

January 23, 2025

Representative Carl R. Albrecht
Utah State Legislature
350 State St.
Salt Lake City, UT 84114

Support for HB 85

Dear Representative Albrecht,

We, the undersigned individuals and organizations, write to express our strong support for **HB 85**, sponsored by Representative Tyler Clancy and Senator Ronald M. Winterton. This bill provides a much-needed update to Utah's Clean Air Act permitting processes, pairing regulatory efficiency with environmental stewardship.

HB 85 has three strengths. First, the bill encourages broader adoption of Plantwide Applicability Limits (PALs) by directing the Division of Air Quality to issue comprehensive guidance, giving facilities a clearer pathway to adopt flexible permit caps while maintaining strict emissions limits. Importantly, the bill ensures that facilities operating near their emissions limits will not be penalized at permit renewal simply for operating under those caps, fostering both innovation and compliance.

Second, HB 85 builds on the remarkable success of Utah's Permit-by-Rule (PBR) program. Utah's single existing PBR for oil and gas has saved an estimated 1,450 years of cumulative permitting time since 2017. The bill requires at least five new categories to join PBR, providing faster, more predictable permitting for appropriate facility types—without compromising air quality standards.

Third, throughout these reforms, HB 85 maintains unwavering commitment to environmental protection. Sources will continue to meet all federal and state regulations, with strict enforcement and oversight. By offering clarity and consistency in the permitting process, the bill ensures that environmental safeguards and economic growth will go hand in hand.

HB 85 strikes the right balance: it preserves rigorous protection of Utah's air while enabling clear, flexible, and efficient permitting. We respectfully urge the Legislature to pass HB 85.

Thank you for your consideration and your dedication to protecting Utah's environment and supporting its economy.

Sincerely,

Thomas Hochman, Director of Infrastructure, *Foundation for American Innovation*

Chris Barnard, President, *American Conservation Coalition Action*

Caden Rosenbaum, Senior Policy Analyst, *Libertas Institute*

Josiah Neeley, Senior Fellow, *R Street Institute*

John Karakoulakis, *The Western Way*



Legislation Summary: Environmental Permitting Modifications

Prepared for: Rep. Clancy | Prepared by: Julie Humberstone | September 23, 2024

Environmental Permitting Modifications would enact provisions related to two permitting programs: the EPA's Plantwide Applicability Limitation (PAL) permitting alternative and the Utah Division of Air Quality's Permit by Rule (PBR) program.

Plantwide Applicability Limitations (PALs)

The draft legislation requires the Division of Air Quality (DAQ) to:

- *Develop and publish written guidance on PALs:*
 - Describe the advantages of PAL for a qualifying facility.
 - Consider relevant programs implemented in other states, including similar guidance published by other states.
 - Be consistent with EPA guidance.
- *Identify any facilities in the state that may benefit from PAL:*
 - Share DAQ's guidance with the facilities.
 - Upon request, provide individual consultation on how to apply for a PAL.
- *Make rules on PALs:*
 - Establish an application procedure for obtaining a PAL.
 - Establish circumstances under which a PAL may be reopened and modified.
 - Ensure DAQ receives facility input and public participation when a PAL is reopened.
 - Require DAQ to renew a PAL at the same level if the emissions level calculated upon renewal is equal to or greater than 80% of the existing PAL level.
- *Submit an annual report to the Natural Resources, Agriculture, and Environment Interim Committee (NRAE).*

Permit by Rule (PBR)

The draft legislation requires DAQ to:

- *Conduct a study on the feasibility of expanding DAQ's PBR program:*
 - Review PRB programs in other states.
 - Identify potential categories of sources suitable for inclusion in PRB program.
 - Assess the environmental and economic impacts of program expansion.
- *Report findings and recommendations to NRAE by Nov. 30, 2025.*

PAL

A PAL is an annual emission limitation for a regulated pollutant at a major stationary source.

The PAL is an optional alternative to traditional air permitting. The PAL allows facility-wide management of physical or operational changes and their impacts on emissions without triggering major New Source Review permitting requirements.

PBR

PBR refers to a permitting or registration process in which a stationary source submits a written registration notice to DAQ to exempt the stationary source from the requirement to obtain an approval order.

Certain oil and gas sources are eligible for DAQ's current PBR program.

OLRGC is a nonpartisan staff office of the Legislature, and the contents of this document should not be considered in support of, or opposition to, any particular policy.

A Primer on Plantwide Applicability Limitations (PALs)

Overview:

Plantwide Applicability Limitations (PALs) are an innovative permitting tool created by the EPA in 2002 to streamline air quality permitting while maintaining environmental protections. PALs establish facility-wide emissions caps that allow facilities to make operational changes without triggering New Source Review (NSR) requirements, as long as total emissions remain below the cap. Despite their benefits, PALs have seen limited adoption nationwide—only about 70 facilities across 20 states received PALs between 2002 and 2020.

