Texas Register

Volume 16, Number 49, June 28, 1991 Pages 3555-3645

In This Issue...

Emergency Sections

Office of the Governor

3567–Criminal Justice Division

Texas Workers' Compensation Commission

3567–Medical Benefits

3569-Medical Benefits-Guidelines for Medical Services, Charges, and Payments

Proposed Sections

Office of the Governor

3571–Criminal Justice Division

Texas State Library and Archives Commission

3571–Library Development

Public Utility Commission of Texas

3572–Practice and Procedure

3573–Substantive Rules

Comptroller of Public Accounts

3575–Tax Administration

Withdrawn Sections

Public Utility Commission of Texas

3579–Substantive Rules

Adopted Sections

Department of Information Resources

3581–Planning and Management of Information Resources Technologies

Public Utility Commission of Texas

3581–Substantive Rules

Texas Department of Mental Health and Mental Retardation

3592–Other Agencies and the Public

Texas Workers' Compensation Commission

3593–Benefits-Guidelines for Medical Services, Charges and Payments

Texas Parks and Wildlife Department

3594–Fisheries and Wildlife

Texas Air Control Board

3605–Control of Air Pollution from Visible Emissions and Particulate Matter

Commission on Fire Protection Personnel Standards and Education

3611–Practice and Procedures

3616–Standards Manual

3624–Forms

CONTENTS CONTINUED INSIDE

public hunts on designated units of the state park system, restrict certain activities considered hazardous to the public or harmful to the resource, and expand hunting opportunity.

The adopted rules provide for harvest of wildlife resources consistent with recognized wildlife management tenets. The rules as adopted provide for sound management of wildlife resources and permit additional public hunting opportunity based upon scientific studies and investigations.

Comments concerning the proposed rules were received in the form of letters, telephone calls, and testimony at the public hearing. Comments primarily concerned the conduct of public hunts on state parks with three persons supporting such activity and 27 persons opposed. Two commenters supported the proposed designation of muzzleloading only deer hunts and one commenter requested designation of additional archer only hunts on state areas.

The Audubon Council of Texas opposed hunting of any kind in state parks.

A regional representative of the National Audubon Society stated that the organization did not object to hunts on state parks for management purposes, but was opposed to hunts on state parks conducted primarily for recreation. The representative suggested that the commission provide more guidance in selecting individual state parks to be hunted and allow for public input prior to the final decision to avoid conflict with use of state parks for conventional park purposes.

The Lone Star Chapter of the Sierra Club opposed recreational hunts on state parks and requested that the revised criteria for conducting hunts on state parks not be approved. The representative said that population control should be done by the most efficient means available and also stated that there was a need to provide some non-hunted areas for the public to enjoy.

Fund for Animals conveyed by telephone the organization's opposition to hunting of any type and especially public hunts on state parks.

Sportsmen's Conservationists of Texas supported the proposed amendments as they would provide for improved management of wildlife resources and increased public hunting opportunity.

Lone Star Bowhunters Association expressed a desire of the provision of additional archery only hunts on state areas.

The Parks and Wildlife Commission disagreed with several of the comments because they were judged not to be compatible with proper resource management on departmental areas.

Public hunts on state parks are conducted to properly manage the wildlife resource by removing surplus animals and maintaining populations under control so that damage to natural habitat or native species does not occur. Public hunts are the most cost efficient method available to the department to remove surplus animals. The taking of wildlife resources on state parks must meet the specific criteria of the Texas Parks and Wildlife Code, Chapter 62, Subchapter D, and §65.190(7)(A)-(C) of this proposal in order to be performed.

The commission after hearing and reviewing the public's testimony and staff's response to the testimony adopted the proposed amendments unchanged. The rules as adopted are reasonable and consistent with the commission's authority to manage wildlife resources along sound biological lines. The rules have as their factual basis scientific studies and investigations which track trends in wildlife resource populations and assess factors affecting those populations. These studies incorporated by reference, are available for public inspection at the Texas Parks and Wildlife Department, Headquarters Complex, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4770 or (512) 389-4770.

The amendments are adopted under the Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, number, means, methods, and conditions for taking wildlife resources on wildlife management areas; with respect to designated state parks, the commission is acting under the authority of the Texas Parks and Wildlife Code, Chapter 62, Subchapter D, which provides authority as sound biological management practices warrant to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife.

This agency hereby certifies that the amendments as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 21, 1991.

TRD-9107416 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: September 1, 1991

Proposal publication date: April 16, 1991

For further information, please call: 1-800-792-1112, extension 4770 or (512) 389-4770

♦ ♦ ♦

Part III. Texas Air Control Board

Chapter 111. Control of Air Pollution from Visible Emissions and Particulate Matter

• 31 TAC §§111.124, 111.125, 111.127, 111.129

The Texas Air Control Board (TACB) adopt new §111.124 and amendments to §§111.125, 111.127, and 111.129 with changes to the proposed text as published in the December 21, 1990, issue of the *Texas Register* (15 TexReg 7421). A new §111.124 and amendments to §§111.125, 111.127, and 111.129 are intended to regulate facilities, such as boilers, industrial furnaces, and cement kilns, which use hazardous waste from off-site sources as fuel on a commercial basis and are not regulated by the United States Environmental Protection Agency (EPA) under Subpart O of 40 Code of Federal Regulations (CFR) 264 or 265. The new §111.124 establishes emission and operational requirements for commercial combustion facilities which burn hazardous wastes a fuel. The amendments to §§111.125, 111.127, and 111.129 add testing, monitoring, and operational requirements for those facilities and include some minor editorial changes.

