

No public comment was received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8308-2.09(a), which authorize the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

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 21, 1992.

TRD-9200912 Ernest Boardman  
Acting General Counsel  
Texas Workers'  
Compensation  
Commission

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For further information, please call: (512) 440-3971

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part III. Texas Air Control Board

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

##### Visible Emissions

##### • 31 TAC §111.111

The Texas Air Control Board (TACB) adopts amendments to §111.111, concerning visible emissions, with changes to the proposed text as published in the August 6, 1991, issue of the *Texas Register* (16 TexReg 4265-4266). The new subsection (c) adds controls for solid fuel heating devices and are in conjunction with the development of a State Implementation Plan (SIP) for the control of inhalable particulate matter, in accordance with the 1990 Federal Clean Air Act (FCAA) Amendments. All provisions are applicable only in the City of El Paso (El Paso).

A public hearing was held in El Paso on September 5, 1991. Testimony was received from three commenters during the comment period which ended September 6, 1991. One individual supported the proposal. Opposing the proposal were the United States Environmental Protection Agency (EPA) and the El Paso City-County Health District (EPCCHD). The following discussion initially addresses the more general comments and then addresses the comments which deal with specific parts of the new subsection.

EPA was concerned with how the requirements of Regulation I will be implemented and enforced in El Paso. The commenter recommended that a memorandum of understanding (MOU) be developed between El

Paso and the TACB to define responsibilities and commitments necessary to accomplish the provisions of the regulation. Specifically, EPA wanted the implementation of a public information program dealing with residential wood combustion. EPA also stated that local ordinances may be necessary to enable the city to meet the requirements of Regulation I.

The TACB has negotiated and executed a MOU with El Paso to define responsibilities under the SIP. The city currently has an enforceable ordinance in place controlling the use of solid fuel heating devices during periods of atmospheric stagnation. El Paso has provided detailed information on this ordinance and committed to a public information program.

EPA wanted to know the source of meteorological data that will be used to implement the provisions of §111.111. Additionally, they requested a definition of "adequate dispersion of smoke" and wanted to apply solid fuel heating device controls to sources outside of buildings as well as inside. Also, EPA was concerned with the distribution of information on adverse atmospheric conditions to the public, and EPA requested justification for the exemption of commercial cookers. Finally, EPA noted that exemptions from other TACB regulations require the approval of the executive director rather than the regional director, as with §111.111.

The specification of National Weather Service data provides an official and verifiable source of weather information, and the term "atmospheric stagnation" indicates a condition where pollutants are not dispersed. Inclusion of these concepts in the rule language satisfies EPA requirements. With regard to EPA's concern with outdoor solid fuel heating devices, this section does not apply to the warning of individuals who must remain outdoors. The relatively small number of cases will minimize impact.

El Paso currently has a regulation limiting the use of heating devices during atmospheric stagnation, along with the necessary public information distribution mechanism. These procedures are detailed in the MOU. The inclusion of commercial cookers in this regulation would cause the closure of those establishments using solid fuel during atmospheric stagnation, while those using gas or electricity could remain open. The staff has decided that this is unfair and overly restrictive. Again, the relatively small number of restaurants using solid fuel makes their impact on air quality minimal. In response to the last EPA comment on this section, the TACB has reworded §111.111(c)(2) to require executive director approval for exemptions to the section. This is to maintain consistency with similar requirements in other rules.

EPCCHD wanted to be allowed to grant exemptions in the use of solid fuel heating devices. Also, EPCCHD requested that the compliance date for §111.111 to be the same as the board adoption date.

The request of EPCCHD to have the authority to exempt solid fuel heating devices is understandable. The TACB prefers to retain sole authority in this matter. However, exemptions granted by the executive director in the future

can be determined in concert with local authorities. It is necessary for exemptions from TACB regulations to be authorized by the executive director. The staff has generally found a better level of understanding when a specific compliance date is stated in the rule rather than relying on the adoption date.

