

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 2, 2020

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

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

Docket No.: 2019-1096-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 111, Control of Air Pollution from Visible Emissions and
Particulate Matter
HB 2386: Amendment to Outdoor Burning Rules
Rule Project No. 2019-124-111-CE

Background and reason(s) for the rulemaking:

The adopted rulemaking will implement House Bill (HB) 2386, 85th Texas Legislature, 2017, by amending §111.209(5) to include volunteer firefighters, acting within the scope of their duties, to fulfill the requirements for providing supervision of the burning of waste. If adopted, the amendment will be submitted as a revision to the State Implementation Plan.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rule will add volunteer firefighters, acting within the scope of their duties, as an option to fulfill the requirements for providing supervision of the burning of waste at a designated site. The site must be located outside of a municipality and within a county with a population of less than 50,000. The only types of material allowed to be burned are trees, brush, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties for which the site is designated.

B.) Scope required by federal regulations or state statutes:

The adopted rule will implement HB 2386 by amending §111.209(5). HB 2386 amended Texas Health and Safety Code (THSC), §382.018(d), Outdoor Burning of Waste and Combustible Material. THSC, §382.018(d) states that the commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branches, trimmings, or other plant growth if certain conditions have been met. Specifically, burning is allowed if the person burning the waste is doing so at a site designated for consolidated burning of waste generated from specific residential properties. The burn site must be located in a county with a population of less than 50,000, located outside of a municipality, and supervised at the time of the burning by an employee of a fire department acting in the scope of the person's employment. HB 2386 added the wording "a volunteer firefighter acting in the scope of the firefighter's volunteer duties" to THSC, §382.018(d)(1)(D)(ii).

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C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

- THSC, §382.018(d)

Effect on the:

A.) Regulated community:

There should not be any new affected persons.

B.) Public:

With the addition of volunteer firefighters being able to supervise this specific type of outdoor burning in counties that might not have a paid fire department, members of the public residing in areas serviced by a volunteer fire department may now be able to conduct this type of outdoor burning.

C.) Agency programs:

No fiscal impact on the agency is anticipated concerning this rulemaking.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was offered during the comment period in Austin.

Public comment:

The commission offered a public hearing on June 1, 2020. The comment period closed on June 23, 2020. The commission did not receive any comments.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

None.

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

No.

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

This rulemaking is necessary to implement HB 2386. If the rulemaking does not move forward, the TCEQ will not be in compliance with the requirements of the statute.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: May 22, 2020

Anticipated *Texas Register* adoption publication date: November 6, 2020

Anticipated effective date: November 12, 2020

Six-month *Texas Register* filing deadline: November 22, 2020

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Attachments:

HB 2386 - 85th Texas Legislature

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