Public hearings were held on January 16, 1991, in Austin and New Braunfels; on January 17, 1991, in Midlothian; and on March 6, 1991, in Austin. Testimony was received from 42 commenters during the comment period which closed March 6, 1991. Two commenters supported the proposal. They were the City of Houston Department of Health and Human Services and State Representative Keith Oakley. Forty commenters opposed the proposal. They were the Cement Manufacturers Association of Texas, Inc. (CMAT); Lafarge Corporation and Systech Environmental Corporation; the City of New Braunfels; the Lone Star Chapter of the Sierra Club; EWK Consultants, Inc.; Texans United and Greenpeace; BFI Medical Waste Systems; E.I. du Pont de Nemours & Company; Henry & Kelly, Attorneys at Law; Texas-New Mexico Power Company; EPA; Southwestern Public Service Company; Sterling Chemicals, Inc.; BoxCrow Cement Company, L.P.; Southdown, Inc.; North Texas Cement Company; and 24 individuals. Overall, the commenters responded in a variety of ways to the proposed rules. Some commenters addressed the specific provisions in the proposal, others compared the proposal with recently published federal rules, and several addressed issues regarding the agency's permit review process. The following discussion initially addresses the more general comments, and, then, addresses the comments which deal with specific parts of the proposal.

The proposed rules generated a great amount of interest, both among the general public and the regulated community, with regard to regulating those combustion units which have been permitted to burn hazardous waste as fuel. A large number of the commenters who submitted oral and/or written testimony expressed concern with the issuance or cancellation of permits for specific combustion units or for cement kilns in general. The proposed rules are intended to regulate a particular type of permitted combustion facility statewide and do not involve the issuance of permits to individual facilities or the possibility of removing previously issued permits. Much of the testimony received at the New Braunfels and Midlothian hearings involved arguments against the permitting of such facilities. This testimony is not germane to the proposed rules and will not be discussed further. Several commenters suggested that commercial combustion facilities which burn hazardous waste as fuel be considered incinerators and that they be regulated as such. Currently, two cement kiln facilities in Texas are permitted by the TACB to burn hazardous waste. Kilns are industrial furnaces deigned to use several fuels to heat mineral-bearing materials in one step of the cement manufacturing process, while incinerators are designed solely to destroy wastes. Even though the two may appear identical superficially with regard to air contaminant emission, the designs of the units necessitate somewhat different regulations to control air pollution.

Several commenters, all members of the regulated community, requested that the TACB

not adopt regulations for commercial facilities which burn hazardous waste as fuel and, rather, adopt by reference the permitting rules for boilers and industrial furnaces (BIF) recently published by the EPA. The most notable of this testimony was submitted by the Cement Manufacturers Association of Texas and by Lafarge Corporation and Systech Environmental Corporation. These two commenters analyzed EPA's BIF rules in the greatest of detail, contrasting them with the TACB proposal and promoting EPA's rules as their preferred regulatory document.

The preamble to the TACB proposal never made any mention of the EPA rules and did not solicit comments regarding the possibility of adopting any or all of the federal rules. The EPA rules were designed to bring BIF units into the federal permitting system and, for the most part, are not structured appropriately for inclusion in the TACB rules. The EPA rules are more lenient than the TACB proposal with respect to standard for particulate and hydrogen chloride (HCl), with respect to implementation and compliance schedules, and with respect to exemptions. The TACB rules provide a more stringent standard for particulate matter and a more stringent, technology-based standard for HCl. The TACB rules do not exempt facilities from testing or other requirements, and they provide shorter compliance schedules and greater monitoring requirements. Furthermore, the Texas Water Commission (TWC) is the only state agency that has statutory authority to adopt EPA's BIF rules. The proposed TACB rules are intended to be an enforcement tool, independent of any conditions placed in a state or federal permit. In addition, testimony submitted by EPA contained neither a discussion of the federal rules nor a recommendation for the state to defer to those rules. EPA's comments treated the proposed rules as independent regulatory language.

In particular, the following issues were raised by CMAT.

EPA's BIF rules are more developed than the TACB proposal and, unlike the TACB proposal, followed five years of intensive scientific investigation, literature reviews, much public comment, and consultation with various experts. The TACB concedes that the BIF rules are more comprehensive and complicated. The TACB rules address a small subset of the facilities regulated by the BIF rules; that is, commercial burners. The simplicity of the TACB rules is not necessarily negative, and, in fact, the TACB rules are in many respects similar to the BIF rules. However, the BIF rules contain at least five exemption scenarios that would allow hazardous waste burning facilities to avoid compliance with various sections of the BIF rules. The TACB rules have no such exemptions because such exemptions are not in the best interests of effective air pollution control.

The BIF interim status standards accomplish the same protections of public health as do the TACB rules. The staff disagrees. EPA's interim status allows facilities to delay compliance testing a significant number of months and destruction removal efficiency testing can be delayed indefinitely. There- fore, the interim status standards do not protect public health to the same degree as do the proposed TACB rules, which establish definite deadlines.

BIF is extremely protective of health and the TACB rules may or may not be health protective. The staff disagrees. The BIF rules set limits of 100 parts per million (ppm) for carbon monoxide (CO) 20 ppm for hydrocarbons (HC) (in-stack concentrations). The TACB proposal would set standards for CO and HC based upon levels measured in the trial burn. These levels set by the TACB would be subject to the same health impact analysis as would any other emissions from a permitted facility. Therefore, the TACB approach will be more health protective overall.

