

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** March 22, 2001

Thru: LaDonna Castañuela
Chief Clerk

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

Subject: Consideration of a Petition for Proposed Rulemaking

Caption: **Docket No. 2001-0280-RUL.** Consideration of a petition by Texas Terminal Operators, for rulemaking to revise 30 TAC Section 335.323, Generation Fee Assessment. If approved, the petition will result in amendments to include additional exemptions from the generation fee for certain types of waste streams. (Don Redmond/Kari Bourland/Michael Bame) (Rule Log No. 2001-014-PET-WS)

Who Submitted the Petition:

On February 12, 2001, the commission received a petition for rulemaking from the Texas Terminal Operators. This petition is similar to the petition filed by the Texas Terminal Operators on March 10, 2000, and withdrawn without prejudice at the May 3, 2000 commission agenda.

What the Petition Requests:

The petitioners request rulemaking under 30 TAC §335.323 to exempt certain waste streams from the waste generation fee assessment. A current fee exemption applies to wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2. The petitioned fee exemption would apply to: 1) wastewaters containing hazardous waste which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, and are generated and stored on-site prior to discharge via hard-pipe connection to a publicly owned treatment works (POTW); and 2) wastewaters containing hazardous wastes which are designated as hazardous because they contain discarded commercial chemical products or manufacturing chemical intermediates identified in 40 CFR §261.33(e) or (f), and are treated on-site and discharged through a Texas Pollutant Discharge Elimination System permitted outfall or collected and stored on-site prior to discharge via hard-pipe connection to a POTW. To qualify for the exemption, the total amount of compounds identified in 40 CFR §261.33(e) shall not exceed 100 parts per billion and the total of all compounds listed in 40 CFR §261.33(f) shall not exceed 1%.

Re: Docket No. 2001-0280-RUL

Recommended Action and Justification:

The executive director recommends denial of the petition. Section 335.323 requires an annual generation fee for hazardous waste generation, with certain limited exceptions. While the petitioner states that it would be inequitable not to exempt the petitioned wastewaters, the executive director maintains that there is a fundamental difference between the petitioned wastewaters and the currently exempt wastewaters. The primary distinction stems from the fact that the petitioned wastewaters are either characteristically or "listed" hazardous wastes and they remain hazardous wastes while on-site. On the other hand, the currently exempt wastewaters are treated to be nonhazardous wastes on-site. Therefore, the petitioners, who are generators of hazardous waste that remains hazardous waste while on-site, should pay the waste generation fee, just as other generators of hazardous waste are required to do under commission rules.

There are significant ramifications if the requested rulemaking is adopted by the commission. For one, there could be a substantial reduction in the amount of waste generation fees assessed, which would reduce revenue for State Fund 5490. Fund 5490 supports waste permitting, enforcement, field inspections and complaint responses, pollution prevention, recycling, and corrective action. Furthermore, there would be no equivalent reduction in commission staff oversight related to the facilities qualifying for the expanded fee exemption. Based upon a review of 1999 waste generation fees, the potential fee reduction is estimated to be between \$372,000 and \$1.3 million per year, depending upon the number of generators able to take advantage of the petitioned exemptions.

The fee exemptions as proposed would not provide an incentive for source reduction, recycling, or reuse which are identified as preferred management methods by state waste management policy. The petitioned rulemaking might be viewed as a precedent for the proposal of additional fee exemptions which do not promote state waste management policy.

Applicable Law:

Administrative Procedure Act, Texas Government Code, §2001.021

Affected Public:

The petitioned exemptions would affect a broad range of hazardous waste generators with regard to reductions in fees.

Affected Agency Programs:

The Office of Permitting, Remediation, and Registration

Agency Contacts:

Don Redmond, Environmental Law Division, 239-0612

Commissioners
Page 3
March 22, 2001

Re: Docket No. 2001-0280-RUL

Marilyn Querejazu, Waste Permits Division, 239-6884
Kari Bourland, Waste Permits Division, 239-6137
Kathleen Trachta, Waste Permits Division, 239-6855
Michael Bame, Office of Environmental Policy, Analysis, and Assessment, 239-5658
Angela Slupe, Texas Register/Administrative Support Team, 239-4712

cc: 7 copies to the Chief Clerk for distribution