

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners Date: August 16, 2000

Thru: LaDonna Castañuela
Chief Clerk

From: Randolph Wood, Deputy Director
Office of Environmental Policy, Analysis, and Assessment

Subject: **Docket No. 2000-0845-RUL.** Consideration of petitions for rulemaking filed by Henry, Lowerre, and Frederick, LLP on behalf of Public Citizen's Texas Office, Clean Water Action, Lone Star Sierra Club, Sustainable Energy and Economic Development Coalition, and Texas Campaign for the Environment. The first petition (Rule Log No. 2000-032A-PET-AI) requests that the commission amend rules in 30 TAC Section 101.10, General Air Quality Rules, Emissions Inventory Requirements, to expand the scope of the data collected in the annual air emissions inventory to include levels of carbon dioxide and methane. The second petition (Rule Log No. 2000-032B-PET-AI) requests that the commission create a new 30 TAC Chapter 121, Control of Greenhouse Gases, that would encourage reductions in greenhouse gases and establish an advisory council to study the cost/benefit of reducing emissions of greenhouse gases to a point 7% below 1990 levels. (David Duncan/Beecher Cameron) (Rule Log No. 2000-032A-PET-AI, 2000-032B-PET-AI)

Rules Requested by the Petitioners:

On July 5, 2000, the agency received two petitions for rulemaking from the law firm of Henry, Lowerre, and Frederick on behalf of Public Citizen's Texas Office, Clean Water Action, Lone Star Sierra Club, Sustainable Energy and Economic Development Coalition, and Texas Campaign for the Environment. The first requests that the commission amend §101.10 to require any point source in the state to submit an annual air emissions inventory if it emits or has the potential to emit 10 tons per year (tpy) of carbon dioxide (CO₂) or methane (CH₄). The proposed revision would add a subsection to §101.10(a), and would modify §101.10(b) to include the reporting of CO₂ and CH₄.

The second petition requests the commission create a new Chapter 121, Control of Greenhouse Gases. This new chapter would require the commission to encourage reductions in greenhouse gases, promote the efficient use of energy, offer training in methods to reduce CO₂ and CH₄, and develop a climate change action plan using EPA guidance. The new Chapter 121 would require the commission create an advisory council composed of industrial, environmental, and consumer representatives to perform a cost/benefit analysis of the effect of reducing emissions of greenhouse gases to a point 7% below 1990 levels.

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The petitioners allege, as support for their petition, that Texas contributes about one-seventh of national greenhouse gases and the state, without action, will become three to five degrees hotter over the next century with an increase in heat related deaths, and heat increases will result in a decrease in water flow to the Texas coast of between 35% and 85% with corresponding severe weather, coastal erosion, and agricultural losses.

Applicable Law:

The petition is submitted under 30 TAC §20.15, and Texas Government Code, §2001.021.

Recommendation:

The executive director does not recommend proceeding with rulemaking at this time for the following reasons. The executive director collects emission inventory data for contaminants which are regulated under TNRCC rules. It is inconsistent with TNRCC policy to require the submission of data when no regulatory process exists for the use of that data. The executive director therefore does not support granting the petition to amend §101.10 to require the collection of annual emission inventory data on CO₂ and CH₄. However, the executive director's staff can estimate greenhouse gas emissions without the need for rulemaking and can do so if that is the commission's desire.

Texas' current actions to reduce greenhouse gases include encouragement and support of energy efficiency for residences, industry, and transportation. Non-regulatory programs are common parts of state action plans and a principal feature of EPA guidance. Additionally, Texas has adopted strict regulations for NO_x in the Dallas/Ft.Worth area as part of state implementation plan requirements and has proposed even more stringent NO_x regulations for the Houston/Galveston area. Certain NO_x control techniques such as low NO_x burners also reduce nitrous oxide (N₂O), which is a greenhouse gas. Texas' current actions are comparable to the actions in those states with published greenhouse action plans.

