

# Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

**To:** Commissioners **Date:** March 28, 2003

**Thru:** LaDonna Castañuela, Chief Clerk  
Margaret Hoffman, Executive Director

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

**Subject:** Consideration of a Petition for Proposed Rulemaking on 30 TAC Chapter 335,  
Industrial Solid Waste and Municipal Hazardous Waste

**Docket No.:** 2003-0297-RUL

**Rule Log No. & Short Title:** 2003-032-PET-WS, Petition for Alternate RATA Procedure

## **Who Submitted the Petition:**

On February 24, 2003, the executive director received a petition for rulemaking from Richard Hill, Environmental Engineer.

## **What the Petitioner Requests:**

The petitioner requests that the agency initiate rulemaking to revise the regulations in 30 Texas Administrative Code (TAC) Chapter 335 to set a 180-day time limit for the commission to take action on such requests for alternate test methods for relative accuracy test audits (RATAs), with automatic approval if the request is not approved or denied by that deadline.

## **Background and Assessment:**

The petitioner states that he has been trying to obtain approval from the commission for more than two years for an alternate test method for an RATA for a carbon monoxide (CO) continuous monitoring system for a boiler/industrial furnace that burns hazardous waste and is operated by Arch Chemical Company. The petitioner requests that a new section be added to Chapter 335, Subchapter H, Standards for the Management of Specific Wastes and Specific Types of Facilities. The rule language in the petition would set a 180-day time limit for the commission to take action on such requests for alternate test methods for RATAs, with automatic approval if the request is not approved or denied by that deadline. The provision referenced in the petition for an alternate method to measure relative accuracy is in 40 Code of Federal Regulations Part 266, Appendix IX, §2.1.9.1 and §2.1.9.2.

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The rule change proposed in the petition would require a specific time frame for action on requests for alternate test methods for RATAs and would make approval automatic if action is not taken within 180 days of submittal of the request. Historically, such requests have been filed only rarely, and each has required significant staff time to evaluate. The petitioner has been informed by letter, dated March 12, 2003, that the specific request for an alternate RATA test method submitted by the petitioner on behalf of Arch Chemical Company was.

**Recommended Action and Justification:**

Staff recommends that the petition be denied. 40 Code of Federal Regulations Part 266, Appendix IX, §2.1.9.2 states that use of the alternate RATA requires approval of the United States Environmental Protection Agency (EPA) regional administrator. Automatic approval of the alternate methods is less stringent than the requirements of the federal regulations and therefore is not allowed by the authorization agreement with the EPA for the Resource Conservation and Recovery Act program.

Staff does not believe that rulemaking is necessary to address the petitioner's concerns regarding the timelines of the review process. The procedures developed for review of these requests include time frames for review and action by the commission that can be implemented without rulemaking. If the commission prefers that rulemaking be initiated, the proposed rulemaking should set a time frame for review of the request for alternate tests methods, but automatic approval should not be provided.

**Applicable Law:**

Texas Government Code, §2001.021, establishes the procedures by which an interested person may petition a state agency for the adoption of a rule and 30 TAC §20.15, provides such procedures specific to the commission.

**Affected Public:**

There will be no effect on the public if the petition is denied. However, if rulemaking is initiated, facilities that burn hazardous waste, and potentially those persons living near those facilities, would be affected.

**Affected Agency Programs:**

I&HW Permits Section processes permits for burning hazardous waste for energy recovery. Engineering Services evaluates requests for alternate RATA test methods.

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**Attachments**

cc: 5 copies to the Chief Clerk for distribution  
Carolyn Brittin  
Sonia Ralls  
David Schanbacher  
Brian Christian  
Dan Eden  
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cc (without attachments):

Bill Shafford, Program Lead  
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Daniel Long, Staff Attorney  
Kathy Vail, Regulation Development Team Leader

