

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 10% or more of solid waste on a total Btu heat input basis averaged over any one-hour period shall be considered an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total British thermal unit heat input basis averaged annually shall also 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 resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

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 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 January 27, 1992.

TRD-9201363 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: February 19, 1992

Proposal publication date: September 2, 1991

For further information, please call: (512) 908-1451

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) adopts amendments to §111.121 and §111.127, with changes to the proposed text as published in the August 2, 1991, issue of the *Texas Register* (16 TexReg 4207). The amendment to §111.121, concerning single-, dual-, and multiple-chamber incinerators, stipulate that the requirements of the section do not apply to hazardous waste incinerators and that incinerators may operate at oxygen concentrations less than 4.0% by volume provided they

meet emissions limits for carbon monoxide and/or total hydrocarbons. The amendment to §111.127, concerning monitoring and recordkeeping requirements, stipulates that compliance with carbon monoxide and hydrocarbon emissions may be demonstrated using a rolling hourly average.

A public hearing was held in Austin on August 27, 1991. Testimony was received from seven commenters during the comment period which ended August 29, 1991. Southwestern Public Service (SPS) and Houston Lighting and Power (HL&P) supported the proposal and four commenters opposed it. Opposing the proposal were Texaco, Incorporated (Texaco), Dupont Gulf Coast Regional Manufacturing Services (Dupont), Sterling Chemicals (Sterling), and Texas Chemical Council (TCC). The United States Environmental Protection Agency (EPA) neither supported nor opposed the proposal. The following discussion initially addresses the more general comments and then, addresses the comments which deal with specific parts of the two sections.

One of the stated objectives of the proposed revisions was to achieve consistency with similar rules of the Texas Water Commission (TWC). This objective was a cause of concern to an individual who felt that consistency between TACB regulations and those of TWC would not adequately protect public health since TWC does not have an equivalent level of expertise in matters relating to incineration. The same individual also felt the exclusion of hazardous waste incinerators from the coverage of these revisions would allow operators of hazardous waste incinerators to easily escape regulation.

Consistent definitions between TACB and TWC are vital in eliminating potential confusion and misunderstandings among regulatory agencies, the regulated community, and the public. Existing hazardous waste incinerators are subject to §111.124, concerning burning hazardous waste fuels in commercial combustion facilities and to federal boiler and industrial furnace rules (40 Code of Federal Regulation 266, Subpart H). New hazardous waste incinerators just also meet stringent permitting requirements of TACB and/or TWC. Consequently, there appears to be adequate regulatory coverage in this important area.

Texaco suggested that the new sentence added to the opening paragraph of §111.121 be changed to state that: "The requirements of this section do not apply to incinerators which burn hazardous waste." The proposed sentence stated that: "The requirements of this section do not apply to hazardous waste incinerators." The term "hazardous waste incinerator" refers to operations conducted under a specific set of regulations and is being retained in the new sentence to eliminate any confusion. In addition the commenter's suggested language could allow an excessive number of incinerators to claim exemption from this section.

Dupont, Sterling, and TCC commented that facilities newly affected by the proposed expansion of the definition of incinerator will need 12 months to retrofit, calibrate equipment, and achieve compliance. The two

commenters requested an extension of the compliance date of December 31, 1991, as specified in §111.121(6), to December 31, 1992. Since the installation and adjustment of control equipment can require many months. The request for an extension appears reasonable. The expansion of the definition of incinerator will be accomplished through concurrent rulemaking in §101.1 of this title, concerning definitions.

With regard to §111.127, the City of Quitman commented that the installation of continuous emission monitors is prohibitively expensive for operators of small incinerators and requested the development of alternate standards for small, municipal incinerators.

Given the small volume of waste burned in the Quitman and similar units, the development of alternate standards appears a reasonable action. A sentence has been added to the subsection to give operators of municipal incinerators constructed prior to 1990 which burn less than 2,000 pounds per hour of municipal solid waste, the option of installing monitors or performing a carbon monoxide stack test to establish oxygen and temperature operating parameters. Continued monitoring of these parameters is sufficient to maintain adequate combustion efficiency needed to minimize levels of air contaminants.

SPS and HL&P supported the changes to §111.121 and §111.127 and EPA had no comment.

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

§111.121. Bingle-, Dual-, and Multiple-Chamber Incinerator. 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 are met. For purposes 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) (No change.)

(6) Compliance with the requirements of this section shall be as soon as practicable, but no later than July 31, 1990, except in the case of industrial solid waste incinerators, which shall be in compliance as soon as practicable, but no later than December 31, 1992.

(7) Incinerators burning not more than 100 pounds per hour of domestic, municipal, commercial, or industrial solid waste, based on the total weight of materials burned, shall be subject to an opacity limit of 5.0% averaged over a six-minute period and the requirements of §111.127(d) of this title (relating to Monitoring and Recordkeeping Requirements), but shall be otherwise exempt from the provisions of §§111.121, 111.123, 111.125, 111.127, and 111.129 of this title (relating to Incineration).

§111.127. Monitoring an 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 non-medical 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). For municipal incinerators built prior to 1990 and burning less than 2,000 pounds per hour of municipal solid waste, a stack test for carbon monoxide may be performed to establish oxygen and temperature requirements necessary to maintain minimum carbon monoxide emissions, and monitoring of these parameters may be substituted for the carbon monoxide monitoring device. 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9201362 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.299

The Comptroller of Public Accounts adopts an amendment to §3.299, concerning newspapers, magazines, publishers, exempt writings, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7454).

The amendment is the result of a change in the Tax Code, Chapter 151 made by the 72nd Legislature, 1991. The amendment expands the definition of newspaper to include newspapers furnished without charge. Another amendment, unrelated to legislative action, defines the term "other short intervals." The expansion of the definition of newspapers to include free newspapers is effective September 1, 1991.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 January 31, 1992.

TRD-9201506 Martin Cherry
Chief, General Law
Section
Comptroller of Public
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For further information, please call: (512) 463-4028

Subchapter S. Interstate Motor Carrier Sales and Use Tax

• 34 TAC §3.445

The Comptroller of Public Accounts adopts an amendment to §3.445, concerning computation of proportioned tax on trailers and semitrailers, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7454).

The amendment reflects the changes to the Tax Code, Chapter 157, made by the 72nd Legislature, 1991 First Called Session. The tax rate used in the computation was increased.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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.

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TRD-9201502 Martin Cherry
Chief, General Law
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