An oxygen (O2) standard is not needed because CO and HC standards indicate when 02 is insufficient for complete combustion. Further, the 02 standard may actually cause harm because it may require additional excess air that would increase total flow of combustion gases to the atmosphere and decrease effi- ciency of the process. The staff disagrees. An 02 standard is necessary to assure minimum combustion efficiency. For example, low oxygen levels are suspected as the cause of confirmed odor nuisance conditions in Midlothian. Regarding excess air in cement kilns, it is true that the higher the excess air, the lower the production capacity of the kiln. However, the opinion of the staff is that the air quality benefits of the 02 standard far outweigh the slightly lowered production capacity.

The BIF rule standards for metals, chlorine (C12), and HCl are extremely well-developed, while the TACB proposal fails to provide any such standards The TACB proposal is parallel, if not identical, to the BIF rules for metals and C12. The TACB proposal exceeds the BIF rules for HCl since a technology-based, minimum removal efficiency and/or maximum allowable emission rate is required.

The TACB proposal contains no criteria to ensure adequate operation of pollution control devices. While the rules do not specifically address operation of pollution control devices, these requirements are contained in permit conditions for all affected facilities.

The BIF rules provide for a much more thorough automatic waste feed (AWF) cutoff because the TACB proposal excludes several important parameters that the BIF rules require to be tied in to the AFW system. The BIF rules are not necessarily more thorough than the TACB proposal since the TACB proposal allows the inclusion of "any other operating limit determined necessary by the executive director" to be connected to the AWF shutoff. In other words, under the TACB proposal, any appropriate process parameter can be connected to the AWF system and can, in fact, go beyond the scope of the BIF rules if determined to be necessary by the executive director.

General interim status standards are not mentioned in the TACB proposal. The majority of the BIF general interim status standards deal with issues such as site security, financial assurance, training, and emergency preparedness. While the staff feels that these issues are important, they do not directly relate to air pollution control.

What evidence does the TACB have to suggest that EPA was wrong to conclude that 18 months are required to implement necessary changes to comply with BIF rules? The staff believes that six months is an adequate period to allow for trial burn completion. This is consistent with EPA New Source Performance Standards testing requirements. Also, based on TACB experience, the staff believes that 12 months, as proposed, is sufficient time to amend or revise the permits for the two existing Texas plants in order to establish the health-based limits for the toxic air emissions.

Some commenters suggested that the proposal include provisions to regulate the transportation, storage, and handling of hazardous waste fuel, to regulate the handling and disposal of ash and captured particulate matter, and to require contingency plans for fuel spills. To the extent that they are regulated, these matters are subject to the rules of the TWC. The proper removal and loading of ash and captured particulate matter usually is addressed in the unit's permit conditions which specify that materials must be handled in a manner to prevent particles from becoming airborne. One commenter contended that concrete products made with cement from a kiln which burns hazardous waste should be labeled "made with hazardous waste." The TACB does not have the statutory authority or responsibility to regulate product labeling.

The opening sentence of §111.124 establishes the applicability of the section to commercial combustion facilities. Three commenters requested clarification of the term "commercial" with relation to off-site sources. Two other commenters recommended that applicability include on-site activities of companies which burn waste they produce. The intent of this rule is to apply only to BIF units which receive and burn hazardous wastes from other companies as fuel to recover energy. The commercial transaction assumes transport of the waste/fuel to the combustion unit from some other company's property, a change of ownership of the waste/fuel, and a direct or indirect financial benefit for disposal of the waste/fuel. Companies which produce waste and use it as fuel in their own furnaces or boilers are not involved in this process. In addition, waste mixtures received from off-site sources may vary in content and mixture from one shipment to the next, and once burned, can produce emissions just as varied. Companies which burn their own waste have a much more consistent waste mixture which will result in more consistently controlled emissions. Commercial burning needs a much higher degree of regulatory control. The wording of the sentence has been modified for clarification of both issues raised by the commenters.

A particulate matter limit of 0.08 grains per dry standard cubic foot (g/dscf) in the stack gas was proposed in §111.124(1). Several commenters recommended particulate matter limits, ranging from 0.05 g/dscf down to 0.008 g/dscf. In addition, two commenters objected to inclusion of particulate matter caught in the back half (impinger) of the particulate sampling device. The staff acknowledges that some individual permits for BIF units may contain somewhat lower particulate limits, but that the proposed limit is a reasonable level for statewide enforcement, particularly for cement kilns. Inclusion of all particulate caught in the sampling device, both front and back halves, provides more sampling accuracy, more stringency in the particulate limit, and consistency with stack sampling of hazardous waste incinerators.

One commenter recommended that the concentration limit for particulate be replaced with a mass emission rate stated, for example, in pounds per hour for the waste gas stream. The commenter's reason was that large stacks will emit greater total amounts of particulate under a specified concentration limit than small ones. The proposed concentration limit is a conventional method of regulating large-volume emissions and is protective of public health. It sets a single limit applicable to all stacks, rather than a range of emission rates which vary with stack size and parameters, as was suggested by the commenter.

