

# Texas Commission on Environmental Quality

## Interoffice Memorandum

To: Commissioners Date: March 18, 2016

Thru: Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

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

Subject: Consideration of a Petition for Rulemaking

Docket No.: 2016-0277-PET

Project No.: 2016-024-PET-NR

### **Who Submitted the Petition:**

On February 24, 2016, the Texas Commission on Environmental Quality (commission or TCEQ) received a petition for rulemaking from Jackson Walker LLP on behalf of the Texas Forestry Association (petitioner).

### **What the Petitioner Requests:**

The petitioner requests the commission amend 30 Texas Administrative Code (TAC) Chapter 111, Subchapter B, concerning Outdoor Burning, to provide specific requirements for prescribed burning conducted by Certified and Insured Prescribed Burn Managers (CPBMs), who are certified by the Prescribed Burning Board (PBB) of the Texas Department of Agriculture.

### **Recommended Action and Justification:**

The Executive Director (ED) recommends a rulemaking proceeding be initiated. The rule language proposed by the petitioner shall be evaluated to ensure consistency with current Texas Health and Safety Code statutes, State Implementation Plan commitments, and similar PBB regulations, as well as to confirm overall adherence to general outdoor burn regulations currently in place for the purpose of protecting the environmental health and safety of the state.

Current TCEQ rules provide an exception from the general prohibition on outdoor burning to authorize prescribed burning activities under specific conditions. However, TCEQ rules do not differentiate between those who conduct prescribed burning activities. As such, TCEQ regulations governing prescribed burning are the same for prescribed burn activities conducted by CPBMs, as defined in 4 TAC §225.1, as they are for prescribed burning conducted by other parties.

The ED understands the petitioner's concern that the TCEQ's current rules do not recognize CPBMs, who have been certified by the PBB and, therefore, have demonstrated they have met specific training and minimum experience level requirements to plan and oversee responsible prescribed burns. Accordingly, the ED agrees an amendment stipulating requirements specific only to CPBMs would benefit the public and the

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environment by promoting the ability of CPBMs to provide their services, thereby encouraging prescribed burns be conducted by trained and experienced managers.

However, while the ED agrees TCEQ's current rules should more closely align with PBB regulations, it is not clear how the petitioner's specific proposed rule changes would accomplish this goal. For example, the petitioner's proposed rule language slightly revises TCEQ notification requirements which are already substantively aligned with PBB rules at this time. As such, the ED does not agree the petitioner's proposed rule language revisions fulfill the intent of aligning TCEQ prescribed burning regulations with PBB regulations.

Lastly, per PBB rules found in 4 TAC §225.3, the "TCEQ regulates outdoor burning in Texas"; and the "prescribed burning standards established by the [PBB] represent the minimum requirements for conducting prescribed burning in the state of Texas [...] The standards do not, and are not intended to, preempt or supersede requirements established by state, federal, or private natural resource management organizations, but rather, are intended to serve as a baseline for effectively planning and conducting prescribed burns as a certified and insured prescribed burn manager." For this reason, TCEQ outdoor burn regulations shall not be revised in such a manner which would inhibit compliance determinations to be made by TCEQ.

**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
- 30 TAC §20.15, which provides such procedures specific to the commission
- 30 TAC §111.203, which provides definitions related to outdoor burning
- 30 TAC §111.211, which allows for the exception for prescribed burning
- 30 TAC §111.219, which provides general requirements for allowable outdoor burning
- 4 TAC §225.1, which defines CPBM
- 4 TAC §225.3, which provides minimum standards for prescribed burning
- 4 TAC §227.4, which details maintenance requirements of prescribed burn notification records
- 4 TAC §228.2, which details notification requirements prior to prescribed burns

**Agency Contacts:**

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**Attachment**  
Petition

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cc: Chief Clerk, 2 copies  
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