

The Texas Commission on Environmental Quality (commission or TCEQ) proposes the repeal of §§106.142, 106.147 and 106.223.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking will repeal 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and technical requirements for these facilities and are intended to replace the PBRs that are proposed to be repealed.

SECTION BY SECTION DISCUSSION

Subchapter E: - Aggregate and Pavement

§106.142 - Rock Crushers

This rulemaking will repeal 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.

The standard permit for rock crushers has not been issued at this time. This section will not be repealed unless the standard permit has been issued prior to adoption of these rule changes.

§106.147 - Asphalt Concrete Plants

This rulemaking will repeal 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 will repeal 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rulemaking is in effect, fiscal implications, although not anticipated to be significant, are expected for the agency as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would repeal PBRs for rock crushers, asphalt concrete plants and sawmills. The repeals will not affect owners or operators of a facility authorized under one of these PBRs unless the facility is moved or modified. If this occurs, these entities would be required to obtain a new authorization that would likely be a standard permit. Standard permits are more comprehensive than PBRs and require renewal every ten years. Because of more stringent monitoring requirements, these standard permits help ensure a facility does not have adverse impacts to public health and safety. Registration for a standard permit may require a \$900 fee.

Impact to Agency Revenue

Repeal of the PBR for rock crushers could increase revenue collected by the agency. The agency anticipates that as many as 38 rock crushers (1 local government and 37 small businesses) per year may apply for a permit or modify a facility, which would require them to obtain a new authorization that

would likely be standard permit. The new standard permit would cost \$900, which would be up to \$800 more than the cost of a PBR. This change is anticipated to increase the revenue collected in Clean Air Account 0151 by \$30,400 per year or \$152,000 over a five-year period and is not anticipated to be significant.

The PBR for asphalt concrete plants has been unavailable for use since 2003. The agency has already developed a standard permit for asphalt plants in a previous action which required registration for a standard permit and implementation of more stringent controls if facility is moved or modified. However, some facilities continue to operate under PBRs because no move or modification has taken place. Repeal of this section will clarify that PBRs can no longer be issued for asphalt plants, but it will not have a fiscal impact on the agency or on owners of these plants since registrations for the PBR are no longer being accepted.

The repeal of the PBR for sawmills and the issuance of a standard permit would: provide an expedited preconstruction authorization process; ensure all facilities (including drying facilities and internal combustion engines used for the generation of electricity) are permitted; and specify internal setback distance requirements, use of best available control technology (BACT) standards, and limit the impact of sawmill operations to off-property receptors. Sawmills will not be required to register or pay a fee for the standard permit. Thus, the agency does not expect revenue to increase for standard permits issued to sawmills. Agency staff is not aware of any local governments that own sawmills.

Impact to Local Governments

One local government is currently authorized by the rock crusher PBR. Owners and operators that move or modify a rock crusher would be required to obtain another authorization that would likely be a standard permit. The standard permit for rock crushers would include conditions that: help ensure that the entity does not adversely impact off-property receptors; specify property line distance limitations, permitted operating hours, throughput limitations, recordkeeping requirements, and monitoring requirements; specify public notice requirements; and make enforcement of permit conditions easier. Specifically, the standard permit would eliminate the stacking of facilities at a single site and curtail the ability of rock crushers to switch from a more stringent new source review permit application midstream to a standard permit application in order to circumvent public notice and contested case hearing requirements.

If this local government moves or modifies its rock crusher facility, permit costs could increase by \$800 the first year for a standard permit. A standard permit would also require the installation of a runtime meter and scale belt the first year, which is estimated to cost \$3,200. Total cost increases in the first year could be as much as \$4,000. Costs are not expected to be incurred in the second through the fifth year the proposed rules are in effect since a standard permit is renewed every ten years, and maintenance and repair costs for runtime meters and scale belts are expected to be minimal.

A review of registrants for the asphalt concrete plant and sawmill PBRs indicated that there were no local governments holding these authorizations. No impact to local governments resulting from the repeal of these PBRs is anticipated.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the changes seen in the proposed repeals will be a reduction of impacts to off-site property owners, a clarification of enforceable permit conditions, an update of administrative and technical requirements for rock crushers, asphalt concrete plants, and sawmills, and increased protection of public health and safety because of the requirement to meet the conditions of the new standard permits.

