

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Air Permits Division and  
Field Operations Staff

**Date:** September 26, 2006

**Thru:** Dan Eden, Deputy Director  
Office of Permitting, Remediation and Registration

**From:** Richard A. Hyde, P.E., Director  
Air Permits Division  
Office of Permitting, Remediation and Registration

**Subject:** REVISED Permit by Rule (PBR) and Standard Permit (SP) Consolidation Into Permits

**Revision:** This memorandum has been revised to clarify that permit amendments are required when represented emissions are greater than those previously authorizable under Permit by Rule (PBR) or represented in a Standard Permit (SP).

**Issue:** The Texas Clean Air Act (TCAA) (§382.002) requires the commission to vigorously safeguard air quality by protecting public health and welfare, and § 382.011 gives the commission general powers to administer the TCAA through all practical and economically feasible methods. In addition, §382.0511 gives the commission authority to consolidate into a single permit any permits, SPs, PBRs, or other authorizations. Toward that end, several rules and associated practices have been implemented over the years.

Current rules allow permitted facilities and processes to be modified if the changes will meet a PBR under 30 TAC Chapter 106 or SP under Subchapter F, Chapter 116. The rules also require that these claims be consolidated into the permit when the permit is next amended or renewed. Section §116.116(d) and §116.615(3) specify when PBRs and SPs must be consolidated into a New Source Review (NSR) permit:

*§ 116.116(d) Permits by rule under Chapter 106 of this title (relating to Permits by Rule) [may be used] in lieu of [a] permit amendment or alteration.*

*(1) A permit amendment or alteration is not required if the changes to the permitted facility qualify for an exemption from permitting or permit by rule under Chapter 106 of this title unless prohibited by permit condition as provided in § 116.115 of this title (relating to General and Special Conditions).*

*(2) All changes authorized under Chapter 106 of this title to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed.*

*§ 116.615(3) Standard permit in lieu of permit amendment. All changes authorized by standard permit to a facility previously permitted under § 116.110 of this title (relating to Applicability) shall be administratively incorporated into that facility's permit at such time as the permit is amended or renewed.*

In accordance with recent agreements with the Environmental Protection Agency (EPA) to resolve Environmental Justice issues, legislation requiring consideration of cumulative risks and impacts, and ongoing rule development, the Air Permits Division (APD) is providing updated guidance on the mechanisms and requirements to consolidate PBRs and SPs into related permit authorizations. These changes apply to all permit actions after the effective date of this memorandum.

PBRs and SPs are claimed for a myriad of facilities, processes, and production changes at permitted sites. Some of these claims authorize changes in the type and quantity of emissions from permitted facilities. Other claims indirectly affect or are related to the operation of permitted facilities. In addition, a number of claims occur at a site with an air permit, but the new facilities are independent and unrelated in any way to permitted units. Each of these circumstances meets the requirements of the rules in different ways.

**Action:**

New Source Review Permits

There are two different scenarios that will determine when and how a PBR or SP should be consolidated in the permit for that facility when the permit is amended or renewed: consolidation by reference and consolidation by incorporation.

Consolidation of certain PBRs and SPs by reference is mandatory. All SPs and PBRs that directly affect the emissions of permitted facilities must, at a minimum, be referenced when a NSR permit is amended. If SPs and PBRs occur at the permitted site, but do not directly affect permitted facilities, it is not required, but at the request of the permit holder they may be consolidated by reference. Referencing will not require a best available control technology (BACT) review but may require an impacts review based on commission guidance.

Consolidation of all other PBRs and SPs by incorporation is voluntary. If the permit holder requests incorporation (that is, reauthorization under the permit), PBRs and SPs may be incorporated but will undergo BACT and impacts review based on commission guidance. When incorporated into the permit, the original authorization becomes void. The incorporation of PBRs and SPs requires an amendment, but no additional forms or fees are required if a complete renewal package with the above information is submitted.

Major Sites with Title V Permits

Any PBR or SP incorporated into an NSR permit would trigger a minor revision to a Title V federal operating permit and can be processed along with any other changes due to the amendment of the NSR permit.

**Procedure:**

Consolidation by Reference in a Permit

PBRs and SPs that are referenced in permits during an amendment or renewal will remain authorized by the PBR or SP, however the permit will identify the facilities and reference the registration or claim in the permit conditions and Maximum Allowable Emission Rate Table (MAERT). The facilities will be listed by registration number (if assigned), hourly and annual emissions type and amount, effective date of PBR or SP, and any other unique historical information. Registrations for these PBRs or SPs will not be voided. These PBR and SP registrations or claims will also be referenced in the Technical Review Summary and company final action letter.