Data collection and analysis should be part of and consistent with the larger national effort given the international scope of global warming and possible legal issues. The executive director therefore does not support the creation of a new Chapter 121. However, the actions requested by the petitioner under the suggested new Chapter 121 do not require rulemaking to accomplish. The executive director's staff can compile information on existing Texas programs that help reduce greenhouse gases and compare these programs to EPA guidance if directed to do so by the commission.

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Discussion:

The petitioner has requested that the commission include CO₂ and CH₄ in the list of air contaminants for which an emission inventory submission is required. This is not the method used to produce greenhouse gas inventories elsewhere in the nation. Other states with greenhouse gas inventories have produced these inventories from estimates based on existing inventories of regulated pollutants. EPA recommends this estimation method in the State Guidance Document for Policy Planning to Reduce Greenhouse Gas Emissions. Wisconsin requires the submission of CO₂ emissions data but only when a source's emissions exceed 100,000 tpy. TNRCC rules already contain a provision in 30 TAC §101.10(b)(5) that allows the agency to request "special inventories" of emissions. This section could be used to perform an inventory of greenhouse gases if the commission so desired.

A review of existing greenhouse plans in other states indicates that they are non-regulatory in nature, and primarily feature energy conservation, waste reduction, and pollution prevention as methods for reducing CO₂. Another feature common to most plans is the encouragement of forest renewal and urban tree planting. Those states that have completed state action plans are: California, Delaware, Hawaii, Illinois, Iowa, Kentucky, New Jersey, North Carolina, Oregon, Tennessee, Vermont, Washington, and Wisconsin. New York has initiated a plan but has not completed it.

The agency already focuses many non-regulatory programs on energy conservation, waste reduction, and pollution prevention. Under its next generation of the Clean Texas Program, the agency currently promotes several measures to reduce energy use, pollution, and waste through the Clean Texas Partner and Clean Texas Leader programs. The Clean Texas Partner program provides recognition, technical assistance and networking opportunities with other business and industries for participants that meet or exceed a predetermined goal for pollution reduction or resource conservation projects. The Clean Texas Leader Program provides the opportunity for participants to lead the initiative themselves, get related industries and businesses involved, and set community goals. The Lower Colorado River Authority has set the reduction of greenhouse gases as one of its goals. The Texas Recycled Program promotes the use of recycled material and recognizes this businesses and industries that use recycled material. In 1998, the agency launched a new initiative to increase pollution prevention integration into the agency's existing and future regulatory programs. The result will be the integration of pollution prevention into agency guidance documents used by permit writers and the regulated community in the preparation of air permits. This will serve to reduce air contaminants, including greenhouse gases, at the source. The agency also participates in and promotes programs such as Austin's Green Choice, which seeks to develop energy from renewable sources such as solar, wind, and landfill gas generation.

The State of Texas currently has standards for the design of systems using solar energy with training and certification for individuals installing these systems. The voluntary emission reduction permit program from Senate Bill 766 allows renewable energy source projects as an alternative

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means for grandfathered facilities to obtain a permit. Senate Bill 7 (the electric utility restructuring bill) sets forth goals for renewable energy generation capacity in the state. The bill's changes to the Texas Utilities Code include a mandate for rules establishing minimum percentages of renewable power to be provided by municipalities and retail electric providers.

The petitioner states that Texas is responsible for approximately one-seventh of national greenhouse emissions. The staff does not dispute this estimation, but some context is useful. Texas' large population, hot summers, and extensive industrial base all result in large CO₂ emissions. The California plan concludes that California benefits from its milder climate (at least in populated areas) and less intensive industrial base. Other information from the California plan is revealing. It states that the most significant CO₂ reductions can be achieved through continued energy efficiency programs including promoting transportation efficiency. The California plan and EPA guidance both conclude that the most effective CO₂ reduction strategy is a carbon tax on units of fuel purchased, including gasoline. The plan also states that because of the national nature of auto manufacturing, national fuel taxes would be more effective than actions by individual states.

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