

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** May 17, 2002

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. 2002-0640-RUL.** Consideration of a petition for rulemaking filed by Crain, Caton, and James, P.C. on behalf of Brazoria and Fort Bend Counties requesting that the commission revise the Houston-Galveston Area (HGA) state implementation plan (SIP) to repeal the 55 miles per hour speed limit control measure for the entire HGA, or alternatively, for Brazoria and Fort Bend Counties; or alternatively delay implementation of the speed limit rule with the HGA for at least two years until May 1, 2004. The petitioner proposed rule language regarding this issue for Chapter 114, Control of Air Pollution from Motor Vehicles. (Kerri Rowland, Heather Evans, Jill Burditt) (Rule Log No. 2002-051-PET-AI)

Who Submitted the Petition:

On April 19, 2002, the commission received a petition for rulemaking from Crain, Caton, and James, P.C. on behalf of Brazoria and Fort Bend Counties regarding the environmental speed limit.

A previous petition filed on behalf of Brazoria and Fort Bend Counties regarding the inspection and maintenance rules, the lawn maintenance shift rule, and the environmental speed limit was considered by the commission at the April 26, 2002 Commissioners' Agenda. The commission denied the request to revise the inspection and maintenance rules and the lawn maintenance shift rule. The environmental speed limit issue was not considered a rulemaking petition because it requested a revision to the state implementation plan and suggested no rule language. However, on April 19, 2002, the representative for Brazoria and Fort Bend Counties submitted additional materials in support of the previous petition which included, among other things, a revised petition with proposed rule language for Chapter 114 related to the environmental speed limit. The executive director considers this additional information regarding the environmental speed limit as a new, separate petition for rulemaking.

What the Petitioner Requests:

Brazoria and Fort Bend Counties requested that the commission revise the HGA SIP to repeal the 55 miles per hour speed limit control measure for the entire HGA, or alternatively, for Brazoria and Fort Bend Counties; or alternatively delay implementation of the speed limit rule within the HGA for at least two years until May 1, 2004.

Re: Docket No. 2002-0640-RUL

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. To meet this deadline, the commission must take action on the petition no later than June 17, 2002.

The executive director recommends denial of this petition for rulemaking. The petitioner proposed rule language for Chapter 114; however, the agency does not have a rule regarding speed limits and is not the agency who would implement and enforce speed limits. The environmental speed limit is currently an emission reduction strategy in the SIP. Therefore, the executive director recommends denial of the petition for rulemaking because even if the commission were to decide to revise the environmental speed limit strategy a rulemaking would not need to be initiated. Any change would be accomplished through a SIP revision.

Staff has been working with several entities to determine whether alternatives to the speed limit SIP strategy would be viable. This issue will likely be discussed in conjunction with the proposed revision to the HGA SIP to be considered by the commission at the June 5th agenda.

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 and 30 Texas Administrative Code, §20.15, which provides such procedures specific to the TNRCC
- 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
- Federal Clean Air Act Amendments of 1990 as codified in 42 United States Code (USC), §7410, which requires a demonstration of attainment of the national ambient air quality standard for ozone; 42 USC, §7502(a)(2) and §7511(a)(1), which requires attainment as expeditiously as practicable; and 42 USC, §7511a(d), which requires states to submit ozone attainment demonstration SIPs for severe ozone nonattainment areas, including an enhanced vehicle inspection and maintenance program

Affected Public:

The proposed revisions would directly affect the citizens of Brazoria and Fort Bend Counties, and the resulting effect on the SIP would impact the entire HGA. Also, revision to the SIP regarding the speed limit issue would affect the Texas Department of Transportation because it would be required to revise its rules regarding the environmental speed limits.

Commissioners

Page 3

May 17, 2002

Re: Docket No. 2002-0640-RUL

Affected Agency Programs:

Strategic Assessment Division and Technical Analysis Division

Agency Contacts:

Kerri Rowland, Environmental Law Division, 239-5693

Heather Evans, Strategic Assessment Division, 239-1970

Jill Burditt, Policy and Regulations Division, 239-0560

Joyce Spencer, Texas Register/Administrative Support Team, 239-5017

Attachment: April 19, 2002 petition for rulemaking from Crain, Caton, and James, P.C. on behalf of Brazoria and Fort Bend Counties

cc: 7 copies to the Chief Clerk for distribution