that has outdated relocation instructions in its permit shall request a permit alteration to update the relocation instructions from the TCEQ central office (Austin). If desired, a relocation application may be applied for simultaneously with the alteration request. The relocation application shall include a completed PI-1 Form, the existing permit special conditions and MAERT, and all associated information, including a detailed plot plan and area map. All appropriate sections of the PI-1 Form must be completed. THERE IS NO FEE REQUIRED FOR THESE TYPES OF APPLICATIONS. The application should be mailed to the Air Permits Initial Review Team at P.O. Box 13087, MC-163, Austin, Texas 78711-3087.

If after evaluating a permit alteration request, the Air Permits Division determines the request may be approved, written response from the Air Permits Division shall be sent to the permit holder confirming the permit as been altered (including new special conditions) and the authorization decision for the move of the portable facility. Any questions regarding this new process should be directed to the Air Permits Division in Austin, Texas at (512) 239-1250.