Another commenter suggested that the correction to 7.0% oxygen (O2) be allowed only if the post-combustion 02 levels exceed 7.0% to discourage the operator from lowering 02 levels during operations. The correction to 7.0% 02 is consistent with industrywide calculation methods and with regulatory calculations for similar types of units. The 7.0% level represents a standard point of reference for calculation and is not an operational specification. A consultant contended that cement kilns are not adequately equipped to handle metallic and other particulate emissions from the burning of hazardous waste as fuel. The staff disagrees since electrostatic precipitators (ESPs) and baghouses have proven to be effective control devices for those emissions.

Several commenters, including EPA, suggested the addition of an opacity limit of 5.0% or 10%. An opacity limit was not included in the proposal; however, the opacity limits for visible emissions contained in §111.111 are applicable and adequately stringent. The EPA commenter indicated that the 30% opacity limit in §111.111 for facilities built before 1972 appears to be incompatible with the proposed mass particulate limit, 0.08 g/dscf, in §111. 124. The commenter argued that a unit which operates at 30% opacity will surely exceed the 0.08 g/dscf particulate limit. The TACB staff does not believe that there is sufficient evidence, at this time, to demonstrate such 100% correlation between 30% opacity and mass emissions greater than 0.08 g/dscf. The proposal does not present a choice between an opacity limit and a particulate limit. The particulate limit mut be met, even if the resulting opacity, by necessity, is lower than 30%.

Several comments were received regarding the HCl removal efficiency proposed in §111.124(2). A cement company recommended that the requirement for an HCl control device be deleted, contending that the alkaline content of a kiln causes a reduction in HCl of more than 95%. Other commenters suggested HCl minimum removal efficiencies (MREs) much higher than 95%. The MRE computation will be based on the difference between the total chlorides entering the unit from all sources and the chloride in the hydrogen chloride emitted from the unit, expressed as a percentage of the incoming chloride. The staff supports a 95% MRE based on the results of EPA sampling of cement kilns which showed an MRE range of 90-99% and the concept of allowing the kiln operator the option of achieving the 95% MRE with or without a control device. The wording of paragraph (2) has been modified to provide that option.

An individual recommended that the rule prohibit any increase in particulate and vaporized liquids from units which switch fuels. The commenter appears to assume that a switch from a conventional fuel, such as coal, to hazardous waste as fuel will result in particulate and "vaporized liquids" emissions increases. The staff finds no basis for this assumption.

Paragraph (3) of §111.124 requires a destruction and removal efficiency (DRE) of at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed. An individual recommended that the rule include a specific plan to control "transient or puff" emissions which could lower the DRE below 99. 99%. These momentary high readings, or "spikes," are infrequent, difficult to prevent, and not readily quantifiable, but are included with all monitored data to be averaged for a one-hour period. The same commenter recommended that the DRE level be determined based on the "most toxic member" of the dioxin/furan families being burned. Dioxins and furans are manufacturing contaminants and, also, are products of combustion present in emissions from boilers and industrial furnaces firing a variety of fuels. Dioxin- and furan-containing wastes (EPA Hazardous Wastes F020, F021, F022, F023, F026, and F027) are not permitted in the waste feed for BIF units in Texas, so a DRE is not applicable. The proposed rule requires enforceable emissions limits for dioxins/furans and chlorine generated from the combustion process as "toxic products of incomplete combustion" under §111.124(5). Another commenter suggested that the 99.99% DRE be required for each class of fuel, with a stack test for each class burned, and that an acid gas scrubber be used to remove chlorinated compounds. A 99.99% DRE is provided for in paragraph (3) of §111.124, a stack test representative of each class is required in paragraph (4), and a scrubber would be specified, as needed, in a permit. The POHCs selected under §111.124(3) may be used to qualify more than one class of compounds in the waste stream. A third commenter suggested a 99.9999% DRE for the trial burn so that a 99.99% DRE could be assured during regular operations. The staff believes that the requirement to use the trial burn to establish operating limits for subsequent operations, under §111.124(4), is sufficient to ensure a consistent DRE of 99.99%. A 99. 99% DRE is consistent with the requirements of the EPA BIF regulations in Subpart H and incinerator regulations in Subpart 0.

EPA requested the addition to §111.124 of a requirement for minimum temperature and residence time for all combustion gases. BIF units, particularly cement kilns, have high combustion temperatures and long residence times which are adequate to guarantee appropriate destruction of hazardous waste. These two functions are addressed on a case-by-case basis in individual permits and all facilities which burn hazardous waste as fuel must have permits.

The requirement for a trial burn was proposed in §111.124(4). Several commenters seemed to misunderstand the overall principle and purpose of the trial burn. Others objected to specifications for the performance of a burn established by EPA at 40 CFR 270.62 or for the operating limits proposed in paragraph (4). The purpose of a trial burn is to test the operating capabilities of the unit and to establish performance characteristics which can be met on a regular basis. The trial burn presents an opportunity for the unit operator to try different operational combinations in order to bring emissions within established limits. The operator may choose compound concentrations in any quantity, but is not required by the proposed rule to test simultaneous maximum concentrations of all compounds, as was interpreted by one commenter. After those combinations are approved, they define the operational control needed in all future burning.

