

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Adoption of Rules Review & Readoption of Chapter 106

AGENDA REQUESTED: June 28, 2023

DATE OF REQUEST: June 9, 2023

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2022-1699-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 106, Permits by Rule. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The proposal was published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 719). (Michael Wilhoit, Abigail Adkins) (Non-Rule Project No. 2023-024-106-AI)

Richard C. Chism

Director

Samuel Short

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 9, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2022-1699-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 106, Permits by Rule
Rules Review of 30 TAC Chapter 106
Non-Rule Project No. 2023-024-106-AI

What the proposed action would do:

This action will approve the rules review of Chapter 106, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality, after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

Applicable law:

The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and with the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

Reason rules are needed:

Chapter 106 contains numerous permits by rule (PBRs) which provide a simplified and streamlined method for authorizing air emissions in specific circumstances, as an alternative to resource-intensive case-by-case air permits. Under Texas Health and Safety Code, §382.051(b)(4) and §382.05196, the Texas Legislature provided the Texas Commission on Environmental Quality (TCEQ) with the authority to create PBRs as a means of authorizing emissions from facilities that will not significantly contribute air contaminants to the atmosphere. PBRs, as codified in Chapter 106, make up a core component of TCEQ's air permitting strategy. The use of PBRs to authorize insignificant emission sources that pose minimal risk to human health or the environment allow TCEQ to allocate finite permitting resources toward the review of more complex or significant sources of air pollution.

Chapter 106 PBRs are used extensively by a wide range of facility types and industries, including, but not limited to, domestic and retail facilities and activities, coatings operations, metalworking and general industrial facilities, stationary engines and turbines, oil and gas production, chemical manufacturing, and petroleum refining. TCEQ typically processes several thousand PBR registrations or notifications each year. Many additional facilities are authorized by PBRs that do not require registration or notification. If these PBR claims had to be processed as full case-by-case air permits, as

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would typically be the case if Chapter 106 was eliminated, it would result in a dramatically increased burden on the regulated community and on the TCEQ.

Rules found to be obsolete:

None.

Public comment:

A public hearing was not offered for this review. The comment period for this rules review closed on March 14, 2023. Comments were received from the City of Houston Health Department, the Environmental Integrity Project on behalf of several community and public interest groups, and the United States Environmental Protection Agency. Commenters expressed a variety of concerns with the Chapter 106 rules, including but not limited to: cancer risk may be correlated with areas of high PBR use; some PBRs may not be protective if weighed against current air quality standards; the use of PBRs at certain sites is potentially excessive; sites with multiple PBRs or PBRs combined with other authorizations may have excessive cumulative impacts; concern that some PBRs have insufficient recordkeeping or monitoring to ensure enforceability or compliance with site-wide limitations in §106.4; concern that PBRs may result in possible circumvention of major NSR requirements; concern that PBRs provide insufficient opportunity for public notice and comment; and concern that the PBR program causes a disproportionate burden on communities of color and economically disadvantaged communities. At the time of this review, the Chapter 106 rules are being readopted without changes, but these comments will be considered as general stakeholder input for possible future policy or rulemaking actions.

Affected agency programs:

The program area responsible for implementing these rules is the Air Permits Division.

Agency contacts:

Michael Wilhoit, Project Manager, Air Permits Division, (512) 239-1222

Abigail Adkins, Staff Attorney, Environmental Law Division, (512) 239-2496

Booker Harrison, Senior Attorney, Environmental Law Division, (512) 239-4113

Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

Texas Register publication of Proposed Rule Review Notice

cc: Chief Clerk, 7 copies

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 255, *Finance*. This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 255 and determined that the reasons for initially adopting the chapter continue to exist. CSEC does not at this time anticipate proposing amendments to its Chapter 255 rules.

All comments or questions regarding this review may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, at The Commission on State Emergency Communications, 1801 Congress Avenue, Suite 11.100, Austin, Texas 78701; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Please include "Chapter 255 Comments" in the subject line of the comments or questions. Any proposed changes to Chapter 255 will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register*.

TRD-202300324
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: January 26, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 10, Commission Meetings.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re Adoption, re Adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 10 continue to exist.

Comments regarding suggested changes to the rules in Chapter 10 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 10. Written comments may be submitted to Gwen Ricco, 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: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-023-010-AD. Comments must be received by March 14, 2023. For further information, please contact Brad Patterson, Office of the Chief Clerk, at (512) 239-1201.

TRD-202300419
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2023



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 106, Permits by Rule.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for re Adoption, re Adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 106 continue to exist.

Comments regarding suggested changes to the rules in Chapter 106 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 106. Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-024-106-AI. Comments must be received by March 14, 2023. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

TRD-202300420

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2023

◆ ◆ ◆
The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 205, General Permits for Waste Discharges.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 205 continue to exist.

