

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: July 3, 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 Proposed Rulemaking
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 rule revision would add at 30 Texas Administrative Code (TAC) §111.211, prescribed burning for wildfire hazard mitigation as an exception to the state's prohibition on outdoor burning. Currently, a prescribed burn is allowed only for forest, range and wildland/wildlife management purposes, and coastal salt-marsh management burning. A prescribed burn is defined in 30 TAC §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 proposed revision 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 proposed amendment 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.

If adopted, the amended §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 rule revision would allow prescribed burns for the purpose of wildfire hazard mitigation.

Commissioners

Page 2

July 3, 2013

Re: Docket No. 2013-0457-RUL

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 proposed under Texas Water Code (TWC), §5.103, Rules, and §5.105, General Policy, which authorize 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 proposed 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, which authorizes the commission to control outdoor burning; and §382.085, 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.

Potential controversial concerns and legislative interest:

The rule revision would be incorporated into the Texas SIP. The revision would 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.

Commissioners

Page 3

July 3, 2013

Re: Docket No. 2013-0457-RUL

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

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

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

Currently, a prescribed burn for wildfire hazard mitigation is authorized only by written permission case-by-case from the TCEQ executive director under 30 TAC §111.215. Currently, citizens either forgo prescribed burns for wildfire hazard mitigation because they are not aware of the option to seek authority from the TCEQ executive director, or are subject to enforcement, including those undertaken and encouraged by federal grant funding.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 26, 2013

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

Public hearing date: September 10, 2013

Public comment period: August 16, 2013 to September 16, 2013

Anticipated adoption date: January 8, 2014

Agency contacts:

Candy Garrett, Rule Project Manager, 239-1457

Joe Janecka, Program Lead, 239-1353

Becky Petty, Staff Attorney, 239-1088

Michael Parrish, Texas Register Coordinator, 239-2548

Attachments

Petition

Order Adopting Petition

cc: Chief Clerk, 2 copies
Executive Director's Office
Anne Idsal
Curtis Seaton
Tucker Royall
Office of General Counsel
Candy Garrett
Michael Parrish