In response to one question about the TACB's role at a trial burn, the TACB will approve the burn protocol and will have technical staff present to observe and quality assure the procedure. Regarding suggested changes to the operating limits to be monitored during the trial burn, the staff supports the items proposed in subparagraphs (A)-(G) as essential parameters to be observed during a trial burn and finds no basis for any reduction of the list. Of particular value is the provision in subparagraph (G), which allows the agency to set additional operating limits on a case-by-case basis. Regarding commenters' concerns with the federal specifications for trial burns, any suggestions would have to be presented to EPA. EPA requested the addition of a requirement for EPA approval of any changes or substitutions in future burning subsequent to a trial burn to enhance federal enforcement of the state rule. Placement of such a requirement in the rule would not be appropriate or necessary and the additional paperwork resulting from such a requirement would be burdensome on the unit operator. EPA will obtain enforcement ability once the rule is approved for inclusion in the State Implementation Plan. If necessary, some procedural agreement on enforcement could be developed without involving a change in the rule. The word "prior" has been deleted from paragraph (4) to clarify that agency approval of changes must occur before changes are made, but not necessarily during the original trial burn.

Several commenters expressed concern that day-to-day combustion process variations may create conditions different from those of the trial burn and cause a violation of the regulation or the conditions of the unit's permit. The unit operator should design the trial burn plan to encompass all anticipated operational variations. Those which pass the test will be included in the unit's scope of allowable operations, but others will subject the company to enforcement action.

Section 111.124(5) restricts the burning of waste containing chlorinated compounds and certain metals, unless the agency has established enforceable emissions limits for the metals present in the waste feed and for toxic products of incomplete combustion (PICs). One commenter asked how, when, and at what levels the agency would set enforceable emissions limits. These limits in all cases are specified in the unit's permit and must be determined on a case-by-case basis. A second commenter asked which PICs would have limits. Certain polychlorinated dibenzo-p-dioxins, certain polychlorinated dibenzofurans, total hydrocarbons (which include all organic PICs), and chlorine gas resulting from the burning of chlorinated compounds must have limits in the permit. The same commenter requested the addition of nickel and selenium to the list of metals in

paragraph (5). These metals, also not chosen to be addressed by EPA's BIF rules, will be included in permitting on a case-by-case basis. A third commenter recommended before-and-after stack monitoring if any chlorinated compounds are burned. The permit limit established for any toxic PIC will carry a requirement for appropriate controls and/or limits in the use of chlorinated fuel. As stated in the rule, the enforceable limits for metals and toxic PICs will be designed to protect public health.

An individual recommended that sulfur-containing wastes and wastes containing the other halogens (fluorine, bromine, and iodine) be included with chlorine in the provisions of §111.124(5). Sulfur compound emissions, whether from burned coal or from burned waste, are addressed in a unit's permit. Fluorine, bromine, and iodine are not typically present in waste in sufficient quantities to warrant inclusion in the section, but are addressed in a unit's permit as necessary.

Section 111.124(8) requires an automatic waste feed cutoff system if approved operation limits are not met. One commenter pointed out that the paragraph does not specify the conditions under which the unit may resume the burning of waste. The staff recognizes the point of concern to the commenter and has added additional wording to state the conditions needed for continued operations.

One commenter recommended a complete ban on waste burning during start-up and shutdown. Section 111.124(7), as proposed, is worded to prohibit the introduction of waste into the unit during start-up or shutdown unless the approved operational limits are being met.

Section 111.124(8) requires control methods for fugitive emissions from the unit. No substantive comments were received concerning this paragraph.

Section 111.124(9) specifies compliance dates for the first eight paragraphs of §111.124 with regard to currently permitted facilities. Two commenters remarked that having existing facilities meet the proposed compliance dates is not possible since one has expired and the other is only a short time away. The staff agrees with the commenters and has extended the compliance dates to December 31, 1991 and July 31, 1992, respectively. Facilities permitted in the future will have specific compliance dates included in the permit conditions. The staff has added wording to paragraph (9) to clarify this difference.

Section 111.125 specifies testing requirements for both incinerators and for commercial combustion facilities. A cement company noted that this section, and §111.127 and §111.129, seem to be much more appropriate for incinerators than for cement kilns. The staff acknowledges that these sections may appear that way, but, that they are quite applicable to both types of facilities. In order to clarify the wording of the three sections, the staff has added reference to commercial combustion facilities, where needed, to provide more of a distinction between requirements for incinerators and for commercial combustion facilities.

The staff has corrected a typographical error in §111.125(5). "SW-486" should read "SW-846" at the end of the paragraph. Also, by agreement with the staff of the Texas Register Division of the Secretary of State's office, new subtitles have been added to paragraphs (5) and (6) for consistency with the other paragraphs in the section.

EPA requested that the TACB remove from paragraph (6) of §111.125 the words "equivalent test methods" and replace them with wording to allow only "minor modifications" to test methods. No substantive changes were proposed for paragraph (6). Changes suggested by the commenter would need to be considered in future rulemaking.

Section 111.127 was amended to add monitoring requirements for commercial combustion facilities. Ambient monitoring was recommended by several commenters to track specific contaminant emissions from commercial combustion facilities which burn hazardous waste as fuel. The agency conducts site-specific ambient monitoring on a case-by-case basis. However, permanently sited ambient monitoring is a costly part of the agency's operations which must be planned and considered within the budget and legislative appropriation processes. Further, any requirement for individual facilities to purchase and maintain ambient monitors would be beyond the scope of this rulemaking.

EPA submitted two new subsections to be added to §111.127, which would require unit operators to conduct daily inspections of equipment and frequent tests of the automatic waste feed cutoff system. The suggested requirements appear to have merit, but would need to be considered in future rulemaking. Two commenters recommended a requirement for stack sampling each six months. Such a requirement is not reasonable and is unnecessary for enforcement purposes. Continuous emissions monitoring, as specified in §111.127(c), is designed to detect abnormalities and to verify normal operations.

