

# 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. 2001-0764-RUL.** Consideration of a petition by First Wave Marine, Inc., for rulemaking to create a new Subchapter P in 30 TAC Chapter 321, Control of Certain Activities By Rule. If approved, the petition will establish a general permit by rule for abrasive blasting and spray painting conducted by shipyards in the coastal waters of Texas. (Jacquelyn Boutwell/L'Oreal Stepney/Michael Bame) (Rule Log No. 2001-066-PET-WS)

## Who Submitted the Petition:

On May 25, 2001, the commission received a petition for rulemaking from First Wave Marine, Inc.

## What the Petition Requests:

The petitioner requests rulemaking under 30 TAC Chapter 321, by adding Subchapter P, that would create a general permit for the discharge of airborne particulates to the coastal waters of the State of Texas from shipyard abrasive blasting and spray painting operations.

## Recommended Action and Justification:

The executive director (ED) recommends denial of the petition. Pursuant to current statutory authority, the commission is no longer issuing new permits by rule under Chapter 321. The commission does issue new general permits under the authority of Texas Water Code (TWC), §26.040, and 30 TAC Chapter 205. Section 26.040, however, specifically excepts the issuance of a general permit from Administrative Procedure Act rulemaking so it would not be appropriate for the commission to initiate a general permit through that process. Therefore, the petitioner's request should be denied.

The ED proposes to investigate and determine whether a general permit is necessary and appropriate for authorizing these discharges of waste solids into waters in the state under the provisions and requirements of the TWC. It is not apparent whether these discharges are an industrial waste subject to TWC, §26.121(a)(1); other waste subject to TWC, §26.121(a)(2); or if the deposition of these solid materials are a point source discharge subject to TWC, §26.121(d) and (e). Further analysis will help

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determine whether a permit is required or not. If it is determined that a permit is required, additional analysis will help to determine whether these types of operations described by First Wave Marine, Inc., should be covered under an individual permit or a general permit.

**Applicable Law:**

Administrative Procedure Act, Texas Government Code, §2001.021.

**Affected Public:**

The petitioned rulemaking would affect operators of marine shipyards, wharves, port authorities, and other persons who maintain metal bulkheads, piers, or marine vessels.

**Affected Agency Programs:**

The affected agency program is the Office of Permitting, Remediation, and Registration.

**Agency Contacts:**

Jacquelyn Boutwell, Environmental Law Division, 239-5846  
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Michael Bame, Office of Environmental Policy, Analysis, and Assessment, 239-5658  
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