

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Air Permits Division and
Field Operations Staff

Date: September 1, 2006

Thru: Richard A. Hyde, P.E., Director, Air Permits Division

From: Anne M. Inman, P.E., Manager, General/Standard/Rule (GSR) Permits Section

Subject: Storage Tank Construction Under Permit by Rule

Introduction: This memorandum is intended to clarify the authorization mechanisms available under permits by rule (PBRs) for storage tanks, railcars, tanker trucks, drums, totes or other storage containers (tanks) in organic and inorganic service.

Issue/Discussion: Historically, the agency has authorized the construction of tanks under 30 Texas Administrative Code §§106.472 – 106.478. These PBRs have not been substantively changed or updated since the mid-1980's. In addition, as of the early 1990's the agency has also allowed changes in service of existing tanks to occur under either §§ 106.472 – 106.478 or §§106.261-106.262 (previously Standard Exemptions 106 and 118), regardless of the restrictions in the latter two PBRs that they may not be used if a more specific PBR exists. This flexibility was, and continues to be, allowed due to §§ 106.261-106.262 being a chemical-by-chemical assessment of protection of public health and welfare.

The question has arisen whether the same logic can be applied to construction of a new tank, as well as change of service to an existing tank, since the PBRs are outdated and new chemicals and mixtures are handled by industry that were not considered during the adoption of these existing PBRs. This memorandum is needed to document the availability of PBRs §§106.261-106.262 for this use.

Action: Effective immediately, PBRs §§ 106.261-262 may be claimed to authorize handling of chemicals not considered or excluded from PBRs §§ 106.472-106.478 while construction of the tank will be authorized under PBR §§106.472-106.478. PBRs §§ 106.261-262 cannot be used to circumvent control, distance, or registration requirements of tank requirements in PBRs §§106.472-106.478.

The executive director has established a schedule to initiate rule changes and revisions to the PBRs §§ 106.472-106.478 to codify this practice and otherwise update these PBRs as appropriate. This action will minimize resources expended by the regulated community and the TCEQ and will not affect the protection of public health and welfare. This memorandum bridges the gap until those changes are adopted by the commission. This memorandum does not apply to any other facility or industry type and will expire upon adoption of revised rules.