An individual contended that night burning should be prohibited because observers are unable to conduct opacity readings in the dark. The continuous emissions monitor for opacity is capable of nighttime readings. The same commenter recommended that radioactive wastes be banned from the waste feed. Radioactive wastes are heavily regulated by at least two state agencies and the United States Nuclear Regulatory Commission. Such materials are subjected to highly controlled disposal procedures and are not available for blending with combustible wastes.

One commenter requested clarification of the applicability of §111.127(c) to medical waste incinerators with regard to continuous monitoring of total hydrocarbons (THC). The provisions of §111.127(c) apply to commercial combustion facilities which burn hazardous waste as fuel. Monitoring requirements for medical waste incinerators are included in §111.127(a).

A cement company suggested that combustion temperatures be indicated by some appropriate indicator, such as product quality, rather than by direct temperature measurement. The commenter contended that the high combustion temperatures (3,200-3,600 degrees Fahrenheit) in a kiln make direct measurement impossible and that alternative methods, such as optical pyrometers, have proven to be unreliable. The use of a subjective evaluation such as product quality is not enforceable as a measurement of temperature even though the preferred "quality" of the product may be highly correlated with temperature. Electronic and optical method are available which can accomplish the measurement of temperatures typically found in a kiln.

Four commenters argued that any upsets should be reported to local government officials and neighbors and that monitoring and reporting records should be available to the public. All monitoring and upset reports are available to the public at the TACB regional offices. All records, except confidential information, relating to specific permits are available from the TACB. In addition, the board recently adopted amendments to §101.6, concerning Reporting Requirements for Major Upsets, designed to strengthen the agency's ability to obtain comprehensive information following a major upset. As a matter of practice, TACB regional offices inform local officials of upsets which may impact nearby public areas.

A consultant recommended a monitoring specification for negative 0 pressure and temperature in the combustion zone and questioned the correction of readings to 7.0% 02- A requirement for negative pressure is included in §111.124(1), and a minimum temperature specification, as explained earlier, is unnecessary for most units. Also, as mentioned earlier, a correction to 7.0% O2 through the calculation formula simply standardizes the results of monitoring.

No substantive comments were received on proposed changes to §111.129.

A commenter pointed out that the proposal lacked penalties and other enforcement measures. Normal TACB enforcement procedures apply to commercial combustion facilities and include, among other things, notices of violation and penalties for rule violations. A consultant proposed that commercial combustion facilities be inspected regularly by private contractors with expenses paid by the facility owner, and another commenter suggested having inspectors stationed at each facility site. The TACB, EPA, and authorized local agencies hold the statutory responsibility and authority to maintain an enforcement staff and to conduct air quality inspections. These responsibilities cannot be delegated to private contractors, and the TACB has neither the statutory authority nor the appropriated funds to station inspectors permanently on company property.

A great number of the comments received addressed issues which are beyond the scope of this rulemaking. In addition to those mentioned previously, a significant number related to the agency's permitting activities and the provisions normally specified as permit conditions. Some of those issues were the use of best available control technology, the injection of fuel into the hot end of the combustion unit, analysis of the waste feed, health effects review and risk assessment, dispersion modeling, minimum temperature and residence times, the percentage of waste burned with relation to all fuels, and operation/contingency plans. Other issues regarded activities not conducted or regulated by the TACB and included compliance history review, environmental risk assessment, dis-

tance limits, the training of industrial employees, and planning for transportation, handling, and spillage of wastes.

These amendments are adopted under the Texas Clean Air Act (TCAA), §382.017 Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

*§111.124. Burning Hazardous Waste Fuels in Commercial Combustion Facilities.*em>No person shall cause, suffer, allow, or permit the burning of hazardous waste as fuel for energy recovery in any facility that accepts hazardous waste as fuel from off-site sources which involves a commercial transaction or a change in ownership of the waste and is not regulated by the United States Environmental Protection Agency at 40 Code of Federal Regulations (CFR) Part 264 or 265, Subpart 0, unless the following requirements are met.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter or 0.08 grain per dry standard cubic foot, to include particulate matter caught by impinger train, when corrected for 7.0% oxygen in the stack gas according to the formula specified in §111.121(1) of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators).

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (four pounds) per hour shall be controlled with a minimum removal efficiency of 95%.

(3) Destruction and removal efficiency (DRE) shall be at least 99.99% for each principal organic hazardous constituent (POHC) in each waste feed. The POHCs shall be selected according to the method at 40 Code of Federal Reuglations Part 264.342 and shall be approved in advance by the Executive Director. DRE shall be determined using the following formula:

$$DRE = \frac{(Win - Wout)}{Win} \times 100\%$$

in which

Win = the mass feed rate of an approved POHC in the waste stream feeding the combustion facility,

and

Wout = the mass emission rate of the same POHC present in exhaust emissions of the combustion device prior to release to the atmosphere.