Comments regarding suggested changes to the rules in Chapter 205 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 205. Written comments may be submitted to Gwen Ricco, 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: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-025-205-OW. Comments must be received by March 14, 2023. For further information, please contact Shannon Gibson, Water Quality Division, at (512) 239-4284.

TRD-202300421
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2023

◆ ◆ ◆
The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 326, Medical Waste Management. This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, re-adoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 326 continue to exist.

Comments regarding suggested changes to the rules in Chapter 326 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 326. Written comments may be submitted to Gwen Ricco, 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: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-022-

326-WS. Comments must be received by March 14, 2023. For further information, please contact Jarita Sepulvado, Waste Permits Division, at (512) 239-4413.

TRD-202300418
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2023

◆ ◆ ◆ Texas Commission on Law Enforcement

Title 37, Part 7

The Texas Commission on Law Enforcement (Commission) files this notice of rule review for Texas Administrative Code, Title 37, Part 7, Chapters 211-229, in accordance with Texas Government Code, §2001.039.

At this time, the Commission has determined that there continues to be a need for these rules and that no changes to the rules as currently in effect are necessary. This proposed rule review is for readopting the rules to continue to exist and will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text.

The Commission will accept comments regarding the review. The comment period will last 30 days following the publication of this notice in the *Texas Register*. Comments regarding this review may be submitted to John Beauchamp, Interim Executive Director, Texas Commission on Law Enforcement, 6330 E. Highway 290, Ste. 200 Austin, Texas 78723 or to public.comment@tcole.texas.gov with the subject line "Rule Review".

TRD-202300373
John Beauchamp
Interim Executive Director
Texas Commission on Law Enforcement
Filed: January 30, 2023

◆ ◆ ◆ Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) readopts Chapter 24, Substantive Rules Applicable to Water and Sewer Service Providers as required by Texas Government Code (Tex. Gov't Code) §2001.039, Agency Review of Existing Rules. Notice of intent to review the rules was published in the October 14, 2022, issue of the *Texas Register* (47 TexReg 6889). Tex. Gov't Code §2001.039 requires that each state agency review its rules every four years and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Tex. Gov't Code, Chapter 2001. Such reviews must include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rules continues to exist. The commission has completed the review of the rules in Chapter 24 required by Tex. Gov't Code §2001.039 and finds that the reasons for adopting the rules in Chapter 24 continue to exist and readopts the rules with no amendments.

The commission received comments on the proposed rule from Monarch Utilities I L.P. (Monarch) and Texas Association of Water Companies (TAWC).

Chapter 24

The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 106, Permits by Rule, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the February 10, 2023, issue of the *Texas Register* (48 TexReg 719).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons still exist. The rules in Chapter 106 contain numerous permits by rule (PBRs) which provide a simplified and streamlined method for authorizing air emissions in specific circumstances, as an alternative to resource-intensive case-by-case air permits. Under Texas Health and Safety Code (THSC), §382.051(b)(4) and §382.05196, the Texas Legislature provided the Texas Commission on Environmental Quality (TCEQ) with the authority to create PBRs as a means of authorizing emissions from facilities that will not significantly contribute air contaminants to the atmosphere. PBRs, as codified in Chapter 106, make up a core component of TCEQ's air permitting strategy. The use of PBRs to authorize insignificant emission sources that pose minimal risk to human health or the environment allow TCEQ to allocate finite permitting resources toward the review of more complex or significant sources of air pollution.

Chapter 106 PBRs are used extensively by a wide range of facility types and industries, including, but not limited to, domestic and retail facilities and activities, coatings operations, metalworking and general industrial facilities, stationary engines and turbines, oil and gas production, chemical manufacturing, and petroleum refining. TCEQ typically processes several thousand PBR registrations or notifications each year. Many additional facilities are authorized by PBRs that do not require registration or notification. If these PBR claims had to be processed as full case-by-case air permits, as would typically be the case if Chapter 106 was eliminated, it would result in a dramatically increased burden on the regulated community and on the TCEQ.

Public Comment

The public comment period closed on March 14, 2023. Comments were received on this review from the City of Houston Health Department (CHHD); the Environmental Integrity Project (EIP) on behalf of Citizens for Clean Air and Clean Water of Freeport and Brazoria County, Citizens Alliance for Fairness and Progress, Hillcrest Residents Association, Air Alliance Houston, Texas Rio Grande Legal Aid, Sierra Club, the Environmental Integrity Project, Earthjustice, and Public Citizen; and the United States Environmental Protection Agency Region 6 (EPA).

Comment

CHHD expressed concern that the use of TCEQ's PBRs contributes to environmental injustice in Houston. CHHD stated that PBRs do not require facilities to monitor, report

or notify the public. CHHD also stated that large facilities in high pollution areas where environmental justice challenged communities live may be using PBRs to add emission sources instead of opening up major source permits. CHHD stated that oversight and the appropriate use of PBRs needs to be re-defined. CHHD stated the following additional concerns:

A. National Air Toxics Assessment (NATA) census tract results indicated that for the census tract locations with the greatest change in number of PBRs over time, the cancer risk significantly increases with increasing PBRs.

