

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 3, 2018

Thru: Bridget C. Bohac, Chief Clerk
Stephanie Bergeron Perdue, Interim Executive Director

From: Ramiro Garcia, Jr., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2018-0906-PET

Subject: Consideration of a Petition for Rulemaking
Non-Rule Project No. 2018-025-PET-NR

Who Submitted the Petition:

On June 29, 2018, the Texas Commission on Environmental Quality (commission or TCEQ) received a petition from the Bell County Fire Marshal (petitioner).

What the Petitioner Requests:

The petitioner requested that the commission amend 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, Subchapter B, concerning Outdoor Burning. Specifically, the petitioner requested that the commission amend 30 TAC §111.219(6)(B) by changing the upper limit of wind speed at which burning is allowed from 23 miles per hour to 20 miles per hour. According to the petitioner, the revision would allow for more restrictive burning conditions by preventing burning when wind speeds are predicted to be greater than 20 miles per hour (mph) and thereby help prevent wildfires from occurring.

Recommended Action and Justification:

The executive director recommends approval of the petition. Many factors affect the production and dispersion of air pollution from burning activities, including wind speed and atmospheric stability. While lower wind speeds during burning can lead to stagnant conditions, which may in turn lead to potentially adverse air quality conditions, the lower limit of six (6) miles per hour in the range provided in 30 TAC §111.219(6)(B) is the protective restriction designed to avoid burning in stagnant air conditions. Lowering the upper wind speed limit for burning conditions from 23 to 20 miles per hour should not have any negative impact on air quality conditions associated with burning activities.

However, while it is true that the proposed rule revision is not expected to have any negative impacts on air quality, the petitioner has not provided, nor does the executive director's staff have, a demonstration that reducing the upper wind limit three (3) miles per hour will reduce the likelihood of a controlled burn becoming a wildfire. Therefore, the executive director recommends that the petition be approved so that staff may evaluate the issue further and proceed accordingly.

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;

Commissioners

Page 2

August 3, 2018

Re: Docket No. 2018-0906-PET

- Texas Water Code §5.103, which establishes that the commission shall adopt any rules necessary to carry out its powers and duties under this code and other laws of this state;
- Texas Health & Safety Code §382.017, which establishes that the commission may adopt rules and the procedures by which the commission adopts rules;
- 30 TAC §20.15, which provides such procedures specific to the commission;
- 30 TAC §111.203, which provides definitions related to outdoor burning; and
- 30 TAC §111.209, which provides general requirements for allowable outdoor burning.

Agency Contacts:

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Attachment:

Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
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