(4) The facility shall perform a trial burn according to the requirements listed at 40 Code of Federal Regulations Part 270.62 to determine compliance with paragraphs (1)-(3) of this Section. The operating conditions and waste feed composition during a trial burn demonstrating compliance with the requirements of paragraphs (1)-(3) of this section shall be maintained as limits for subsequent operation for the facility. Substitution of new hazardous waste constituents and increases in the concentration of any hazardous waste constituent compared to the conditions existing during the trial burn will require retesting, unless such change or substitution has received written approval from the executive director. The operating limits shall be monitored continuously and shall include the following:

(A) maximum carbon monoxide level in the exhaust gas of the combustion device;

(B) minimum oxygen level in the exhaust gas of the combustion device;

(C) maximum waste feed rate to the combustion device;

(D) minimum combustion temperature;

(E) an appropriate indicator of combustion gas velocity;

(F) maximum total hydrocarbons in the exhaust gas of the combustion device; and

(G) any other operating limit determined necessary by the Executive Director to ensure that the requirements of paragraphs (1)-(3) of this section are met.

(5) The facility shall not burn any chlorinated hazardous waste or hazardous waste containing any of the following metals, unless the Executive Director has established an enforceable emission limit designed to protect public health for each metal and for toxic products of incomplete combustion.

Metals

Arsenic	Chromium
Antimony	Lead
Barium	Mercury
Beryllium	Silver
Cadmium	Thallium

(6) The facility shall maintain an automatic waste feed cutoff sytem which shall activate if the facility is not operating within the limits determined in accordance with paragraph (4) of this section and shall remain activated until the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(7) During tart-up or shutdown of the facility, hazardous waste fuels must not be fed into the combustion zone unless the facility is operating within the limits determined in accordance with paragraph (4) of this section.

(8) Fugitive emissions from the combustion zone shall be controlled by maintaining the combustion zone pressure lower than atmospheric pressure or by keeping the combustion zone totally sealed to prevent fugitive emissions.

(9) Compliance with the requirements of paragraphs (1)-(4) and (6)-(8) of this section shall be as soon as practicable, but no later than December 31, 1991. Compliance with paragraph (5) shall be as soon as practicable, but no later than July 31, 1992. This paragraph applies to facilities burning hazardous waste as fuel prior to the effective date of this section. Facilities permitted after that date will be subject to compliance dates specified by permit.

§111.125. Testing Requirements. Upon the request of the executive director or a designated representative of the Texas Air Control Board, or a representative of the United States Environmental Protection Agency, or the local air pollution control agency, compliance with §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators) and §111.123 of this title (relating to Medical Waste Incinerators) shall be demonstrated by application of the test methods included in paragraphs (1)-(4) of this section, as appropriate. Compliance with §111.124 of this title (relating to Burning Hazardous Waste Fuels in Commercial Combustion Facilities) shall be demonstrated by application of the test methods included in paragraphs (1)-(5) of this section. Test reports prepared to demonstrate compliance with §111.124 shall clearly document the operating conditions and waste feed composition existing during the test.

(1)-(4) (No change.)

(5) Destruction and removal efficiency. Destruction and removal efficiency, measuring principal organic hazardous constituent (POHC) mass feed rate to the commercial combustion facility, measuring the mass emission rate of POHC in the stack gas, and analyzing the POHC sample obtained from the stack gas, using the following test methods, respectively: Method 8240 of SW-846 "Test Methods for Evaluating Solid Waste," Method 0030 (VOST) of SW-846, Method 5040 of SW-846.

(6) Alternative methods. Equivalent test methods approved by the executive director.

§111.127. Monitoring Requirements.

(a) (No change.)

(b) The owner or operator of an incinerator or commercial combustion facility subject to the requirements of §§111.121; 111.123; 111.124; and 111. 125 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators; Medical Waste Incinerators; Burning Hazardous Waste Fuels in Commercial Combustion Facilities; and Testing Requirements), respectively, shall maintain written records of all monitoring and testing results, hours of operation, and quantity of waste burned. Such records shall be retained for a period of not less than two years before being destroyed. Such records shall be made available upon request by authorized representatives of the TACB, United States Environmental Protection Agency (EPA), or local air pollution control agencies. Alternately, for facilities other than commercial combustion facilities, in the absence of records verifying waste quantities burned, the design capacity of the unit will be used to determine applicable controls.

(c) The owner or operator of a commercial combustion facility subject to the requirements of §111.124 of this title (relating to Burning Hazardous Waste Fuels in Commercial Combustion Facilities) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the waste feed rate, combustion gas velocity, opacity, oxygen content, carbon monoxide (CO) content, total hydrocarbon (THC) content, and temperature of the exhaust gas of the combustion device. CO and THC shall be corrected to 7.0% oxygen, reported on a dry basis, and measured in the same location. The oxygen, THC, CO, combustion gas velocity, and opacity devices must be certified for use following procedures outlined in 40 Code of Federal Regulations Part 60. Such certification must be approved by the Executive Director or his designated representative of the TACB. Compliance determinations may be made based on results of monitoring with a certified monitor.

(d) Upon the request of the executive director or a designated representative of the TACB, EPA, or local air pollution control agency, the owner or operator of an incinerator which is exempt from the requirements specified in §111.121 of this title (relating to Single-, Dual- and Multiple-Chamber Incinerators) and whose incinerator has the capacity to burn more than 100 pounds per hour shall maintain written records of the amount of waste burned. Such records shall be retained for a period of not less than two years before being destroyed.

§111.129. Operating Requirements. The owner or operator of incinerators or commercial combustion facilities subject to the requirements of §§111.121; 111.123; 111.124; 111.125; and 111.127 of this title (relating to Single-, Dual-, or Multiple-Chamber Incinerators; Medical Waste Incinerators; Burning Hazardous Waste Fuels in Commercial Combustion Facilities; Testing Requirements; and Monitoring and Recordkeeping Requirements), respectively, shall meet the following operating requirements:

(1)-(2) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 20, 1991.

