department does not believe that the drafting notes of the NAIC should be made a part of this regulation. The department also notes that regardless of the prior regulatory history or the drafting notes of the NAIC, any actions taken by an insurer or an HMO which fall within the scope of Article 21.21-5 must meet the criteria set forth in that statute.

FOR: No comments were received for the sections during the comment period. AGAINST: Comments were received against the sections from the American Council of Life Insurance (ACLI) and Health Insurance Association of America (HIAA), and from one insurance carrier.

The amendment is adopted under the Insurance Code, Articles 21.21 and 1.04, and Texas Civil Statutes, Article 6252-13a, §§4 and 5. Article 21.21, §13 authorizes the State Board of Insurance to promulgate and enforce reasonable rules and regulations as are necessary to accomplish the purposes of Article 21.21. Article 1.04 authorizes the board to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures. Section 5 prescribes the procedures for adoption of rules by a state administrative agency.

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 October 2, 1992.

TRD-9213361 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 463-6327

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# 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 an amendment to §111.111, concerning visible emissions, with changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934).

The amendments to §111.111 include requirements to install and operate continuous emissions monitoring systems (CEMS) in response to federal guidance.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992. A total of seven commenters submitted testimony on the proposal during the comment period which was extended until July 9, 1992. All of the commenters opposed the proposal. Submitting testimony on the proposal were: Eastman Kodak Company (Kodak), ASARCO, Inc. (ASARCO), United States Environmental Protection Agency (EPA), Fina Oil and Chemical Company (Fina), Witco Corporation (Witco), Aluminum Company of America (ALCOA), and an individual.

EPA commented that language should be added in subsection (a)(1) that would achieve consistency in the compliance methods stated in subparagraphs (D) and (F) of the paragraph and include all approved test methods. Specifically, EPA wanted Test Method 9 added to the methods in subparagraph (D) and CEMS and Alternate Method 1 to Method 9 added in subparagraph (F). EPA also commented that the rule should state that the highest opacity reading obtained using the specified test methods will be used to determine compliance with the standard. The final comment by EPA on paragraph (1) concerned incomplete references to the Code of Federal Regulations (CFR) in subparagraph (F). Kodak and ALCOA also mentioned this incomplete reference.

The staff agrees with EPA's suggestion and has added language concerning compliance and test methods. This adds the flexibility of enforcing opacity standards by several methods, including visual observation and clarifies the fact that CEMS are optional in vents of less than 100,000 actual cubic feet per minute (acfm). In order to achieve consistency in the rule regarding compliance methods, the staff has moved opacity compliance requirements from subparagraph (D) to subparagraph (F).

An individual stated that CEMS should be required on all facilities regardless of whether they maintain 15% opacity or less and that CEMS performance records should be retained for five years to be consistent with the TACB compliance history requirements and to document compliance trends. This same individual requested that language be added specifying that local, state, and federal enforcement agencies have access to these records. ALCOA and ASARCO commented that language in subparagraph (D) could be misinterpreted as removing the option to use CEMS in vents having flow rates of less than 100, 000 acfm.

The TACB staff believes that requiring CEMS on sources maintaining less than 15% opacity, with a flow rate of less than 100,000 acfm, is not justifiable when considering cost and benefit. These sources contribute relatively little particulate matter due to their generally clean exhaust streams and remain subject to enforcement from visual observation of emissions. The retention of CEMS performance records for two years is consistent with federal policy and will not affect source compliance record retention, which must be held for five years. A requirement that records be available for inspection by federal, state, and local air pollution agencies would be consistent with a similar requirement in TACB Regulation II, concerning control of air pollution from sulfur compounds, and the staff has included appropriate wording in paragraph (1)(D).

Witco testified that CEMS are a new source performance standard (NSPS) requirement, that the carbon black industry is not defined under NSPS, and that their facilities are "grandfathered" under the Federal Clean Air Act. They also stated that CEMS will be subject to particulate and water fouling if installed in carbon black plants. Witco acknowledged that the TACB regulations allow the substitution of opacity readers for determining opacity, but stated that the training of these readers is a redundant expense and an ineffective use of skilled personnel.

While some carbon black plants may be "grandfathered" or exempted from permitting requirements, they are not exempt from Regulation I, concerning control of air pollution from visible emissions and particulate matter, opacity requirements. The TACB and federal regulations allow for alternative methods of opacity determination from sources where the vent gases have characteristics that would not allow accurate CEMS readings or would damage the equipment. In these instances, the staff believes that the training of personnel to perform visible emission observations (EPA Method 9) is a reasonable and economical method for a facility to verify and track compliance.

