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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part III. Texas Air Control Board

### Chapter 101. General Rules

#### • 31 TAC §101.1

The Texas Air Control Board (TACB) proposes an amendment to §101.1, concerning definitions. One proposed amendment would modify the existing definition of "incinerator" to stipulate that any combustion device which burns more than 5.0% or more of solid waste on a total Btu heat input basis averaged over a one-hour period shall be considered an incinerator. The existing definition of industrial solid waste would be revised to delete the reference to hazardous waste and make the definition consistent with that of the Texas Water Commission. The TACB also proposes to add a definition of solid waste in order to aid in the consistency of enforcing existing rules relating to facilities which incinerate various types of solid waste.

Bennie Engelke, director of administrative services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Lane Hartssock, director of the planning and development program, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improved understanding and more consistent application of TACB regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on this proposal is scheduled for 2 p.m. on August 27, 1991, in the auditorium of the TACB, located at 12124 Park 35 Circle, Austin.

Copies of the proposals are available for inspection at the TACB central office and at all regional offices. Public comment, both oral and written, on the proposals is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on August 29, 1991, will be included in the hearing record. For further information, contact Karen Kirkpatrick, (512) 908-1460.

The amendment is proposed under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**§101.1. Definitions.** Unless specifically defined in the Texas Clean Air Act (the Act) or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms

which are defined by the Act, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Incinerator**—An enclosed combustion apparatus and appurtenances thereto which is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste, and which is equipped with a flue for conducting products of combustion to the atmosphere. **Any combustion device which burns 5.0% or more of solid waste on a total British thermal unit heat input basis averaged over any one-hour period shall be considered an incinerator.** An open-trench type (with closed ends) combustion unit may be considered an incinerator when approved by the executive director.

**Industrial solid waste—Solid waste [waste] resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations [which may include hazardous waste].**

**Solid waste—Garbage; rubbish; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control equipment; and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 24, 1991.

TRD-9108852

Lane Hartssock  
Director, Planning and  
Development Program  
Texas Air Control Board

Earliest possible date of adoption: September 2, 1991

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

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

#### Incineration

##### • 31 TAC §111.121, §111.127

The Texas Air Control Board (TACB) proposes to amend the undesignated head concerning incineration, including §111.121, concerning single-, dual-, and multiple-chamber incinerators, and §111.127, concerning monitoring and recordkeeping requirements. The proposed revision of §111.121 would specify that the requirements of the section do not apply to hazardous waste incinerators, which are controlled under other TACB and federal regulations. The requirements of this section, however, are intended to apply to municipal and industrial boilers. Commenters seeking a change in this

requirement will need to provide verifiable data demonstrating why the change should be made, including documentation that air quality would not be adversely impacted.

Also in §111.121, the TACB proposes to allow incinerators to operate at oxygen concentrations below what is currently required, provided they can continuously demonstrate compliance with existing carbon monoxide or total hydrocarbon standards. The proposed revision of §111.127 clarifies that compliance with the existing carbon monoxide or hydrocarbon standards can be demonstrated using a rolling hourly average.

Bennie Engelke, director of administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Lane Hartssock, director of the planning and development program, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clarification of TACB rules, more consistent application of TACB and federal regulations, and added flexibility by which industrial sources can comply with the regulation without adversely affecting air quality. There will be no effect on small businesses. There is no anticipated economic cost to persons or industries which are required to comply with the sections as proposed.

A public hearing on this proposal is scheduled for 2 p.m. on August 27, 1991, in the auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed revisions are available from Karen Kirkpatrick at the central office of the TACB located at 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed revisions is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on August 29, 1991, will be included in the hearing record.

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

**§111.121. Single-, Dual-, and Multiple-Chamber Incinerators.** No person shall cause, suffer, allow, or permit the burning of domestic, municipal, commercial, or industrial solid waste as defined in §101.1 of this title (relating to Definitions) in a single-, dual-, or multiple-chamber incinerator unless the conditions listed in paragraphs (1)-(7) of this section [below] are met. For purposes [the purpose] of this section, the term "commercial waste" shall be defined as waste material generated from retail and wholesale establishments. The requirements of this section do not apply to hazardous waste incinerators.

(1)-(3) (No change.)

(4) Oxygen content shall be maintained at greater than 4.0% by volume of the emissions of the incinerator, measured at the exit of the incinerator, or at an alternate location approved by the executive director or a designated representative of TACB. Incinerators subject to the requirements of this section may operate at oxygen concentrations less than 4.0% by volume if compliance with paragraph (3) of this section can be continuously demonstrated at a lower oxygen concentration.

(5)-(7) (No change.)