In addition, applicants have the flexibility to represent the maximum potential to emit (PTE) of their facilities based on capacity or design, as long as these values are less than any PBR conditions or the general requirements of §106.4. If the quantity of emissions is greater than these amounts, the increase in previously unauthorized emissions will require review for the facility under permit amendment procedures and the facilities will be subject to BACT, public notice (as appropriate per §39.402), and impacts review guidelines. Applicants may also voluntarily represent any emission value less than PTE for inclusion on the permit MAERT and the values listed will become federally enforceable limits. It should also be noted that SP representations become limitations and any emission limits in the registration or on a table are already federally enforceable limits. If the emissions increase would result in the facility no longer meeting the standard permit, a review under permit amendment procedures will be required and the facilities will be subject to BACT, public notice (as appropriate per §39.402), and impacts review guidelines.

Consolidation by Incorporation into a Permit

PBRs and SPs that are incorporated into a permit during an amendment or amendment/renewal will not remain authorized by the PBR or SP, and any registrations for these PBRs or SPs will be voided upon issuance of the amended or amended/renewed permit. The permit will identify the facilities in the permit conditions and MAERT. The facilities will also be identified in the Technical Review Summary and company final action letter. Incorporation of a PBR or SP will not be required to meet the public notice requirements listed in §39.402 since this rule is intended for emission increases which are not previously authorized. Also, no additional fees will be charged when incorporating a PBR or SP, as these facilities are previously authorized. For the incorporation process, the facilities are required to be reviewed under permit amendment procedures and will be subject to BACT, and impacts review guidelines. The incorporation of PBRs and SPs requires an amendment, but no additional forms or fees are required if a complete renewal package with the above information is submitted. All PBRs and SPs to be incorporated into a permit are expected to be an integral part of an amendment or amendment/renewal and the length of time for review will depend on the completeness of the application.

### Impacts Reviews

Facilities authorized by PBR or SP that are incorporated into permits will be subject to an impacts review based on the agency's "Modeling and Effects Review Applicability (MERA) Flowchart" and "Air Quality Modeling Guidelines." Facilities consolidated by referencing may require an impacts review based on commission guidance. As with all authorizations, the intent of the TCAA §382.002 must be met to ensure protection of public health and welfare. During the development process for a PBR or SP, the impacts of only the changes to permitted units, or new facilities and related activities are considered, not the potential of other emissions at the site, and therefore additional evaluation should be performed as a part of subsequent permit reviews.

As sites add emissions, the impacts analysis during permit reviews has always required a comprehensive evaluation of all emissions when certain criteria are met (such as quantity, character, and location of emissions). The "project" increases include all PBRs and SPs to be consolidated into the permit as well as all other changes that are requested in the permit review. This includes the step where the "project" is compared to 10% of the effects screening level (ESL) for modeling applicability. The impacts review referred to in this memorandum is not a new requirement, but a clarification of the scope expected by the MERA flowchart guidance document, and the memorandum titled Incorporating PBR Emissions in Permit Review – Pilot Study, dated April 15, 2005. The results of any analysis or modeling must follow standard procedures and guidance when compared to ESLs, state regulatory limits, or National Ambient Air Quality Standards (NAAQS). As with any review, if impacts are unacceptable, changes must be proposed by the applicant before a positive recommendation to issue the permit can be made. Facilities/changes previously authorized by PBR or SP can operate during permit review and if needed, the time line for changes will be negotiated in the Special Conditions.

Following the modeling guidance documents, impacts reviews may be performed during permit reviews to ensure that a cumulative site-wide analysis (PBR, SP, and permits) is conducted. If an impact analysis is submitted as part of a PBR or SP registration which follows the same guidelines that would be covered during a permit review, and would still be current at the next amendment or renewal incorporation review, additional analysis may not be required if nothing at the site has changed, or APD guidance and practice have not changed. However, depending on the scope and details of the impacts analysis submitted during a PBR or SP review, the registration may be delayed so the impacts analysis can be evaluated and audited in accordance with standard procedures.

### **Effective Date:**

This memorandum supersedes all previous memoranda on this subject and is effective immediately. If the implementation of this memorandum causes a real and practical problem, entities may appeal to the executive director through the appropriate management levels, beginning with the permit reviewer or team leader. In addition, the executive director intends to propose rulemaking for PBRs and SPs consolidation procedures in Chapter 116 and this memorandum will expire upon adoption of any revised rules.