

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the repeal of §§106.142, 106.147, and 106.223 as published in the February 15, 2008 issue of the *Texas Register* (33 TexReg 1235) *without changes*.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking repeals the permits by rule (PBRs) for rock crushers, asphalt concrete plants, and sawmills, which are in §§106.142, 106.147, and 106.223, respectively. The Air Permits Division has developed new standard permits for permanent rock crushers, asphalt concrete plants, and sawmills. These standard permits update administrative and technical requirements for these facilities and are intended to replace the PBRs that will be repealed.

SECTION BY SECTION DISCUSSION

Subchapter E: Aggregate and Pavement

§106.142 - Rock Crushers

This rulemaking repeals the PBR for rock crushers. The TCEQ has developed a new standard permit for rock crushers that has provisions regarding public notice, property line distance limitations, operating hours, throughput limitations, monitoring, and recordkeeping. This standard permit was the subject of an extensive protectiveness review based on air dispersion modeling to help ensure that no adverse off-property impacts or nuisance conditions occur. Additionally, the rock crusher standard permit has conditions to help eliminate: use of the standard permit as an immediate precursor for a new source review (NSR) permit; circumvention of public notice for sites applying for an NSR permit; and stacking of facilities at a single site. A facility that is currently authorized under the PBR can remain so until it is moved or modified.

§106.147 - Asphalt Concrete Plants

This rulemaking repeals the PBR for asphalt concrete plants. The TCEQ has issued a new standard permit for hot mix asphalt plants that is available for use in lieu of the PBR. This standard permit includes requirements to minimize dust emissions, property line distance limitations, and opacity and visible emission limitations. These limitations were based on air dispersion modeling, impacts analyses, and plant observations performed to verify the protectiveness of the standard permit. The commission has concluded research that shows that the standard permit is protective of the public health and welfare and facilities that operate under the conditions specified will comply with TCEQ regulations. The PBR for asphalt concrete plants has been unavailable for use since November of 2003. A facility that is currently authorized under the PBR can remain so until it is moved or modified.

Subchapter I: Manufacturing

§106.223 - Saw Mills

This rulemaking repeals the PBR for sawmills. The TCEQ has issued a new standard permit for sawmills that is available for use in lieu of the PBR. The new standard permit for sawmills provides an expedited preconstruction authorization process that may be used for any sawmill complying with the standard permit requirements. The PBR for sawmills has not proven to be a widely useful authorization because it lacks any provision for drying lumber, which is a common practice at most sawmills. The new standard permit authorizes lumber drying in kilns that are directly heated or indirectly heated by a small boiler. Additionally, the new standard permit provides an authorization for an internal combustion engine used for electric power generation. A facility that is currently authorized under the PBR can remain so until it is moved or modified. However, owners or operators currently authorized by the PBR may want to

reauthorize the facility under the new standard permit, since it includes provisions for drying lumber and generation of electricity.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted repeals in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this adoption is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adoption is not a major environmental rule because it is mainly an administrative action only, to repeal the PBRs for rock crushers, asphalt concrete plants, and sawmills, which are in §§106.142, 106.147, and 106.223. The adopted repeals will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a regulatory impact analysis is not required because the adopted repeals do not meet any of the four applicability criteria for requiring a regulatory impact analysis of a major environmental rule as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and

federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This adoption does not exceed a standard set by federal law. In addition, this adoption does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this adoption does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this repeal action and performed an analysis of whether the repeals are subject to Texas Government Code, Chapter 2007. The primary purpose of the repeals is to repeal the PBRs for rock crushers, asphalt concrete plants, and sawmills, which are in §§106.142, 106.147, and 106.223. These repeals do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of these repeals is neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these repeals do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal

Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed repeals will indirectly benefit the environment because repealing the PBRs is expected to result in more standard permit registrations, and standard permits help ensure these types of facilities will have fewer adverse impacts to public health and the environment. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Most facilities affected by this rule change are minor sources and not subject to the Federal Operating Permits Program. However, if a facility authorized by §§106.142, 106.147, or 106.223 is located at a site with a federal operating permit, any modification of the facility that would require a new authorization would also require revision of the operating permit to reflect the new authorization.

PUBLIC COMMENT

A public hearing on this proposal was offered on March 18, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle in Austin, however no oral comments were provided at the hearing. A public comment period was offered from February 15, 2008 to March 21, 2008. No comments were received.

RESPONSE TO COMMENTS

No comments were received.

SUBCHAPTER E: AGGREGATE AND PAVEMENT

§106.142, §106.147

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeals are also adopted under THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; and §382.057, concerning Exemption, which authorizes the commission to exempt from permitting changes within any facility which will not make a significant contribution of air contaminants to the atmosphere.

The adopted repeals implement THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.142. Rock Crushers.

§106.147. Asphalt Concrete Plants.

SUBCHAPTER I: MANUFACTURING

§106.223

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the Texas Water Code; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The repeal is also adopted under THSC, §382.051, concerning Permitting Authority of Commission; Rules, that authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for types of facilities which will not make a significant contribution of air contaminants to the atmosphere; and §382.057, concerning Exemption, which authorizes the commission to exempt from permitting changes within any facility which will not make a significant contribution of air contaminants to the atmosphere.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.223. Saw Mills.