

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** April 9, 1999

Thru: LaDonna Castañuela
Chief Clerk

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

Subject: **Docket No. 1999-0508-RUL.** Consideration of a petition for rulemaking for amendments to 30 TAC Chapter 106, Exemptions from Permitting, §106.496, concerning trench burners. The petition requests that the commission initiate rulemaking to move the responsibility for site approval of trench burners from the Austin Office to the regional offices. (Terry Leifeste) (Rule Log No. 99016-106-AI)

Substance of the Petition and Recommendation:

On February 23, 1999, the agency received a letter from Aubrey S. Labuff & Associates Construction Company, Incorporated (attached) requesting amendment to 30 Texas Administrative Code (TAC) §106.496(18) to allow applications for trench burner standard exemption site approval to be processed and approved at the commission's regional offices. Another letter was received on March 15, 1999 (attached) further clarifying the request. The Environmental Law Division has determined that the company's letter should be considered a petition for rulemaking under the commission's rules §20.15. Staff supports the requested change in procedures, but recommends denial of the petition because the transfer of site approval authorization can be accomplished through an administrative policy change without going through the rulemaking process.

What the Proposed Petition/Staff Recommendation Would Do:

Section 106.496(18) presently requires the PI-7 applications for a standard exemption for a trench burner to be processed/approved at the Austin Office with written site approval to be received from the executive director and any local air pollution program having jurisdiction in the proposed area. Inspection of the proposed trench burner site is done by the appropriate regional office with such evaluation being sent to Austin for formal approval. This process takes, on the average, about one to two weeks.

The petition for rulemaking requests that the wording of paragraph (18) read as follows:

“Before operation of the facility begins at any site written site approval shall be received from the Texas Natural Resource Conservation Commission Regional Office and any local Air Pollution Control Program having jurisdiction in the area and the facility shall be registered with the Commission Regional Office using PI-7.”

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Staff recommends that site approval for this standard exemption be delegated to the regional offices by the executive director.

Applicable Law:

30 TAC §20.15(c) states: “Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.” The 60-day deadline for commission action on the petition is May 13, 1999.

As to implementing the change through administrative policy, the TNRCC Procedural Rules define “executive director” as “the director of the commission, or any authorized individual designated to act for the executive director.” Therefore, the change will be administered through the executive director’s subdelegation of signatures authority for permits and authorizations.

Reason Change Is Needed:

The petitioner maintains this change will be more expeditious and efficient in that the paper work does not have to go to Austin for processing and, thus, shortens the processing time. Because regional staff do the site inspections, they are closer to the issue and able to do the evaluation.

Affected Public:

The affected public (trench burner operators and their customers, and the general public) does not change under this proposal. The procedural change would provide a time savings to the same operators and customers while providing the same environmental protection to the general public by maintaining the identical operational criteria.

Recommendations:

Staff recommends that the petition be denied, and that the proposed procedural change to move the §106.496(18) approval process to the regional offices be accomplished by administrative means as opposed to rulemaking. The process can be transferred by the executive director from the New Source Review Permits Division to the section manager in regional offices.

Draft Regulatory Impact Analysis:

N/A

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Takings Impact Assessment:

N/A

Coastal Management Program Consistency Review

N/A

Affected Agency Programs:

The Field Operations Division and the New Source Review Permits Division are responsible for enforcing the trench burner standard exemption.

Agency Contacts:

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James Randall, New Source Review Permits Division, 239-1078
David Duncan, Environmental Law Division, 239-3465
Jim Reed, Field Operations Division, 239-0415
Bettie Bell, Texas Register Team, 239-6087

cc: 7 copies to the Chief Clerk for distribution

Attachment