A substantial portion of the comments from EPA dealt with the State Implementation Plan (SIP) document and modeling procedures. ASARCO also had comments on modeling and submitted additional data to be incorporated into their emission inventory. The following discussion contains general comments on test methods for PM<sub>10</sub> followed by comments on specific points raised about the SIP document and modeling.

EPA commented that federal rules, promulgated on April 17, 1990 (55 Federal Register 14246), require every PM<sub>10</sub> nonattainment area SIP to contain the test methods for measurement of PM<sub>10</sub> emissions. The staff did not believe that test methods for stack emissions of PM<sub>10</sub> should be included in this SIP revision, and no revised rule language was included on this point. In staff discussions between the TACB and EPA Region 6 staff, a consensus was reached that the more appropriate approach would be to revise TACB Regulation I on a statewide basis. The revisions would include the development of rules requiring the use of specific test methods and possibly a testing frequency in cases where an allowable rate of emissions has been established. Development of statewide regulations will occur apart from this SIP revision.

EPA commented that the emissions reduction claimed from residential fireplaces had not been specified and that other credits claimed under the revisions to Regulation I can not be accounted for without a specific plan of implementation from El Paso.

Fireplace emissions for 1990 and 1994 are shown in Table 22 of the SIP document. The 1994 emissions reflect projected population growth from 1990 to 1994 coupled with the emissions reducing effect of restrictions on fireplace operation as adopted in §111.111. The net decrease in fireplace emissions from 1990 to 1994 is eleven tons per year. The SIP revision was enhanced to clarify this issue. The issue of a plan of implementation is addressed through a MOU which is mentioned earlier in this discussion.

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

##### §111.111. Requirements for Specified Sources.

(a)-(b) (No change.)

(c) Solid fuel heating devices.

(1) Operating restrictions. In the City of El Paso, including the Fort Bliss Military Reservation, no person shall oper-

ate a solid fuel heating device during a period when National Weather Service data indicates that an atmospheric stagnation condition exists or is predicted to exist. For the purposes of this section, a solid fuel heating device shall be defined as any fireplace, wood heater, wood stove, wood-fired boiler, coal-fired furnace, or similar device burning any solid fuel which is used for aesthetic, cooking (excluding commercial cooking), or heating purposes, and located inside a building.

(2) Exemptions. An exemption from the requirements of this section may be granted by the executive director of the Texas Air Control Board if one or more of the following conditions are met:

(A) the solid fuel heating device is in a period of burn down; that is, a period of time not to exceed three hours for the cessation of combustion within the device;

(B) the solid fuel heating device is the sole source of heat for the building in which it is situated; or

(C) the solid fuel heating device becomes the sole source of heat within the building because of a temporary power loss.

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 21, 1992.

TRD-9200963 Lane Hartsock  
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For further information, please call: (512) 908-1451

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**Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots**

• **31 TAC §§111.141, 111.145, 111.147**

The Texas Air Control Board (TACB) adopts amendments to §§111.141, 111.145, and 111.147 concerning materials handling, construction, roads, streets, alleys, and parking lots, with changes to the proposed text as published in the August 6, 1991, issue of the *Texas Register* (16 TexReg 4266-4267). The amendments are adopted in conjunction with the development of a State Implementation Plan (SIP) for the control of inhalable particulate matter in accordance with the 1990 Federal Clean Air Act (FCAA) amendments.

All revisions are applicable only in the City of El Paso (El Paso). The revisions to §111.141, concerning geographic areas of application and date of compliance, include the Fort Bliss Military Reservation (Fort Bliss) and establish a separate compliance date of December 10, 1993, for the newly-affected sources. The revisions to §111.145, concerning construction and demolition, require controls for all such activities, regardless of the size of the area of land affected, and require the application of paving or wetting agents to construction or demolition site access roads. The revisions to §111.147, concerning roads, streets, and alleys, eliminate the exemption of sand applied for snow or ice control, add requirements for paving and cleaning all vehicle traffic surfaces, require that specific thoroughfares be paved, and define a street sweeping schedule and recordkeeping requirements.