Benefits of PALs:

- **Operational Flexibility:** Facilities can modify and optimize their operations without repeated permit reviews, as long as they stay under their emissions cap
- **Faster Project Implementation:** Reduced permitting requirements mean faster deployment of facility improvements and upgrades
- **Environmental Protection:** The facility-wide emissions cap ensures total emissions don't increase, while incentivizing efficient operations
- **Administrative Efficiency:** Fewer permit modifications reduce burden on both facilities and regulators
- **Modernization Incentive:** PALs remove the "new source bias" that can discourage facilities from upgrading to cleaner or more efficient equipment

Current Challenges:

1. **Lack of Guidance:** Insufficient information about PAL benefits and processes creates hesitancy among facilities
2. **Regulatory Uncertainty:** Ambiguous renewal provisions in some states discourage PAL adoption
3. **Expertise Gap:** Low adoption rates mean regulators have limited experience processing PAL permits

Success Story: Capitol Power Plant Modernization

The Capitol Power Plant in Washington D.C. used a PAL permit to facilitate a major modernization project that:

- Restored facility's ability to generate electricity while providing steam/cooling
- Enabled transition from coal to natural gas as primary fuel
- Streamlined permitting for complex facility upgrades while maintaining emissions caps

Other PAL Examples:

- Intel's semiconductor gigafactory in Arizona
- University of Iowa's biomass plant
- General Motors' automotive plant in Tennessee
- Duke Energy's combined-cycle gas plant in North Carolina

Plantwide Applicability Limits in Utah

Utah's Current Situation:

Utah has made initial steps toward PAL implementation but faces significant opportunity for improvement:

- **Current Framework:** Utah has incorporated PALs into its State Implementation Plan (SIP) with language closely aligned to federal regulations
- **Limited Adoption:** Despite Utah's significant industrial presence, only two facilities—both PacifiCorp coal-fired plants—have obtained PALs
- **Guidance Gap:** The state lacks comprehensive guidance materials explaining PAL benefits and processes
- **Regulatory Uncertainty:** Current renewal provisions create uncertainty about long-term operational flexibility
- **Underutilized Potential:** Many facilities that could benefit from PALs have not pursued them due to these challenges

Utah's Proposed Solution (Rep. Clancy's bill):

The Environmental Permitting Modifications bill addresses these challenges by requiring the Division of Air Quality to:

1. **Establish Clear Rules**
 - Create transparent application procedures
 - Define circumstances for reopening/modifying PALs
 - Ensure stakeholder input in PAL modifications
 - Guarantee PAL renewal at existing levels when emissions are $\geq 80\%$ of the cap
2. **Develop Clear Guidance**
 - Create comprehensive written materials explaining PAL benefits
 - Consider successful programs from other states
3. **Provide Direct Support**
 - Identify facilities that could benefit from PALs
 - Offer individual consultation on PAL applications
 - Share guidance materials proactively
4. **Ensure Accountability**
 - Submit annual reports to the legislature
 - Track program implementation
 - Monitor environmental and economic impacts

A Primer on Permit-by-Rule

What is Permit-by-Rule?

Permit-by-Rule (PBR) creates standardized, pre-approved requirements for common facility types. Rather than undergo individual permit reviews, facilities meeting these standards can register and begin operations immediately. This maintains environmental standards while dramatically reducing processing time—from 6-7 months to approximately two weeks.

Current Success in Utah

Utah's existing PBR program for oil and gas facilities has demonstrated remarkable results:

- Saved an estimated 1,450 years of cumulative permitting time since 2017
- Maintained environmental standards
- Significantly reduced regulatory burden

HB 85's Expansion Requirements

The bill mandates that the Division of Air Quality:

1. Add at least 5 new source categories to the PBR program by November 30, 2025
2. Conduct a comprehensive feasibility study examining:
 - Successful PBR programs in other states
 - Environmental and economic impacts
 - Permitting efficiency improvements

Potential New Categories

The bill identifies 20 potential source categories for consideration, including auto body refinishing, concrete batch plants, dry cleaning operations, emergency generators, and printing facilities.

Benefits of Expansion

- **Small Business Relief:** Particularly helps smaller operations without dedicated environmental staff
- **Regulatory Efficiency:** Standardized requirements reduce processing time and administrative burden
- **Proven Model:** Similar programs successfully implemented in other states (Texas has over 100 PBR categories)

Accountability Measures

- Required legislative report by November 30, 2025 detailing:
 - Recommendations for program expansion
 - Impacts on air quality
 - Effects on permitting efficiency
 - Economic impacts on regulated sources

This expansion builds on Utah's demonstrated PBR success while bringing the state's program more in line with other successful state models.