

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners Date: November 17, 2000

Thru: LaDonna Castañuela
Chief Clerk

From: Randolph Wood, Deputy Director
Office of Policy and Regulatory Development

Subject: **Docket No. 2000-1317-RUL.** Consideration of a petition for rulemaking filed by Tom Lake, Cameron, Texas requesting that the commission amend 30 TAC Chapter 20, Rulemaking, Section 20.3, APA Rulemaking.

The proposed amendment would more fully implement the provision of Texas Government Code, Section 2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires the agency to index and cross-index to statute its rules, final orders, decisions and opinions. (Kathy Ramirez) (Rule Log No. 2000-058-PET-AD)

Who Submitted the Petition:

The petition was submitted by Mr. Tom Lake of Cameron, Texas.

What the Petition Requests:

The petition requests the agency amend Chapter 20, Rulemaking, §20.3, APA Rulemaking, to more fully implement Texas Government Code, §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions. This section of the Texas Government Code states that rules, written statements of policy or interpretations, final orders, decisions and opinions be indexed and cross-indexed to statute and made available for public inspection.

Recommended Action and Justification:

The executive director recommends that a rulemaking be initiated in response to this petition to ensure that the agency is in compliance with the Administrative Procedure Act requirements to index and cross-index to statute all rules, written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and to index and cross-index to statute all final orders, decisions and opinions and make them available for public inspection.

This issue also was raised during the Sunset Commission Review in the document, Sunset Commission Decisions / Texas Natural Resource Conservation Commission / September 2000. New Issue 52 stated that TNRCC should be required to comply with the Administrative Procedure Act and create indexes and cross-references to its orders, statements of policy or interpretations and make all final orders available to the public.

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The Sunset Commission decided to adopt New Issue 52 but modified it to direct the agency to comply prospectively with the Administrative Procedure Act requirements to create indexes and cross-references to its final orders, statements of policy or interpretations and to make all final orders available to the public.

The TNRCC commissioners are moving to implement the Sunset Commission's decision on this issue, and initiating a rulemaking based on this petition would be consistent with that action.

Applicable Law:

Texas Government Code, §2001.004, Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, requires that a state agency index, cross-index to statute, and make available to the public final orders, decisions, and opinions, as well as all rules, written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions.

Texas Government Code, §2001.021, Petition for Adoption of Rules, states that an interested person can petition the agency to request the adoption of a rule.

Texas Government Code, §2001.033(a)(1)(B) and (2), State Agency Order Adopting Rule, requires that final orders adopting rules show the factual basis for the adopted rules as well as a concise restatement of the statutory provisions under which the agency adopted the rule.

Texas Water Code, §5.103, gives the agency the authority to adopt any rules necessary to out its powers and duties and requires the agency to adopt its rules in the manner provided by Chapter 2001, Government Code.

Affected Public:

The petitioned amendment will not affect the regulated public since it is the agency that will need to create and make available an index and cross-index.

Affected Agency Programs:

The Office of General Council
The Chief Clerk's Office
The Office of Permitting, Remediation, & Registration
The Information Resources Division
Intergovernmental Relations

Agency Contacts:

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