TRD-9107379 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 11, 1991

Proposal publication date: December 21, 1990

For further information, please call: (512) 908-1770

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTION

Part VIII. Commission on Fire Protection Personnel Standards and Education

Chapter 231. Practice and Procedures

• 37 TAC §§231.1-231.56

The Commission on Fire Protection Personnel Standards and Education adopts the repeal of §§231.1-231.56 and new §§231.1, 231.3, 231.5, 231.7, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.29, 231.31, 231.33, 231.35, 231.37, 231.39, 231.41, 231.43, 231.45, 231.47, 231.49, 231.51, 231.53, 231.55, 231.57, 231.59, 231.61, 231.63, 231.65, 231.67, 231.69, 231.71, 231.73, 231.75, 231.77, 231.79, 231.81, 231.83, 231.85, 231.87, 231.89, 231.91, 231.93, 231.95, 231.97, 231.99, 231.101, 231.103, 231.105, and 231.107 concerning practice and procedure and administration practice and procedure.

New §§231.1, 231.3, 231.5, 231.7, 231.9, 231.11, 231.15, 231.17, 231.19, 231.21, 231.25, 231.27, 231.35, 231.37, 231.39, 231.41, 231.43, 231.47, 231.53, 231.55, 231.57, 231.59, 231.61, 231.63, 231.67, 231.69, 231.71, 231.77, 231.79, 231.83, 231.85, 231.93, 231.95, 231.97, 231.99, 231.103, and 231.105 are adopted with changes to the proposed text as published in the April 16, 1991, issue of the *Texas Register* (16 TexReg 2216).

The repeal of §§231.1-231.56 and new §§231.13, 231.23, 231.29, 231.31, 231.45, 231.49, 231.51, 231.65, 231.73, 231.75, 231.81, 231.87 231.89, 231.91, 231.101, and 231.107 are adopted without changes and will not be republished.

The repeals are necessary to delete obsolete, contradictory, and inadequate language which is seriously hampering the commission in its actions to comply with its legislative mandates. The new sections supply the rules of procedure for the administrative operation of the agency. They will provide clear and concise language to aid in agency operation and promote a better understanding of agency procedures.

The repealed sections will be replaced with new sections and the rules established by these new sections will be used to conduct all business before the agency.

No comments were received regarding adoption of the repeals and new sections.

The repeals are adopted under the Government Code, Executive Branch, Chapter 416, §416.007 which provides the Commission on Fire Protection with the authority to adopt rules for the administration of this chapter and for the commission's internal management and control.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1991.

TRD-9107284 K. R. Ethridge
Field Representative
Commission on Fire Protection Personnel Standards and Education

Effective date: July 10, 1991

Proposal publication date: April 16, 1991

For further information, please call: (512) 837-9851

♦ ♦ ♦

• 37 TAC §§231.1, 231.3, 231.5, 231.7, 231.9, 231.11, 231.13, 231.15, 231.17, 231.19, 231.21, 231.23, 231.25, 231.27, 231.29, 231.31, 231.33, 231.35, 231.37, 231.39, 231.41, 231.43, 231.45, 231.47, 231.49, 231.51, 231.53, 231.55, 231.57, 231.59, 231.61, 231.63, 231.71, 231.73, 231.75, 231.77, 231.79, 231.81, 231.83, 231.85, 231.87, 231.89, 231.91, 231.93, 231.95, 231.97, 231.99, 231.101, 231.103, 231.105, 231.107

The new sections are adopted under the Government Code, Executive Branch, Chapter 416, §416.007 which provides the Commission on Fire Protection with the authority to adopt rules for the administration of this chapter and for the Commission's internal management and control.

§231.1. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant–A petitioner or a party or parties seeking document of certification or rule from the commission.

Commission–The Texas Commission on Fire Protection Personnel Standards and Education.

Commissioner–One of the appointed members of the decision making body defined as the "Commission."

Complainant–Any party who has filed a signed, written complaint with the commission, against any party subject to the jurisdiction of the commission.

Contested Case–A proceeding, including but not restricted to the issuance of certificates, permits, etc., in which the legal rights, duties, or privileges of a part are to be determined by the commission after an opportunity for adjudicative hearing.

Director–The executive director in charge of the commission office.

Division–An administrative unit for regulation of specific activities within the jurisdiction of the commission.

Examiner–Any person appointed by the commission to conduct hearings on matters within the commission's jurisdiction.

Intervenor–Any party otherwise not defined.

License–The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

Licensing–The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Party–Each person or agency named or admitted as a party.

Person–Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Petitioner–An applicant or a party or parties seeking document of certification or rule from the commission.

Pleading–Written allegations filed by parties concerning their respective claims or objections.

Protestant–Any party opposing an application or petition filed with the commission.

Register–The *Texas Register*.

Respondent–Any party against whom any complaint has been filed.

Rule–Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of an agency and not affecting private rights or procedures. This definition includes substantive regulations.

§231.3. Objective. The purpose of these rules is to provide for a simple and efficient system of procedure before the commission, to ensure uniform standards of practice and procedure, public participation, notice of commission actions, and a fair and expeditious determination of causes. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

§231.5. Scope. This chapter shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the commission. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission, or the substantive rights of any person.