

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** November 26, 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. 2001-1430-RUL.** Consideration of a petition from Fluoro-Seal received on October 31, 2001, requesting regulation of volatile organic compound emissions from portable fuel containers.

The petition requests rulemaking to require permeation standards and design criteria for the body and spouts of the fuel containers (including single openings and automatic shutoff and self-sealing devices for the dispensing of fuel) and for a sell-through period for fuel containers produced before the effective date of the rules. The requirements are requested for fuel containers distributed or manufactured for use in the state, with certain exemptions. If approved, these requested rules would be written as a new Division 2, Portable Fuel Containers, in Chapter 115 (Control of Air Pollution from Volatile Organic Compounds), Subchapter G (Consumer-Related Sources). (Joseph Thomas) (Rule Log No. 2002-039-PET-AI)

Who Submitted the Petition:

On October 31, 2001, the commission received a petition for rulemaking from Fluoro-Seal corporation concerning the control of emissions from portable fuel containers.

What the Petition Requests:

The petitioner requests rulemaking to require the lack of vents in and permeation standards for the bodies of portable fuel containers and to require automatic shut-off and self-sealing devices for the spouts for dispensing fuel. The suggested rules in the petition also specify labeling requirements for these products and prohibit, after a one-year period, the sale of non-compliant fuel containers manufactured before the effective date of the rule.

Recommended Action and Justification:

The commission is required to act within 60 days after receiving a petition by denying the petition in writing stating the reasons for denial or by initiating rulemaking. Staff recommends initiating rulemaking but with changes from the rules suggested in this petition.

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The petition specifies that containers produced before the effective date of the requested rule be limited to a one-year sell-through period for distributors. However, other rules with such periods generally provide a three-year period for sales of existing stocks. There is no limit on the use of non-compliant containers in the requested rule, only distribution or manufacturing of the items for use in Texas.

Although if authorized, these rules would be written in Chapter 115, the new Division 2 would not be submitted as part of the State Implementation Plan (SIP). Research and modeling has not been done to determine what effect the rule might have on ozone attainment. The anticipated reduction in spills of gasoline would also benefit both surface water and groundwater through reduction of contamination. These provisions would be applicable state-wide.

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 Clean Air Act (TCAA), Texas Health and Safety Code, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the TCAA.

The amended sections are proposed under broad powers granted in TWC, §§5.102, 5.103, and 5.120.

Affected Public:

The request would affect all businesses and members of the public who manufacture, sell, or purchase fuel containers after the effective date of the rules. In addition to limits on the types of manufacturing processes that could be used and to labeling requirements for the products, the price of containers is expected to at least double and the speed of dispensing fuel from the containers would be lower in many cases. According to information from the petitioner, the costs would be mostly offset by savings from eliminating fuel losses during transport, storage, and dispensing.

Affected Agency Programs:

The Field Operations Division of the Office of Compliance and Enforcement (OCE) conducts field inspections from the regional offices to verify compliance with the Chapter 115 rule provisions. The Policy and Regulations Division, Regulation Development Section, of the Office of Environmental Policy, Analysis, and Assessment would develop the Chapter 115 rules.

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Agency Contacts:

Parker Wilson, Environmental Law Division, 239-0580
Brad Oehler, Strategic Implementation Plans Section, 239-1488
Arthur Talley, Strategic Implementation Plans Section, 239-4546
Joseph Thomas, Regulation Development Section, 239-4580
Patricia Durón, Texas Register/Administrative Support Team, 239-6087

Attachment: Petition for Rulemaking from Fluoro-Seal

cc: 7 copies to the Chief Clerk for distribution