

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** October 7, 2005

Thru: LaDonna Castañuela
Chief Clerk

From: Dan Eden, Deputy Director
Office of Permitting, Remediation, and Registration

Subject: Consideration of a Petition for Proposed Rulemaking

Docket No.: 2005-1540-RUL

Rule Project No. 2005-074-PET-NR

Who submitted the petition:

The petition was submitted by Cleancut, LLC on August 26, 2005.

What the petitioner requests:

The petitioner requests the addition of a permit by rule that would authorize the use of micro-containment abrasive blasting material without a setback distance restriction or other operational limits.

Recommended action and justification:

The executive director recommends denying the petition and requesting that the petitioner submit an application to add dry abrasive blasting using micro-containment blasting material to the *de minimis* source list. This recommendation is based on the insufficient justification material included with the petition and the uncertain benefit of expending staff resources for promulgating a rule with potentially limited application in the regulated industries when other authorization methods for operations using the abrasive blasting material are currently available. The executive director has confirmed only one party (the petitioner) advocating this rule change.

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 TAC §20.15, which provides such procedures specific to the commission.

Also applicable are Texas Health and Safety Code, §382.017, Rules, which authorizes the commission to adopt rules and §382.05196, Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of contaminants to the atmosphere.

Re: Docket No. 2005-1540-RUL

Affected public:

Adding micro-containment abrasive blasting to the *de minimis* source list could affect any company or individual engaged in abrasive blasting.

Affected agency programs:

The Air Permits Division would be responsible for evaluating the abrasive blasting material and amending the *de minimis* source list.

Agency contacts:

Beecher Cameron, Rule Project Manager, 239-1495
Erin Selvera, Staff Attorney, 239-6033
Joyce Spencer, Texas Register Coordinator, 239-5017

Attachment: Petition

cc: 5 copies to the Chief Clerk for distribution
Executive Director's Office
David C. Schanbacher, P.E.
Jason Skaggs
Ashley K. Wadick
Brent Wade
Office of General Counsel
Beecher Cameron
Joyce Spencer

cc (without attachments):

Erin Selvera, Staff Attorney
Debi Dyer, Office Liaison
Tara Capobianco, Division Liaison
Booker Harrison, OLS Liaison
Russ Kimble, OLS