

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 20, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

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

Docket No.: 2013-0457-RUL

Subject: Commission Approval for Rulemaking Adoption
30 Texas Administrative Code Chapter 111, Control of Air Pollution from
Visible Emissions and Particulate Matter
Add Wildfire Hazard Mitigation to Prescribed Burn Rule
Rule Project No. 2013-023-111-CE

Background and reason(s) for the rulemaking:

The Texas Prescribed Burning Board (TPBB) petitioned the Texas Commission on Environmental Quality (TCEQ or commission) to address wildfires in the state's prescribed burn rule. In particular, the TPBB asked for a revision that would add hazard mitigation to the rule. The commission approved the request at its February 27, 2013, agenda meeting and issued an order on March 5, 2013, directing the executive director to initiate rulemaking (Project No. 2013-018-PET-NR).

Scope of the rulemaking:

The rulemaking adds prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning in 30 Texas Administrative Code (TAC) §111.211, Exception for Prescribed Burn. Currently, a prescribed burn is allowed only for forest, range and wildland/ wildlife management purposes, or coastal salt-marsh management burning. A prescribed burn is defined in §111.203(5) as the controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures. The rulemaking would allow prescribed burning in other areas, such as where rural areas interface with urban areas, for the purpose of wildfire hazard mitigation in order to reduce the incidence, intensity, and spread of wildfires. While the petitioner did not specifically request that the hazard mitigation provision be specific to wildfires, the rulemaking to §111.211(1) is specific to wildfire hazard mitigation in order to provide clarity and specificity consistent with the commission's understanding of the TPBB's intent.

The adopted §111.211 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

A.) Summary of what the rulemaking will do: The rulemaking allows prescribed burns for the purpose of wildfire hazard mitigation.

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B.) Scope required by federal regulations or state statutes: The rulemaking is not required by federal regulation or state statute.

C.) Additional staff recommendations that are not required by federal rule or state statute: There are no additional staff recommendations.

Statutory authority:

The amended section is adopted under Texas Water Code (TWC), §5.102, General powers, §5.103, Rules, and §5.105, General Policy, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.018, Outdoor Burning of Waste and Combustible Material, which authorizes the commission to control outdoor burning; and §382.085, Unauthorized Emissions Prohibited, which prohibits unauthorized air emissions.

Effect on the:

A.) Regulated community: There would be no impact on the regulated community. This revision would not change or increase the equipment, training, or other resources needed to conduct a prescribed burn.

B.) Public: Public safety would improve because the rule revision would help reduce the incidence, intensity, and spread of wildfires.

C.) Agency programs: There would be no effect on agency programs.

Stakeholder meetings:

No stakeholder meetings were held. The TPBB met October 8, 2012, and took action by unanimous vote to request the rule change.

Public comment:

A public hearing was held on September 10, 2013. No comments were received at the hearing. During the public comment period, written comments were received from The Lone Star Chapter of the Sierra Club, Harris County Attorney's Office, Harris County Pollution Control Services Department, and EPA Region 6 office in Dallas. The Sierra Club generally supported the revision. General comments included: a concern that the revision

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would result in burning for land-clearing and the perceived need for additional definitions, the lack of a distinct approval process for each burn, and potential to impact the SIP.

In response, the commission did not make any changes because prescribed burning under this rulemaking does not allow for burning debris from land clearing. Additionally, the rule amendment will allow for specific outdoor burning activities that are currently approved by Regional offices on a case-by-case basis as an exception to the rule. The additional exception does not waive other local fire safety ordinances, or county burn bans. The revision is designed to streamline the approval process so that a prescribed burn will mitigate the hazards of a wildfire. The current rules approved by the EPA as part of the SIP allow the agency to approve prescribed burns for wildfire hazard mitigation purposes. Therefore, the adopted rule revision does not authorize new prescribed burns that were not already allowed on a case-by-case basis and is not backsliding under the SIP. Finally, controlled prescribed burns will lessen the frequency, duration, and intensity of wildfires, thus are expected to result in an improvement in air quality.

Significant changes from proposal:

No changes were made from the proposal of the rule.

Potential controversial concerns and legislative interest:

The rulemaking will be incorporated into the Texas SIP. The revision will not interfere with applicable requirements for attainment and for reasonable further progress toward attainment, or with any other applicable requirements of the Federal Clean Air Act. The revision is expected to improve air quality by reducing the incidence, intensity, and spread of wildfires. The amended §111.211, if adopted, will be subject to review and approval by the EPA as a SIP revision.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking will not affect current policies and will not prompt new policies. The TCEQ regulatory guidance document, Outdoor Burning in Texas (RG-049), will be revised to reflect the rule change.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Not going forward with this rulemaking would be in conflict with the commission's order to make the rule revision in response to a petition by the TPBB.

Without this rulemaking, prescribed burning for wildfire hazard mitigation will require case-by-case approval; which is the existing approach that has the potential to delay or postpone this important process for areas of the state that may be in the greatest risk.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** August 16, 2013

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Anticipated Texas Register adoption publication date: January 31, 2014

Anticipated effective date: February 6, 2014

Six-month Texas Register filing deadline: February 26, 2014

Agency contacts:

Joseph A. Janecka, P.E., Rule Project Manager, (512) 239-1353, Program Support Section,
Office of Compliance and Enforcement

Becky Petty, Staff Attorney, Environmental Law Division, Office of Legal Services (OLS),
(512) 239-1088

Michael Parrish, Texas Register Coordinator, General Law Division, OLS, (512) 239-2548

Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Tucker Royall
Office of General Counsel
Joseph A. Janecka, P.E.
Michael Parrish