#### *§111.127. Monitoring and Recordkeeping Requirements.*

(a) Incinerators burning not more than 100 pounds per hour of medical waste as specified in §111.123 of this title (relating to Medical Waste Incinerators) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the temperature of the exhaust gas of the incinerator. All incinerators burning more than 100 pounds per hour of waste as specified in §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators) and §111.123 shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the oxygen content and temperature of the exhaust gas of the incinerator. The monitoring device for incinerators equipped with a wet scrubbing device shall continuously measure and record the pressure drop of the gas flow through the wet scrubbing device. Commercial medical waste incinerators and incinerators burning more than 225 pounds per hour of domestic, municipal, commercial, medical, or industrial solid waste shall be equipped with continuous emissions monitors which measure and record in-stack carbon monoxide in addition to the other requirements of this section. For nonmedical incinerators, a total hydrocarbon monitor may be substituted for the carbon monoxide monitor if a total hydrocarbon standard is established pursuant to §111.121(3). The oxygen, total hydrocarbon, and carbon monoxide monitoring devices described in this section must be certified for use following procedures outlined in 40 Code of Federal Regulations 60, Appendix B, Performance Specifications 3 and 4, respectively. Such certification must be approved by the executive director or a designated representative of the Texas Air Control Board (TACB). Compliance determinations may be made based on results of monitoring with a certified monitor. Compliance with the carbon monoxide and/or total hydrocarbon requirements specified in §111.121(3), §111.123(3)(D), and §111.124(4) of this title (relating to Burning Hazardous Waste Fuels in Commercial Combustion Facilities) may be demonstrated using a rolling hourly average.

The rolling hourly average shall be defined as the arithmetic mean of the 60 most recent one-minute concentrations measured by the continuous monitoring system.

(b) -(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 24, 1991.

TRD-9108854

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

Earliest possible date of adoption: September 2, 1991

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

## Chapter 281. Applications Processing

### • 31 TAC §281.26

The Texas Water Commission (TWC) proposes new §281.26, concerning suspension of commercial industrial solid waste and municipal hazardous waste permitting activities. The new section is proposed in order to incorporate new provisions of the Texas Solid Waste Disposal Act (TSWDA), Chapter 361, Texas Health and Safety Code (Vernon's Supplement 1991) recently promulgated by the legislature.

The proposed new §281.26 states that TWC shall not process a new commercial hazardous waste management facility permit application unless the applicant provides the evidence or demonstration required under 31 Texas Administrative Code §305.50(12)(C)(i) or (ii), concerning emergency response capability.

Karen P. Phillips, director of budget and planning, has determined that for the first five-year period the section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. The effect on state government will be an increase in costs of administration of approximately \$470,000 in fiscal year 1992 and \$410,000 in each of the fiscal years 1993-1996. These increased costs will be recovered from affected businesses applying for permits and conducting regulated waste management activities through authorized fee assessments and represent a cost to businesses. In addition to these increased regulatory costs recovered, businesses will incur greater costs of development of permit applications due to consideration of additional or more stringent requirements, such as those related to land use, highway access, and availability of emergency response facilities. These costs will vary with the nature, location, and size of a proposed facility, and while not predictable, are not anticipated to significantly increase the costs of development of any specific application. Significantly greater costs may be incurred in complying with specific requirements for mitigating impacts of a proposed facility on local government and infrastruc-

ture. An applicant may be required to provide improvements to highways or roads, emergency response facilities, or financial assurance for such facilities. These requirements may represent significant costs to an applicant and will vary with specific applications. Applicants must demonstrate the financial capability to construct and operate a proposed facility and commercial hazardous waste facilities will require an annual environmental audit. It is anticipated that most applicants will incur some modest cost to prepare adequate documentation. Applicants who must develop detailed original financial information, such as those without audited financial statements, will incur significantly higher costs that will vary with the size and complexity of the company and the proposed facility. Costs of annual environmental audits will vary with the size and complexity of the facility, but may average \$25,000. Audit costs and the costs of the selection process for an auditor may be significantly higher for large, complex operations. Additional requirements for public meetings, hearings, and notice of applications will increase costs for applicants. The cost of providing a local meeting and complying with public notice requirements could be as much as \$10,000 or more in areas where population densities are high, but should be less in rural or less populated areas. No more than 15 public meetings and no more than 30 hearings per year are anticipated. The effects on local government will be equivalent to mitigation of the effects of proposed facilities. Local governments may be the beneficiaries of financial assurance mechanisms established to ensure the provision of adequate local emergency response capabilities or direct compensation for highway or road improvements. The section as proposed is not anticipated to have any specific effect on small businesses.

Ms. Phillips also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improvement in the regulation of hazardous waste and hazardous waste management activities, the protection of human health and the environment, and public participation in the processing of applications for hazardous waste facilities and enforcement of the authority, regulations and permit provisions of the Texas Water Commission. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Sally Jo Hahn, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Comments will be accepted until 5 p.m., 30 days after the date of this publication. To facilitate public comments on the proposed new section in Chapter 281, the commission is holding several public hearings in various locations as follows to receive comments: New Braunfels Civic Center, 390 South Seguin, on August 15th, at 7 p.m.; New Braunfels; El Paso Community College, 9570 Gateway North, Lecture Forum Room, on August 20, 1991, at 9:30 a.m.; El Paso; University of Texas at Tyler, 3900 University Boulevard, University Center, Room 134, at 2 p.m.; Tyler; Midlothian High School, 925 South Ninth Street, Auditorium, on August 20, 1991, at 7:30 p.m.; Midlothian, Texas; William B. Travis Building, 1701 North Congress Ave-