B. NATA cancer risk is statistically higher in census tracts with greater than median number of PBRs compared to tracts with lower number of PBRs (p-value <0.10) for the 2018 NATA year.

C. All census tracts within three miles of a PBR have at least one environmental justice indicator ranking in the top 10 percentile of the nation.

Comment

EIP submitted numerous comments on the review of Chapter 106, expressing a variety of concerns and alleged deficiencies with the Chapter 106 rules and the TCEQ's PBR program. EIP commented that the Chapter 106 rules allow significant emission increases, provide insufficient opportunity for public participation, and cause disproportionate harm to communities of color and economically underprivileged populations. EIP's comments identified the following primary concerns, and included additional details and supporting comments under each primary concern:

- A. Texas's Chapter 106 regulations do not comply with federal standards for public participation;
- B. PBRs claimed by sources in TCEQ Region 12 (Houston) authorize significant increases of air pollution and interfere with permitting programs designed to improve air quality in the region;
- C. The TCEQ's Chapter 106 regulations interfere with major source preconstruction permitting requirements and regulations established to maintain National Ambient Air Quality Standards (NAAQS) attainment in Texas attainment areas; and
- D. Flaws in the TCEQ's Chapter 106 PBR program rules disproportionately harm communities of color and low-income communities.

EIP also stated that Chapter 106 should not be readopted unless the following revisions were made:

- A. Restrict use of the program to true minor sources and prohibit use of the program to authorize changes with multiple, distinct processes;
- B. Require PBRs to authorize only well-defined and relatively simple projects, such as gas stations or dry cleaners, that don't have the potential to contribute significantly to local air pollution concentrations, and that will emit pollutants with similar characteristics and warrant similar permit terms;
- C. Require each PBR to contain specific and technically accurate limits that restrict the potential to emit and specific compliance requirements;
- D. Establish cumulative emission limits for projects authorized by PBR below the

applicable netting threshold for major sources and impose additional requirements to protect the public from cumulative risks in areas of concentrated operations;

E. Establish specific criteria the TCEQ must consider when conducting investigations required by THSC, §§382.05196(a) and 382.057(a) and require such investigations to be conducted whenever a new PBR is announced, when an existing PBR is amended, and as part of the TCEQ's quadrennial review of the PBR program regulations;

F. Establish regulations specifically defining the terms and conditions for a PBR in nonattainment areas necessary to facilitate prompt compliance with the NAAQS and to prevent circumvention of other, more stringent, preconstruction permitting and pollution control requirements (THSC, §382.057(b));

G. Prohibit the use of multiple PBRs to authorize project types not covered by a single PBR;

H. Ensure consistency with public participation requirements at 40 CFR §51.161; and

I. Revoke PBRs that are inconsistent with the above recommendations, including but not limited to §§106.261, 106.262, 106.263, and 106.264.

Comment

EPA provided a variety of comments and concerns about the use, protectiveness, and enforceability of PBRs. A summary list of EPA's comments is provided below:

A. EPA questioned whether sufficient safeguards are in place to prevent a PBR project in nonattainment areas from circumventing non-attainment new source review (NNSR).

B. TCEQ should reevaluate the §106.4 limits based on new or revised NAAQS

promulgated in 2010, 2013, and 2020 and limit total emissions from a source to a reasonable de minimis level.

C. TCEQ should consider the cumulative impacts from PBRs, especially for the oil and gas handling and production PBR, which tends to be used in high concentrations in some counties.

D. EPA stated that cumulative impacts from the use of PBRs at a site have raised concerns that efforts to improve air quality might be affected. TCEQ should review the number of PBRs claimed by individual sites and co-located sites.

E. EPA asked if TCEQ conducts any review of each account to determine what impacts may accrue if multiple PBRs are being claimed or registered.

F. EPA asked if there was a review to determine if projects are interrelated and if those projects' impacts should be aggregated and possibly permitted through a case-by-case NSR permit or a major NSR permit.

G. EPA asked if TCEQ reviews the number and frequency of "off permit" changes that are made to Title V permits and evaluates if these are being made appropriately.

H. EPA stated that a review of Title V permits for major sources indicates there is little or no recordkeeping prescribed in some PBRs, and this indicates that the provisions of §106.4(a)(2)-(3) relating to major source permits may not always be practically enforceable.

H. EPA stated that TCEQ should review any netting performed when a source is registering a PBR at a site with sitewide emissions exceeding the major source and/or netting threshold. This is especially relevant in non-attainment areas where the netting

trigger for federal NSR is 5 tons per year (TPY).