Repeal of the PBR for concrete plants will ensure that agency rules are updated to reflect current practice established in a prior rulemaking. If the owner or operator of a concrete asphalt plant operating under a previously issued PBR decides to move or modify a facility, they will be required obtain a new authorization, which would likely be a standard permit. The standard permit fee is \$900. If the asphalt plant is not currently using BACT, compliance costs, required by the permit, could increase by as much as \$200,000 to install and operate a fabric filter baghouse instead of a wet scrubber.

Registration under the new standard permit for sawmills will ensure that all facilities at a site are permitted and the permit requires that sawmills comply with internal setback distance requirements, use BACT, and have less impact on off-property receptors. Staff estimates that there may be one sawmill per year that will be required to obtain a new authorization that would likely be a standard permit. These sawmills are expected to be small businesses and fiscal implications are addressed in the **SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT** section of this fiscal note.

Repeal of the PBR for rock crushers may result in the issuance of as many as 38 new standard permits per year. Thirty-seven of these entities are expected to be small or micro-businesses and fiscal implications

are addressed in the SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT section of this fiscal note.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for owners or operators sawmills classified as small or micro-businesses that choose to modify a facility. For rock crushers, the increase in costs to obtain a standard permit (\$800) and install a runtime meter and scale belt (\$3,200) are expected to be incurred only in the first year of the first five years the repeals are in effect and only if a facility is moved or modified.

Sawmills will not incur permitting costs since the agency does not intend to impose a standard permit fee issued to sawmills. However, if a sawmill owner or operator elects to modify a facility and is not in compliance with distance and BACT requirements, they will incur costs to comply with the standard permit. These costs will vary depending on each sawmill operation. Staff has estimated that moving equipment to comply with internal setback distance requirements could cost \$400 to \$1,000. Installation of cyclone and collection equipment and hoods to comply with BACT may cost \$1,000 to \$5,000.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The purpose of the proposed rulemaking is to repeal PBRs for rock crushers, asphalt concrete plants, and sawmills. The repeals will require owners of new and modified facilities to obtain a new authorization, which would likely be a standard permit. Standard permits are generally considered to be more stringent and protective of public health and safety. Therefore, there are no alternative methods of achieving the purpose of the rulemaking other than repealing the use of PBRs for these facilities.

Repeal of these PBRs is expected to increase costs for an estimated 37 rock crushers and one sawmill per year choosing to move or modify facilities. Costs for rock crushers are expected to total \$4,000 during the first year the proposed rules are implemented. If a sawmill is not in compliance with standard permit distance and BACT requirements, it could incur costs ranging from \$1,400 to \$6,000 the first year depending on the changes needed to come into compliance with the standard permit. To avoid an adverse impact of the proposed repeals, these small businesses could elect not to move or modify any facility at a rock crusher or sawmill site and maintain their operations as permitted by their current PBR.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal 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 proposed rulemaking 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 proposed 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 draft regulatory impact analysis is not required because the 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 rulemaking does not exceed a standard set by federal law. In addition, this proposal does not exceed an express requirement of state law and is not proposed 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 rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the proposed repeals are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking 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 proposed 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(1)). 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.

Written comments on the consistency of the proposed rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

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.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held on March 18, 2008, at 10:00 a.m. in Building E, Room 201S at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle in Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-011-106-PR. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. The comment period closes March 21, 2008. For further information, please contact Blake Stewart, Air Permits Division, at (512) 239-6931.

SUBCHAPTER E: AGGREGATE AND PAVEMENT
§106.142, §106.147

STATUTORY AUTHORITY

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

[\§106.142. Rock Crushers.]

[Any rock crusher with a maximum rated capacity of 200 tons per hour or less that operates according to the following conditions of this section is permitted by rule:]

[(1) operating schedule of the plant does not exceed 1,600 hours per year;]

[(2) all in-plant haul roads and stockpiles are sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions;]

[(3) water sprays are located at all belt transfer points, shaker screens, and inlet and outlet of all crushers and used as necessary to achieve maximum control of dust emissions;]

[(4) the plant is located at least 1/2 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located;]

[(5) the plant is located at least 1,000 feet from any state or federal highway not currently under maintenance or construction;]

[(6) before construction of the facility begins, written site approval is received from the executive director and the facility shall be registered with the commission using Form PI-7, including a current Table 17.]

[\S106.147. Asphalt Concrete Plants.]

[(a) Any asphalt concrete facility that complies with 40 Code of Federal Regulations Part 60, Subparts A and I and operates according to the following conditions of this section is permitted by rule.]

[(1) A New Source Performance Standard pretest meeting concerning the required stack sampling shall be held with commission personnel before the required tests are performed. Air contaminants to be tested for will be determined at the pretest meeting. Stack sampling requirements will not be required by the executive director, provided that:]

[(A) the applicant submits adequate documentation (including copies of previous test results of the model hot mix plant proposed, including a description of the aggregate materials used in previous tests) demonstrating compliance with the 0.04 grain per dry standard cubic feet allowable;]

[(B) visible emissions from the exhaust stack are documented at 5.0% or less opacity averaged over six consecutive minutes.]

[(2) Fuel for dryers shall be sweet natural gases as defined in Chapter 101 of this title (relating to General Air Quality Rules) or liquid petroleum gas, diesel, or fuel oil with a maximum sulfur content of 1.5%.]

[(3) All aggregate stockpiles shall be sprinkled with water and/or chemicals as necessary to achieve maximum control of dust emissions.]

[(4) All permanent in-plant roads shall be watered, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions.]

[(5) The plant is located at least 1/2 mile from any recreational area or residence or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.]

[(6) Before construction of the facility begins, written site approval shall be received from the executive director and the facility shall be registered with the commission's Office of Permitting, Remediation, and Registration in Austin using Form PI-7, including a current Table 22.]

[(7) Emissions of particulate matter, sulfur dioxide, or organic compounds shall not exceed 25 tons per year each.]

[(b) Beginning November 1, 2003, registrations under this section will no longer be accepted.]

SUBCHAPTER I: MANUFACTURING
§ 106.223

STATUTORY AUTHORITY

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

[§106.223. Saw Mills.]

[Sawmills processing no more than 25 million board feet, green lumber tally of wood per year, in which no mechanical drying of lumber is performed and which meet all of the following provisions of this section are permitted by rule.]

[(1) The mill shall be located at least 500 feet from any recreational area, school, residence, or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the facility is located.]

[(2) All in-plant roads and vehicle work areas shall be watered, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions.]

[(3) All sawmill residues (sawdust, shavings, chips, bark) from debarking, planing, saw areas, etc., shall be removed or contained to minimize fugitive particulate emissions. Spillage of wood residues shall be cleaned up as soon as possible and contained such that dust emissions from wind erosion and/or vehicle traffic are minimized.]

[(4) All sawmill residues shall be mechanically conveyed by belts and/or drag chains to a collection area for disposal or if a pneumatic collection system is utilized, the air must exhaust to a fabric or cartridge filter with air cleaning and a filtering velocity no greater than 7.0 ft/min (air-to-cloth ratio =

7.0), or automatic sequenced mechanical cleaning and a filtering velocity no greater than 5.0 ft/min (air-to-cloth ratio = 5.0), or a system found to be equivalent by the appropriate regional office.]

[(5) Disposal of collected sawmill residues must be accomplished in a manner which will prevent the material from becoming airborne. Disposal by means of burning is prohibited unless it is conducted in an approved incinerator.]

[(6) All open-bodied vehicles transporting sawmill residues (sawdust, shavings, chips, bark) shall be covered with a tarp to achieve maximum control of particulate emissions.]

[(7) There will be no visible emissions at the property line from the facility or equipment.]

[(8) Before construction of the facility begins, written site approval must be received from the director of the commission's Office of Permitting, Remediation, and Registration in Austin and the facility shall be registered with that office using Form PI-7.]