A public hearing was held in El Paso on September 5, 1991. Testimony was received from seven commenters during the comment period which ended September 6, 1991. Two commenters supported the proposals and five were in opposition. Opposing the proposals were Asarco, Incorporated (Asarco), the United States Environmental Protection Agency (EPA), the Texas Department of Public Safety (DPS), El Paso Water Utility (EL Paso), and an individual. The following discussion initially addresses the more general comments and then addresses the comments which deal with specific parts of the regulation.

EPA was concerned with how the requirements of Regulation I will be implemented and enforced in El Paso. The commenter recommended that a memorandum of understanding (MOU) be developed between El Paso and the TACB to define responsibilities and commitments necessary to accomplish the provisions of the regulation. Specifically, EPA wanted a commitment of funds necessary for the paving of road surfaces, that is, an agreement that funds for paving and construction will remain intact in the event of city budget cuts.

The TACB has negotiated and executed a MOU with El Paso to define responsibilities under the SIP. Through a resolution of the city council, El Paso has agreed to commit the funds necessary to accomplish the requirements of the amendments.

A private citizen wanted to see the application of these revisions throughout West Texas because of the dust from construction that is a problem throughout this area. Another individual felt that the TACB offices are frequently distant from areas causing dust problems and can not respond quickly to complaints.

Regulation I requires dust control at construction sites and other unpaved surfaces in areas where monitored air quality data indicates a high probability of particulate problems (El Paso, Harris, and Nueces Counties). The majority of Texas counties meet the National Ambient Air Quality Standards (NAAQS) for particulate matter of less than 10 microns (PM<sub>10</sub>); therefore, the enhanced controls required by this revision are not needed. In such areas, protection is provided by TACB rule under §101.4 relating to nuisance.

The location of the TACB offices in major population areas of the state allows quick response to complaints from the majority of the population. Every effort is made to respond as quickly as possible to complaints, but communities farther from the regional office experience longer response times. Nevertheless, every complaint will get attention.

An individual was concerned about the amount of dust resulting from the movement of military vehicles on Fort Bliss range roads.

Fort Bliss is subject to the same paving requirements as the City of El Paso for roads used by passenger vehicles. Areas used for tactical training maneuvers and the roads and trails leading to them are exempted from regulation. Control of the maneuver areas is not practical due to their large size and the fact that there are no set paths for vehicles to follow. The roads leading to the maneuver areas would be subject to damage from tracked vehicles.

An individual expressed concern that the illegal dumping of industrial solid waste and a nearby rock quarry were responsible for a portion of the PM<sub>10</sub> levels. The individual indicated that these activities currently are not regulated.

While illegal dumping is a legitimate concern, the contribution to airborne dust is minimal and control of this activity is covered in other state and local laws and is beyond the scope of this revision. Activities at quarries are regulated under the Materials Handling section of Regulation I. Citizens having problems with this kind of facility are urged to file complaints with the TACB regional offices.

DPS expressed concern that many of the paving materials now in use will be classified as air toxics under the new amendments to the FCAA.

The adopted revisions apply to the control of PM<sub>10</sub>. The classification of certain paving materials as toxic will not necessarily prohibit their use but may require enhanced control. In any event, toxic controls are not the subject of this revision.

El Paso expressed concern that water used for dust control will place a strain on a limited water supply.

Using water is only one of the alternatives available for dust control. The requirement that El Paso pave alleys and other surfaces is based on the understanding that water accomplishes only temporary dust control and is a very limited resource in El Paso. The TACB recognizes the need of the local government to manage the use of such a basic resource for the greater good of the citizens.

EPA recommended that the words "as soon as practicable" and "maximum" be deleted from the text of §111.147. These words are used here, and in other sections, in conjunction with the application of dust control methods. EPA also requested a specification as to how long sweeping records are to be kept by the city. The El Paso City-County Health District requested that the levee roads be added to the paving requirements at the same rate (15 miles per year) as alleys.

The words "as soon as practicable" and