I. EPA asked if sources were reviewing the increases and decreases in emissions in the contemporaneous period when registering or claiming a PBR.

J. EPA stated a concern that existing major sources in ozone non-attainment areas may be able to claim or register a PBR for emissions exceeding 5 TPY of volatile organic compounds or nitrogen oxides (NO_x) without performing contemporaneous netting to determine if the project causes a significant net emissions increase.

K. EPA stated that they have found instances where sites without a Chapter 116 permit may exceed the site-wide emission limitation of §106.4(a)(4) and have concerns that it may happen more frequently than known. EPA asked how TCEQ verifies that site-wide emissions for all PBRs do not exceed the limits of §106.4(a)(4). EPA asked how TCEQ can verify compliance with this requirement for any site when not all PBRs have to be registered with the TCEQ.

L. EPA asked if a site with a “claimed” PBR with only the generic emission limit of 30 TAC §106.4(a)(1) is precluded from obtaining any other PBR authorization. EPA also asked how TCEQ could prevent such a source from claiming an additional PBR since it is unclear if they are required to notify TCEQ of any PBRs that are merely “claimed” through the use of the §106.4 checklist.

M. EPA asked what mechanisms, beyond the non-mandatory §106.4 checklists, are in place to ensure that site-wide emissions from claimed and registered PBRs never exceed the emission limits of §106.4(a)(4) when the source does not have a Chapter 116 permit. EPA asked if any additional safeguards are in place to ensure that sitewide

emissions do not exceed major source thresholds when in an Ozone or particulate matter (PM) non-attainment county.

N. EPA stated that when TCEQ proposes new or revised PBRs, TCEQ should provide an estimate of the number of the proposed PBRs that are currently authorized (or could be authorized), with the anticipated locations or areas where these authorizations occur to inform the public of the possible pollutants and health effects. EPA stated that without knowledge of the number of facilities using the PBR in specific areas, TCEQ will not be able to determine the cumulative impact of the PBRs especially when §106.4(a)(1) has such large emission thresholds.

O. EPA stated that PBRs should be a clearly defined permit for a specific category of sources with definitive emission limits and conditions and should also be for only small sources that have less than significant emission increases.

P. EPA provided a table of certain PBRs which EPA stated were defined, specific categories of sources. EPA stated that due to new standards for PM_{2.5}, NO_x, sulfur dioxide, and lead (Pb), these PBRs must be reevaluated for their protectiveness of the current NAAQS. As an example, EPA noted concern for §106.227, Soldering, Brazing, and Welding, and stated that TCEQ should determine if this limit of Pb is acceptable and where there could be violations of the NAAQS should there be other sources of Pb emissions. EPA also stated that PBRs with particulate emissions should be evaluated for potential NAAQS implications.

Q. EPA stated concerns that a large majority of TCEQ's PBRs do not require registration, and a large subset of those do not have any recordkeeping requirements.

EPA stated that a PBR cannot be practically enforceable without the inclusion of any recordkeeping requirements.

R. EPA stated that many PBRs do not specify the type of monitoring, recordkeeping, and compliance testing to be performed to ensure compliance with the PBR. EPA stated that TCEQ should have specific and definitive monitoring requirements and should specify methods for emission estimates that are replicable.

S. EPA stated that they appreciate that TCEQ is requiring Title V permit renewal and significant revision applications to include a PBR Supplemental Table to identify the monitoring, recordkeeping, and reporting for each emission unit covered by a claimed or registered PBR. EPA stated that the quality of information in these tables varies widely, and stated that it's EPA's understanding that TCEQ is not verifying the adequacy of the information provided. EPA stated that if PBRs were updated with adequate monitoring, recordkeeping, and reporting it would alleviate some of the problems identified in EPA Title V petition orders and objection letters issued for multiple permits.

Response to all comments

The commission recognizes that CHHD, EIP, and EPA have expressed concern about a number of aspects of the Chapter 106 rules implementing PBRs. As stated in the February 10, 2023, *Texas Register* notice of this rules review, the commission is not making any changes to the Chapter 106 rules as part of this review action. The PBR authorization mechanism implemented by Chapter 106 is an essential component

of the agency's air permitting program, and the commission finds that the reasons that the Chapter 106 rules were initially adopted continue to exist. The commission is readopting Chapter 106 without change. The commission will consider these comments as ongoing stakeholder input for possible future policy or rulemaking action.

As a result of the review, the commission finds that the reasons for adopting the rules in 30 TAC Chapter 106 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

Texas Commission on Environmental Quality



ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. 2022-1699-MIS
Non-Rule Project No. 2023-024-106-AI

On June 28, 2023, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 106, Permits by Rule in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The proposed Notice of Intention to Review was published in the February 10, 2023, issue of the *Texas Register* (48 TexReg 719).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 106 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed