

The Texas Natural Resource Conservation Commission (commission) proposes new §101.12, concerning Temporary Exemptions During Drought Conditions.

EXPLANATION OF PROPOSED RULE. The new section is proposed to allow the agency flexibility regarding air quality requirements when emergency drought conditions dictate the need for conservation of the state's water resources. The proposed new section would allow owners and operators of sources which are required to suppress emissions, such as dust, through the application of water to receive a temporary exemption from air quality requirements upon written request. The types of requirements from which an exemption may be granted are permit conditions, standard exemption conditions, permit representations, air quality rules, and commission orders. The proposed rule specifies the type of information to be submitted for consideration of whether such relief will be granted and the period of time for which the exemption is valid. The rule also limits the length of time the executive director may authorize this temporary exemption and specifies that commission approval is required for long-term exemptions. A source must be located in an area classified as severe or extreme under the Palmer Drought Index for a minimum of 30 days to be eligible for this exemption.

FISCAL NOTE. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect, there will be no significant fiscal implications for state or local government as a result of enforcement and administration of the section.

PUBLIC BENEFIT. Mr. Minick has also determined that for each year of the first five years this section is in effect, the public benefit anticipated as a result of enforcement of and compliance with the

section will be a more efficient use of agency resources in dealing with drought conditions and the conservation of the state's water resources. Operators qualifying for temporary exemptions from requirements under this section will realize economic benefits from the reduction of costs of water supplies during periods of limited availability. These cost savings will vary on a case-by-case basis and have not been estimated. There are no economic costs to any person, including small businesses, required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for the rule in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to afford owners and operators flexibility from air requirements for the use of water to suppress emissions as necessary to maximize conservation of the state's water resources during specific drought conditions. The rule will substantially advance this specific purpose by providing the commission and regulated community a temporary exemption from requirements to apply water included in rules, permit or standard exemption conditions, or orders of the commission. Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule because it offers a temporary option for compliance with existing requirements which would otherwise require the application of water.

PUBLIC HEARING. A public hearing on the proposal will be held January 6, 1997, at 11:30 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration.

Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS. Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96155-101-AI. Comments must be received by 5:00 p.m., January 6, 1997. For further information, please contact John Gillen, Air Policy and Regulations Division, (512) 239-1415.

STATUTORY AUTHORITY. The new section is proposed under Texas Water Code, §5.103 and Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements Health and Safety Code, §382.017.

§101.12

§101.12. Temporary Exemptions During Drought Conditions.

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order.

(1) The request must be submitted in writing and include at a minimum the following information:

(A) the site specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative measures which will be undertaken to minimize emissions.

(2) The executive director may authorize by written permission a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will utilize reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 20, 1996.