

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for a Petition for Rulemaking

AGENDA REQUESTED: February 27, 2013

DATE OF REQUEST: February 8, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Michael Parrish, (512) 239-2548

CAPTION: Docket No. 2013-0175-RUL. Consideration of a petition for rulemaking under Section 20.15 of 30 TAC Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality on January 18, 2013 by Dr. Lynn Drawe. The petitioner requested that the commission add "hazard mitigation" to list of exceptions for prescribed burning. (Candy Garrett, Becky Petty) (Project No. 2013-018-PET-NR)

Ramiro Garcia, Jr.

Deputy Director

Susan Jablonski, P.E.

Division Director

Michael Parrish

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 8, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2013-0175-RUL

Project No.: 2013-018-PET-NR

Who Submitted the Petition:

The petition for rulemaking was received on January 18, 2013. Dr. Lynn Drawe, Chairman of the Texas Prescribed Burning Board (TPBB) signed the petition, stating that there was a unanimous vote by the TPBB members in October 2012 to request the change.

What the Petitioner Requests:

The TPBB requests adding "hazard mitigation" to the list of exceptions to prescribed burning contained in 30 Texas Administrative Code Chapter 111, §111.211(1) (the rule).

Recommended Action and Justification:

The Executive Director recommends that a rulemaking proceeding be initiated. As drought continues in parts of Texas, allowing hazard mitigation burns will improve the safety of Texas citizens by reducing the risk associated with fuel loads as a measure in controlling wildfires.

Currently the rule allows for prescribed burning, but only for the purposes of range management, wild land/wildlife management, or forest management. "Hazard mitigation" burning to reduce fuel loads to prevent the spread of wild fire is not authorized. This is especially relevant when an area with excess fuel loads is located in rural-urban interface or platted lots, inside city limits, or commercially-held property.

The current alternative to this rulemaking is accomplished through § 111.215 of the rule. This section requires case-by-case approval by the Executive Director and was meant for infrequent exceptions not contemplated by the rule. Though the agency has been supportive of approving "hazard mitigation" burns on a case-by-case basis as exceptions, the lack of inclusion of "hazard mitigation" burns in §111.211(1) has generally resulted in entities or individuals forgoing needed burns because they are not aware of the option for exception under §111.215.

Applicable Law:

Commissioners
Page 2
February 8, 2013

Re: Docket No. 2013-0175-RUL

- Texas Government Code, §2001.021, which establishes the procedures by which an interested person may petition a state agency for the adoption of a rule
- 30 TAC §20.15, which provides such procedures specific to the commission
- 30 TAC §111.211(1), which allows prescribed burning for forest, range and wildland/wildlife management purposes

Agency contacts:

Candy Garrett, Rule Project Manager, 239-1457, Central Texas Area
Becky Petty, Staff Attorney, 239-1088
Michael Parrish, Texas Register Coordinator, 239-2548

Attachment

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Candy Garrett
Michael Parrish

Dr. Lynn Drawe, Chairman
Texas Prescribed Burning Board
P.O. Box 12847
Austin, TX 78711

RECEIVED

JAN 18 2013

Texas Commission on Environmental Quality
Commissioners' Offices

January 15, 2013

RECEIVED

TRACKING # 18060

ASSIGNED TO: DCE, DLS

JAN 22 2013

Zak Covar, Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

DUE DATE: FY1

Dear Mr. Covar:

At the October 8, 2012 meeting of the Texas Prescribed Burning Board (PBB) in Austin, Texas, the PBB discussed and took action by unanimous vote to request a change in the Texas Commission on Environmental Quality (TCEQ) rules pertaining to authorization for prescribed burning, specifically Title 30, Part 1, Chapter 111, Subchapter B, §111.211(1) of the Texas Administrative Code, which currently provides:

*§111.211. Exception for Prescribed Burning
Outdoor burning shall be authorized for:*

(1) Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

The motion passed by the PBB requests that the TCEQ add "hazard mitigation" to the exception authorized for prescribed burning in section 111.211(1) above.

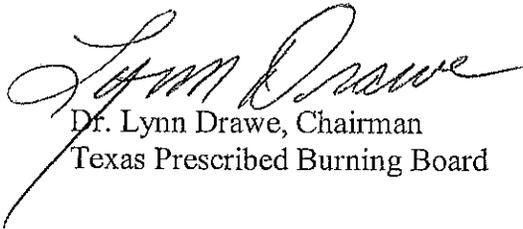
Two important goals of the PBB through the certified and insured prescribed burn managers licensed under its authority are to utilize prescribed burning to control vegetative fuels that can contribute to wildfires and to manage, maintain and restore valuable ecosystems in Texas. Adding the suggested

Zak Covar, Executive Director
Texas Commission on Environmental Quality
January 15, 2013
Page 2 of 2

language to the rule referenced above is another step toward achieving those goals.

On behalf of the PBB, I want to thank you in advance for your consideration of this matter.

Respectfully Submitted,



Dr. Lynn Drawe, Chairman
Texas Prescribed Burning Board

cc: Dr. Bryan Shaw, Chairman
Mr. Carlos Rubinstein, Commissioner
Mr. Toby Baker, Commissioner
Richard Hyde, TCEQ Deputy Executive Director

**DECISION OF THE COMMISSION
REGARDING THE PETITION FOR RULEMAKING
FILED BY DR LYNN DRAWE**

Docket No. 2013-0175-RUL

On February 27, 2013, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Dr. Lynn Drawe, Chairman of the Texas Prescribed Burn Board. The petition, filed on January 18, 2013, requests that the agency initiate rulemaking to revise 30 Texas Administrative Code Chapter 111 to add an exception for prescribed burning to the prohibition on outdoor burning.

IT IS THE DECISION OF THE COMMISSION pursuant to Administrative Procedure Act, Texas Government Code, § 2001.021 and Texas Water Code, § 5.102 to instruct the Executive Director to examine the issues in the petition and to initiate rulemaking.

This Decision constitutes the decision of the Commission required by the Texas Government Code, § 2001.021(c).

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman