

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

AGENDA REQUESTED: August 22, 2018

DATE OF REQUEST: August 3, 2018

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Paige Bond, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2018-0906-PET. Consideration of a petition for rulemaking under Section 20.15 of 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking.

The petition was filed with the Texas Commission on Environmental Quality (commission) on June 29, 2018, by the Bell County Fire Marshal (petitioner). The petitioner requested that the commission amend Section 111.219(6)(B) of 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, by reducing the upper wind speed limit from 23 miles per hour to 20 miles per hour. (Amancio Gutierrez, Amy Prescott) (Project No. 2018-025-PET-NR)

Ramiro Garcia, Jr.

Deputy Director

Kelly Keel Linden

Division Director

Paige Bond

Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 3, 2018

Thru: Bridget C. Bohac, Chief Clerk
Stephanie Bergeron Perdue, Interim Executive Director

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

Docket No.: 2018-0906-PET

Subject: Consideration of a Petition for Rulemaking
Non-Rule Project No. 2018-025-PET-NR

Who Submitted the Petition:

On June 29, 2018, the Texas Commission on Environmental Quality (commission or TCEQ) received a petition from the Bell County Fire Marshal (petitioner).

What the Petitioner Requests:

The petitioner requested that the commission amend 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter B, concerning Outdoor Burning. Specifically, the petitioner requested that the commission amend 30 TAC §111.219(6)(B) by changing the upper limit of wind speed at which burning is allowed from 23 miles per hour to 20 miles per hour. According to the petitioner, the revision would allow for more restrictive burning conditions by preventing burning when wind speeds are predicted to be greater than 20 miles per hour (mph) and thereby help prevent wildfires from occurring.

Recommended Action and Justification:

The executive director recommends approval of the petition. Many factors affect the production and dispersion of air pollution from burning activities, including wind speed and atmospheric stability. While lower wind speeds during burning can lead to stagnant conditions, which may in turn lead to potentially adverse air quality conditions, the lower limit of six (6) miles per hour in the range provided in 30 TAC §111.219(6)(B) is the protective restriction designed to avoid burning in stagnant air conditions. Lowering the upper wind speed limit for burning conditions from 23 to 20 miles per hour should not have any negative impact on air quality conditions associated with burning activities.

However, while it is true that the proposed rule revision is not expected to have any negative impacts on air quality, the petitioner has not provided, nor does the executive director's staff have, a demonstration that reducing the upper wind limit three (3) miles per hour will reduce the likelihood of a controlled burn becoming a wildfire. Therefore, the executive director recommends that the petition be approved so that staff may evaluate the issue further and proceed accordingly.

Applicable Law:

- 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;

Commissioners

Page 2

August 3, 2018

Re: Docket No. 2018-0906-PET

- Texas Water Code §5.103, which establishes that the commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state;
- Texas Health & Safety Code §382.017, which establishes that the commission may adopt rules and the procedures by which the commission adopts rules;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- 30 TAC §111.203, which provides definitions related to outdoor burning; and
- 30 TAC §111.209, which provides general requirements for allowable outdoor burning.

Agency Contacts:

Amancio Gutierrez, Project Manager, Program Support Division, (512) 239-3770

Amy Prescott, Staff Attorney, (512) 239-3668

Paige Bond, Rule/Agenda Coordinator, (512) 239-2678

Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Dennise Braeutigam
Jim Rizk
Office of General Counsel
Amancio Gutierrez
Paige Bond

RULE PETITION

TO : EXECUTIVE DIRECTOR

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. BOX 13087

AUSTIN, TEXAS 78711-3087

FROM: STEVE CASEY - BELL COUNTY FIRE MARSHAL

708 WEST AVE O

BELTON, TEXAS 76513

CURRENTLY THE TCEQ RULE – TITLE 30 PART 1 CHAPTER 111 – SUB CHAPTER RULE 219

OUTDOOR BURNING- ITEM (6) – (B) - BURNING SHALL NOT BE COMMENCED WHEN SURFACE SPEED IS PREDICTED TO BE LESS THAN (6) MPH (5 KNOTS) OR GREATER THAN (23) MPH (20 KNOTS) DURING THE BURN PERIOD.

I WOULD LIKE THE RULE TO BE CHANGED TO :

(B) BURNING SHALL NOT BE COMMENCED WHEN SURFACE WIND SPEED IS PREDICTED TO BE LESS THAN (6) MPH (5 KNOTS) OR GREATER THAN (20) MPH (18) KNOTS) DURING THE BURN PERIOD.

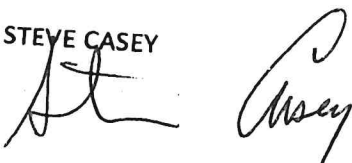
DUE TO THE TEXAS WILDFIRE CONDITIONS THAT ARE PREVALENT YEAR AROUND. THE WIND SPEEDS ARE THE MAIN FACTOR IN THE THESE FIRES GETTING OUT OF CONTROL AND SPREADING TO THE POINT THAT FIREFIGHTER LIVES, LIVESTOCK , WILD LIFE, PROPERTY, AND HOMES CAN BE THREATENED AND DSITROYED . THESE FIRES ARE USUALLY STARTED BY CARELESSNESS AND CONTROL BURNS.

UNDER THE CURRENT RULE AS A FIRE MARSHAL I CAN NOT RESTRICT BURNING UNTIL THE WIND SPEEDS ARE (23) MPH. THIS IS A PROBLEM DUE TO THE WIND GUSTS . I THINK BY CHANGING THE RULE TO (20) MPH THIS WILL ALLOW ME TO RESTICT BURNING EARLIER THUS MAY PREVENT SOMEONE FROM BURNING IN HIGH WIND CONDITIONS.

AS A RETIRED FIREFIGHTER AND A FIRE MARSHAL FIRE PREVENTION IS MY MAIN OBJECTIVE AND MISSION . THE LOWERING OF THE WIND SPEEDS CAN PREVENT WILDFIRES.

SINCERELY

STEVE CASEY



Mr. Steve Casey
Fire Marshal - Bell County, Texas
708 West Ave O.
Belton, Texas
76513

Representative Hugh D. Shine
Texas State Representative of House District 55
4 South 1st St.
Temple, Texas
76501

June 4th, 2018

Stephanie Perdue, Interim Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas
78711-3087

Dear Stephanie Perdue:

As the Fire Marshal for Bell County, fire prevention is my main priority. Due to the Texas wildfire conditions that are prevalent year round wind speeds are the main factor in fires getting out of control. These fires that are usually started by carelessness and control burns can spread to the point that firefighter's lives, livestock, wild life, property, and homes can be threatened and destroyed.

Under the current rules, I cannot restrict burning until the wind speeds are 23 MPH. This is a problem due to wind gusting. I believe that by changing the rule from 23 MPH to 20 MPH will be able to make a difference. By allowing me to restrict burning earlier this may prevent someone from burning in high wind conditions.

Under current TCEQ guidelines, TAC Title 30 Part 1, Chapter 111, Sub-Chapter B Rule 219.6 states:

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

My proposed rule change would change TCEQ guidelines to:

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than ~~23 mph (20 knots)~~ 20 mph (17.4 knots) during the burn period.

Thank you for taking my proposal into consideration. If you have any questions or concerns please do not hesitate to reach out to my office at (254) 933-5589 or s.casey@co.bell.tx.us.

Respectfully,

Steve Casey
Bell County Fire Marshal

Rep. Hugh D. Shine
Texas State Representative
House District 55

STATE of TEXAS
HOUSE of REPRESENTATIVES



HUGH D. SHINE
DISTRICT 55
BELL COUNTY

5 June 2018

**Stephanie Perdue, Interim Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711**

**Re: Steve Casey, Bell County, Texas, Fire Marshal. See attached letter dated
4 June 2018.**

Ms. Perdue

**Please see Bell County Fire Marshal Steve Casey's letter, dated 4 June 2018,
addressing the Texas Commission on Environmental Quality's (TCEQ)
guidelines, TAC Title 30 Part 1, Chapter 111, Sub-Chapter B Rule 219.6:**

**(B) Burnings shall not be commenced when surface wind speed is
predicted to be less than six miles per hour (mph) (five knots) or greater than
23 mph (20 knots) during the burn period.**

**Mr. Casey is proposing a rule change to the TCEQ guidelines to strike the 23
mph and lower the maximum wind speed to 20 mph (17.4 knots).**

Please consider his proposal.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Hugh D. Shine".

Hugh D. Shine



HUGH.SHINE@HOUSE.TEXAS.GOV

Capitol: P.O. Box 2910 • Austin, Texas 78768-2910 • (512) 463-0630 • (512) 463-0937 fax
District: 4 South First Street • Temple, Texas 76501

Steven M. Casey

From: Dale Little <DLittle@mcounty.com>
Sent: Friday, June 01, 2018 9:37 AM
To: Steven M. Casey; countyfiremarshal@cafcatx.org
Subject: RE: info

I fully agree with you and support this venture as here in west Texas where we have no hills or trees 3 mile an hour wind makes a lot of difference.

Dale

Chief M. Dale Little
Midland County Fire Marshal/EMC/MPO
2435 East Hwy 80
Midland, Tx 79706
Office 432-688/4160
Fax 432-688/4946
em101@co.midland.tx.us

From: Countyfiremarshal <countyfiremarshal-bounces@cafcatx.org> **On Behalf Of** Steven M. Casey
Sent: Thursday, May 31, 2018 9:16 AM
To: countyfiremarshal@cafcatx.org
Subject: [Countyfiremarshal] info

Fellow County Fire Marshals, I am trying to petition the TCEQ to change there wind speed guidelines from 23 mph to 20 mph. PLEASE GIVE ME YOUR FEEDBACK . CASEY- BELL COUNTY FIRE MARSHAL - 254-933-5589
***** EXTERNAL EMAIL ALERT ***** This email came from the internet. DO NOT CLICK on unknown attachments or links.

Steven M. Casey

From: Smith, Brad <bsmith@tfs.tamu.edu>
Sent: Monday, July 09, 2018 1:14 PM
To: Steven M. Casey
Subject: Re: INFO
Attachments: ROS Casey 0709.PNG; Flame Length Casey 0709.PNG

Hi Casey

Attached are comparisons for rate of spread and flame length using windspeed from 5mph to 30 mph. I used two fuel models. The Gr3 represents dead grasses. Fuel model 4 represents Juniper brush mixed with some grass. I hope this helps tell your story.

Brad Smith
Texas A&M Forest Service
Wildland Fire Analyst
Austin Texas

Ofc 512-339-0501
Mob 979-220-1398

From: Steven M. Casey <S.Casey@bellcounty.texas.gov>
Sent: Thursday, July 5, 2018 1:58 PM
To: Smith, Brad
Subject: FW: INFO

BRAD: I NEED ANOTHER FAVOR. CAN YOU GIVE ME THE SAME INFORMATION ON 5-MPH 15- MPH AND 17- MPH. THAT SEEMS TO BE WHAT EVERY ONE WANTS TO SEE. THANKS CASEY

-----Original Message-----

From: Smith, Brad [mailto:bsmith@tfs.tamu.edu]
Sent: Wednesday, June 13, 2018 12:41 PM
To: Steven M. Casey <S.Casey@bellcounty.texas.gov>
Cc: Spencer, Tom <tspencer@tfs.tamu.edu>
Subject: Re: INFO

Casey

?I cannot endorse your proposal to change the windspeed threshold in the TCEQ publication Outdoor Burning in Texas. I can however show you the science behind what you propose by reducing the windspeed requirement from 23 mph to 20 mph. Given the same fuel type and fuel dryness I can compare the effect windspeed has on the rate of spread (ROS) and fire intensity (measured by flame length).

The attached images show the comparison of ROS and fire intensity in dead grass and brush fuel types. I used the same inputs for each fuel model run as documented on the model input image.

The model runs show what you expect to see in that an increase in windspeed will increase the rate of spread and fire intensity. What the model also does is quantify the increase in rate of spread and fire intensity with your proposed change in windspeed.

I hope this helps.

Brad Smith
Texas A&M Forest Service
Wildland Fire Analyst
Austin Texas

Ofc 512-339-0501
Mob 979-220-1398

From: Steven M. Casey <S.Casey@bellcounty.texas.gov>
Sent: Monday, June 11, 2018 11:25 AM
To: Smith, Brad
Subject: INFO

BRAD: I AM BELL COUNTY FIRE MARSHAL AND I AM PROPOSING THAT TCEQ CHANGE THE GUIDELINRE THAT THE YOU SHOULD NOT BURN IF THE WINDS ARE GREATER THAN 23 MPH. I THINK THE GUIDELINE SHOULD BE NO BURNING IF THE WIND ARE GREATER THAN 20 MPH. I NEED A LETTER OF AGREEMENT FROM THE FORREST SERVICE ON THIS PROPOSAL. I HAVE SEVERAL STATE REPRESENTATIVES AGREEING AND THE STATE FIRE MARSAHLS ASSOCIATION. WITH THE WILD FIRES THAT OCCUR EVERY YEAR THE WIND SPEEDS ARE A BIG FACTOR. HELPING STOP SOME OF THE WILDFIRES CAN SAVE LIVES , PROPERTY, AND RESOURCES. CASEY

Outputs: SURFACE

Description	→	wind comparison in Brush for Casey	
fuel/Vegetation		Surface/Understory	
Fuel Model	→	4	
fuel Moisture			
1-h Moisture	% →	5	
10-h Moisture	% →	6	
100-h Moisture	% →	8	
Live Herbaceous Moisture	% →	30	
Live Woody Moisture	% →	70	
Weather			
20-ft Wind Speed (upslope)	mi/h →	23. 20.	
Wind Adjustment Factor	→	0.4	
rain			
Slope Steepness	% →	10	

wind comparison in Brush for Casey

20-ft Wind mi/h	ROS (max) mi/h	Flame Length ft
23	2.9	34.2
20	2.4	31.3

and comparison in dead grass for C

20-ft Wind mi/h	ROS (max) mi/h	Flame Length ft
23	2.0	11.7
20	1.7	10.9

Fire behavior for Casey

Surface Rate of Spread (maximum) (ft/min)

20-ft Wind Speed (upslope)

mi/h

5	10	15	20	25
36.6	84.9	144.8	214.0	290.1
30.6	65.8	104.9	147.0	191.1

Fire behavior for Casey

Flame Length (ft)

20-ft Wind Speed (upslope)
mi/h

5	10	15	20	25
13.9	20.5	26.2	31.3	36.1
5.3	7.5	9.3	10.9	12.3

Texas Commission on Environmental Quality



DECISION OF THE COMMISSION REGARDING THE PETITION FOR RULEMAKING FILED BY BELL COUNTY FIRE MARSHAL

Docket No. 2018-0906-PET
Rule Project No. 2018-025-PET-NR

On August 22, 2018, the Texas Commission on Environmental Quality (Commission) considered the petition for rulemaking filed by Steve Casey, the Bell County Fire Marshal (Petitioner). The Petitioner filed the request on June 29, 2018 and requested that the Commission amend Section 111.219(6)(B) of 30 Texas Administrative Code Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, by changing the upper wind speed limit for burning conditions from 23 miles per hour to 20 miles per hour.

IT IS THEREFORE ORDERED BY THE COMMISSION, pursuant to the Administrative Procedure Act, Texas Government Code § 2001.021, that the Executive Director evaluate the request further and initiate rulemaking as appropriate.

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

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed