

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §106.141.

### **Background and Summary of the Factual Basis for the Proposed Rule**

There is currently no standard permit or permit by rule (PBR) specifically designed for medium-sized batch mixing operations commonly used in construction and repair operations. The current batch mixer PBR, §106.141 authorizes equipment with a five cubic feet capacity drum and smaller. Medium-sized batch mixing operations use drums with a capacity larger than five cubic feet, and is considerably smaller than the facilities authorized by the air quality standard permit for concrete batch plants that may have a production rate of up to 300 cubic yards per hour. Medium-sized batch mixing operations are portable, brought to a site for specific jobs, and designed for rapid production. Because of the small size of these operations, it is appropriate for owners or operators to use this authorization for both temporary and permanent projects. The standard permit registration and public notice process required by Texas Health and Safety Code (THSC), §382.058, Notice of and Hearing on Construction of Concrete Plant Under Permit by Rule, Standard Permit, or Exemption, was not designed for a medium-sized batch mixer used in temporary construction and repair operations.

The proposed PBR amendment would expand §106.141 to include batch mixing operations with drum capacities larger than five cubic feet, up to 27 cubic feet. The PBR

would still exclude concrete batch plants, which can be authorized under the air quality standard permit for concrete batch plants or a case-by-case new source review (NSR) permit under 30 TAC §116.111, General Application.

### **Section Discussion**

The commission proposes changes to §106.141 that would allow larger batch mixers to be authorized with the PBR. In this subsection, the commission also proposes the addition of specific example products that owners or operators can make with these mixers. The proposed amendment includes additional paragraphs that include engine size restrictions and best management practices for dust control. As in all PBRs, owners or operators are required to comply with Chapter 106, Subchapter A, General Requirements.

Stakeholders suggested including volumetric trucks in this amendment, but after careful consideration, the commission decided that volumetric trucks would continue to be considered mobile sources. The Air Permits Division has examples of volumetric trucks filled with cement or flyash from material handling silos. This PBR amendment does not restrict owners or operators from claiming §106.144, Bulk Mineral Handling, for these types of operations when appropriate. When silos are filling volumetric trucks and those trucks are used for larger scale batch mixing, the concrete batch plant standard permit or case-by-case NSR permit are appropriate authorizations as the truck capacity

is larger than the 27 cubic feet limitation in this PBR amendment.

**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 rule is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would amend §106.141 to include medium-sized batch mixing operations in the current PBR for concrete batch mixers. A medium-sized batch mixing operation uses drums larger than a five cubic feet capacity, but their capacity is considerably smaller than facilities for concrete batch plants that have production rates up to 300 cubic yards per hour. Like small batch mixing operations, medium-sized batch mixing operations have portable equipment and they are designed for the rapid production of concrete at a job site. Under current rule, owners or operators of medium-sized batch mixing operations are required to meet the requirements of the standard permit or apply for a case-by-case NSR permit, which has a fee and requires public notice. However, the agency has never received an application for medium-sized batch mixing operations. These operations typically have a negligible overall effect on air quality and are usually temporary in nature. For these reasons, the agency proposes to amend the current PBR for concrete batch mixers to include those larger than allowed

by current rule but that would not be considered a concrete batch plant.

The proposed PBR would limit the capacity of batch mixers to 27 cubic feet or less, limit the size of internal combustion engines to 25 horsepower or less, and require best management practices to control dust. The current PBR does not require registration, notice, or the payment of a fee.

Units of local government or other state agencies that own or operate medium-sized batch mixing operations are not expected to experience any fiscal implications because of the proposed rule. The agency has not received any permit applications or fees in the past for these operations, and the proposal to include them in the current PBR would not require registration or payment of a fee. The agency does not have data regarding the number of medium-sized batch mixing operations that may be owned or operated by governmental entities.

### **Public Benefits and Costs**

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be the efficient authorization of medium-sized batch mixing operations that allows the agency to focus resources on facilities that have a larger environmental impact.

The proposed rule would not have a significant fiscal impact on individuals or large businesses that own or operate medium-sized batch mixing operations. The proposal to include these operations in the current PBR would not require registration or the payment of a fee. Although current rule requires that these operations be permitted on a case-by-case basis or meet the requirements of the standard permit, the agency has received no applications or fees to permit these operations in the past. The agency has no data regarding the number of medium-sized batch mixers owned or operated by businesses or individuals.

#### **Small Business and Micro-Business Assessment**

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate medium-sized batch mixers. The proposal to include these operations in the current PBR would not require registration or the payment of a fee. Although current rule requires that these batch mixing operations be permitted on a case-by-case basis or meet the requirements of the standard permit, the agency has received no applications or fees to permit these operations in the past.

#### **Small Business Regulatory Flexibility Analysis**

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does

not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

### **Local Employment Impact Statement**

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

### **Draft Regulatory Impact Analysis Determination**

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, Regulatory Analysis of Major Environmental Rules, and determined that the proposed rule does not meet the definition of a major environmental rule as defined in the statute. According to Texas Government Code, §2001.0225, 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, 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." While the purpose of this rulemaking is to increase protection of the environment and reduce risk to human health, it is not expected that this rulemaking will adversely affect in a material way the

economy, a sector of the economy, productivity, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, no regulatory impact analysis is required.

Furthermore, even if the proposed rulemaking constituted a major environmental rule, a regulatory impact analysis would not be required because the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule. Texas Government Code, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet any of the four applicability criteria listed in Texas Government Code, §2001.0225 because: 1) the proposed rulemaking is designed to meet, not exceed the relevant standard set by federal law; 2) parts of the proposed rulemaking are directly required by state law; 3) no contract or delegation agreement covers the topic that is the subject of this rulemaking; and 4) the proposed rulemaking is authorized by specific sections of the THSC, Chapter 382 (also known as the Texas Clean Air Act), cited in the Statutory Authority section.

The purpose of the proposed PBR amendment is to expand the applicability of §106.141 to more facilities. Currently, the PBR authorizes batch mixer drums of five cubic feet capacity and smaller. Under the proposed amendment, the PBR would also include batch mixing operations that use equipment larger than a five cubic feet capacity drum but are not considered to be concrete batch plants.

The commission invites public comment on the draft regulatory impact analysis determination. 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.

### **Draft Takings Impact Assessment**

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043, Takings Impact Assessment. The primary purpose of the rulemaking is to expand a PBR authorization for registering batch mixers that use equipment larger than a five cubic feet capacity drum but are not considered to be concrete batch plants. The expansion of the PBR authorization does 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 a governmental action. This rulemaking will not revoke the authorizations of previously authorized facilities. Consequently, this rulemaking

action does not meet the definition of a takings under Texas Government Code, §2007.002(5), Definitions.

### **Consistency with the Coastal Management Program**

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201, *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code (TAC), §505.22, Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this rulemaking action is to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone. The proposed amendment will balance economic development with other concerns by limiting batch mixer capacity, limiting engine size, and requiring dust control measures.

The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC, §501.32, Policies for Emission of Air Pollutants). Therefore, in accordance with 31 TAC, §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies.

Written comments on the consistency of this 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**

Chapter 106, is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, include any changes made using the amended Chapter 106 requirements into their operating permit.

### **Announcement of Hearing**

The commission will hold a public hearing on this proposal in Austin on October 2, 2012, at 10:00 a.m., in building E room 201S, at the commission's central office located at 12100 Park 35 Circle. 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. Open discussion will not be permitted 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 Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be submitted to Mr. Bruce McAnally, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-007-106-PR. The comment period closes October 8, 2012. Copies of the proposed rulemaking can be obtained from the commission's

*[http://www.tceq.texas.gov/nav/rules/propose\\_adopt.html](http://www.tceq.texas.gov/nav/rules/propose_adopt.html)*. For further information,  
please contact Ms. Becky Southard, Air Permits Technical Program Support Section,  
(512) 239-1638.

## **SUBCHAPTER E: AGGREGATE AND PAVEMENT**

### **§106.141**

#### **Statutory Authority**

The amendment is proposed under Texas Water Code, §5.103, Rules, and §5.105, General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under Texas Health and Safety Code, §382.002, 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, General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, 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, Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, Exemption, which authorizes exemptions from permitting.

The proposed amendment implements Texas Health and Safety Code, §§382.002,

382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

**§106.141. Batch Mixers.**

Batch mixers with rated capacity of 27 [five] cubic feet or less for mixing cement, sand, aggregate, lime, gypsum, additives, and/or water to produce concrete, grout, stucco, mortar, or other similar products; and that comply with the following conditions; [or similar materials] are permitted by rule.

(1) An internal combustion engine rated at 25 horsepower or less may be used to power the mixer.

(2) The owner or operator shall use best management practices for dust control by:

(A) cleaning up spilled raw materials, waste products, or finished products on a daily basis; and

(B) controlling dust in transfer systems, stockpiles, work areas, storage, and truck unloading areas.