

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 6, 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. 2001-0758-RUL.** Consideration of a petition for rulemaking filed by Ms. Cary Terrall on behalf of 125 citizens of Hays and other Texas counties requesting that the commission revise 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Section 111.209, Exception for Disposal Fires. The petitioners request that the rule be made more restrictive by authorizing residential, domestic waste burning only when collection is not provided or authorized by a local governmental entity or, additionally, when it is not available or provided by a private commercial collection service. Staff recommends denial of the petition, but requests direction to further assess the issues related to potential health impacts from domestic waste burning over the next six months. (Arnoldo Medina/Jill Burditt) (Rule Log No. 2001-065-PET-AI)

Who Submitted the Petition:

On June 11, 2001, the commission received a petition for rulemaking from Ms. Cary Terrall on behalf of 125 citizens of Hays and other Texas counties.

What the Petition Requests:

The petitioners request rulemaking to revise 30 TAC §111.209. The current rule only authorizes residential, domestic waste burning “when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction.” The petitioners request that the rule be made more restrictive by inserting the additional language “or when collection is not available or provided by a private commercial collection service.”

Recommended Action and Justification:

The commission is required to act within 60 days after receiving a petition by either denying the petition in writing and stating the reasons for denial or by initiating rulemaking. Staff requests direction to further assess the issues related to potential health impacts from residential, domestic waste burning over the next six months; however, staff recommends denial of the petition for the following reasons.

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Given the variety of factors specific to each of the 254 Texas counties, staff believes that further control of domestic waste burning is better left to the discretion of local governmental entities. The TNRCC rules provide the framework for local governments to assess the specific needs within their local areas and determine the appropriate solid waste management strategy to employ. Under existing rules, an authorized local governmental entity may provide for or authorize the collection of domestic waste, resulting in the prohibition of domestic waste burning for that community.

Additionally, the Texas Clean Air Act, Texas Health and Safety Code, §382.113, specifically recognizes the authority of a municipality to abate a nuisance and enact and enforce an ordinance for the control and abatement of air pollution or for other purposes as long as the ordinance is not inconsistent with the Act or the TNRCC's rules or orders. Texas Local Government Code, §240.906, also specifically addresses the authority of a county commissioners' court to prohibit or restrict outdoor burning under certain conditions, such as when drought conditions exist or when a public safety hazard exists.

The authority to conduct outdoor burning under TNRCC's rules does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

Specifically, outdoor burning is also subject to the general rules in 30 TAC Chapter 101, §101.4, Nuisance, which states "No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."

Furthermore, the suggestion that domestic waste burning should not be authorized when collection is available or provided by a private commercial collection service poses a problem with accountability. Without a governmental entity authorizing the service there is no ability to ensure that the reliability and pricing of the service meets public needs. This may not be a problem when multiple private collection companies are competing to provide service. However, in more rural areas, there may be only one private collection service available. Therefore, without the legal alternative to burn domestic waste, if the service is unreliable or pricing is unreasonable, additional problems such as waste build-up, unsanitary conditions, vectors, and illegal dumping could occur.

Because of the many factors to be considered and the statutorily limited time the commission has to act on a petition for rulemaking, staff requests a six month period to further assess the issues related to potential health impacts from domestic waste burning. After this assessment, staff would report findings and any recommendations to the commission.

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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; Texas Health and Safety Code (TH&SC) §382.018, which authorizes the commission to control and prohibit the outdoor burning of waste; §382.113, which provides municipalities with the powers and rights to abate a nuisance and enact and enforce an ordinance for the control and abatement of air pollution; TH&SC, Chapter 363, concerning municipal solid waste; and Local Government Code, §240.906, which authorizes a county commissioners' court to prohibit or restrict outdoor burning under certain conditions.

Affected Public:

Citizens living in areas where trash collection is not provided or authorized by a local governmental entity having jurisdiction are affected. Under the current rule, domestic waste burning is authorized in these areas. If the rules were revised as suggested, these citizens would no longer be allowed to burn domestic waste if private collection service was available or became available.

Affected Agency Programs:

The regional offices of the Field Operations Division are responsible for enforcing the agency's outdoor burning rules.

Agency Contacts:

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Attachment: Petition for Rulemaking from Ms. Cary Terrall

cc: 7 copies to the Chief Clerk for distribution