Kodak objected to language in subparagraph (D) that would require sources subject to CEMS requirements under NSPS to also comply with 40 CFR 51, Appendix P, CEMS requirements. They stated that this does not coincide with EPA's intent to exempt NSPS sources from the Appendix P requirements.

The staff agrees that the subparagraph, as written, would require sources regulated under this section to comply with both sets of federal standards. Language referring to 40 CFR 51, Appendix P, requirements has been deleted from subsection (a)(1)(D) and added to subsection (a)(2).

Witco commented that the March 1, 1994, deadline for CEMS installation and operation provides insufficient lead time for operating companies to acquire and calibrate the equipment. The adopted deadline is a federal mandate representing a period of 18 months from the adoption of the proposal. It applies to three categories of sources: solid fossil fuel steam generators with a heat input of greater than 250 million British thermal units per hour, steam generators burning oil or a mixture of oil and gas that require particulate collection equipment to meet opacity standards, and catalyst regenerators for fluid bed catalytic cracking units of greater than 20,000 barrels per day total feed capacity. This limits the number of sources required to install CEMS, and the staff believes the deadline is timely and reasonable.

An individual testified that the public should be consulted prior to the TACB approval of an alternate method of determining opacity other than an opacity monitor. Fina commented that language in subsection (a)(3) would elim-

inate consideration of alternative opacity monitoring methods where a CEMS cannot be used due to uncombined water in the gas stream. Fina was particularly concerned about the use of alternative methods on fluid catalytic cracking units. Southwestern Public Service Company suggested that the requirements of this paragraph be modified to allow the use of CEMS in sources where occasional interference by condensed water vapor occurs.

Under 40 CFR 51, Appendix P, a state does have the option of substituting alternative monitoring methods where an opacity CEMS cannot be used. Any proposed alternative method must receive EPA approval prior to use. The staff has modified the rule language of subsection (a)(3) to allow this option for affected sources. The review of an alternate monitoring method will involve an analysis of its technical merits. Only systems that are proven accurate and reliable will be approved. A public hearing to approve an alternative method would unnecessarily prolong the process. The staff retained language allowing the approval process to remain with the TACB executive director and EPA. The use of CEMS in stacks that occasionally contain condensed water vapor is not excluded. The executive director will determine if the occurrence of condensed water vapor is of such a frequency as to render CEMS data unreliable.

EPA commented that the frequency of compliance surveillance should be specified. EPA also stated that Method 9, identified in 40 CFR 60, Appendix A, should be added to the proposed methods of determining compliance.

These additions will improve the enforceability of the rule and have been included in subsection (a)(3) with a specification that compliance be determined daily.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX, or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

The amendment is 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 purposes of the TCAA.

*§111.111. Requirements for Specified Sources.*

(a) Visible emissions. No person may cause, suffer, allow, or permit visible emissions from any source, except as follows.

(1) Stationary vents. Visible emissions from any vent shall not exceed the following opacities and must meet the following requirements.

(A)-(B) (No change.)

(C) Opacity shall not exceed 15% averaged over a six-minute period for any source having a total flow rate greater than or equal to 100,000 actual cubic feet per minute, unless an optical instrument capable of measuring the opacity of emissions is installed in the vent in accordance with subparagraph (D) of this paragraph. Facilities utilizing such instruments shall meet opacity limits outlined in subparagraph (A) or (B) of this paragraph as applicable. Records of all such measurements shall be retained as provided for in §101.8 of this title (relating to Sampling).

(D) Any opacity monitoring system installed as provided for in subparagraph (C) of this paragraph must satisfy the new source performance standards requirement for opacity continuous emissions monitoring systems (CEMS) as contained in 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 1. In order to demonstrate compliance with Performance Specification 1, the system shall undergo performance specification testing as outlined in 40 CFR 60.13. The facility will maintain records of all such testing for a period of not less than two years which shall be available for inspection by federal, state, and local air pollution control agencies. Compliance with this provision shall be accomplished within one year of the effective date of this rule, except as specified in paragraph (2) of this subsection.

(E) (No change.)

(F) Compliance with subparagraphs (A), (B), and (C) of this paragraph shall be determined by applying the following test methods, as appropriate. The highest reading obtained shall determine compliance with the appropriate visible emission limit:

(i) CEMS as described in subparagraph (D) of this paragraph;

(ii) Test Method 9 (40 CFR 60, Appendix A);

(iii) Alternate Method 1 to Method 9, Light Detection and Ranging (40 CFR 60, Appendix A); or

(iv) equivalent test method approved by the executive director of the Texas Air Control Board (TACB) and United States Environmental Protection Agency (EPA).

(G) Current certification of opacity readers for determining opacities under 40 CFR 60, Appendix A, Method 9, shall be accomplished by the successful completion of a TACB visible emissions evaluator's course by opacity readers no more than 180 days before the opacity reading.

(2) Sources requiring continuous emissions monitoring. Beginning March 1, 1994, all stationary vents located at the sources specified in this paragraph shall be equipped with a calibrated and properly operating CEMS for opacity. The system shall be calibrated, installed, operated, and maintained as specified in 40 CFR 51, Appendix P, hereby incorporated by reference:

(A) steam generators fired by solid fossil fuel with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1974, and with a heat input of greater than 250 million British thermal unit per hour;

(B) steam generators that burn oil or a mixture of oil and gas and are not able to comply with the applicable particulate matter and opacity regulations without the use of particulate matter collection equipment, and have been found to be in violation of any visible emission standard contained in a state implementation plan;

(C) catalyst regenerators for fluid bed catalytic cracking units of greater than 20,000 barrels per day of total feed capacity.

(3) Exemptions from continuous emissions monitoring requirements. Opacity monitors shall not be installed or used to determine opacity from any gas stream or portion of a gas stream containing condensed water vapor which could interfere with proper instrument operation, as determined by the executive director. Opacity monitoring techniques as listed in subsection (a)(1)(F) of this section may be substituted with the approval of the executive director and EPA, the highest reading of which will be used to determine compliance with the appropriate opacity standard. If opacity is determined through 40 CFR 60, Appendix A, Method 9, readings shall be made daily, unless weather or other conditions prevent visual observation.

(4) Gas flares.

(A) Visible emissions from a gas flare shall not be permitted for more than five minutes in any two-hour period, except as provided in §101.11(a) of this title (relating to Exemptions from Rules and Regulations). Acid gas flares, as defined in §101.1 of this title (relating to Definitions), are subject only to the provisions of subsection (a)(1) of this section.

(B) Compliance with subparagraph (A) of this paragraph shall be

determined daily by applying the following test methods, as appropriate:

(i) (No change.)

(ii) Test Method 9, 40 CFR 60, Appendix A; or

(iii) equivalent test method approved by the executive director and EPA.

(5) Motor vehicles. Motor vehicles shall not have visible exhaust emissions for more than 10 consecutive seconds. Compliance shall be determined as specified in 40 CFR 60, Appendix A, Method 22.

(6) Railroad locomotives or ships.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

(7) Structures.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

(8) Other sources.

(A) (No change.)

(B) Compliance with subparagraph (A) of this paragraph shall be determined by applying the following test methods, as appropriate:

(i) (No change.)

(ii) equivalent test method approved by the executive director and EPA.

(b)-(c) (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 October 2, 1992.

TRD-9213370 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: October 23, 1992

Proposal publication date: April 24, 1992

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

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## Chapter 112. Control of Air Pollution from Sulfur Compounds

## Control of Sulfur Dioxide

### • 31 TAC §§112.1-112.14, 112.16-112.20

The Texas Air Control Board (TACB) adopts the repeal of §§112.1-112.14 and §§112.16-112.20, concerning control of sulfur dioxide, without changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934). In concurrent action, TACB adopts §§112.1-112.9 and §§112.14-112.21, concerning control of sulfur dioxide.

The repeals delete provisions which are obsolete or incompatible with new federal requirements. The concurrently adopted new sections contain substantial changes to the texts of some existing sections and include some renumbering of sections. The provisions of the new sections simplify allowable emissions calculations, combine similar requirements of the repealed sections, and meet federal requirements for continuous emissions monitoring and rule enforceability. In some cases, the content of a new section may be similar or identical to a section being repealed.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992, to consider the proposed repeals. No one commented on the repeals.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX, or 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

The repeals 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.

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 October 2, 1992.

TRD-9213369 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

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Proposal publication date: April 24, 1992

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

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## Control of Sulfur Dioxide

### • 31 TAC §§112.1-112.9, 112.14-112.21

The Texas Air Control Board (TACB) adopts new §§112.1-112.9 and 112. 14-112.21, concerning control of sulfer dioxide, with changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2934).

The new sections represent a reorganization of the existing sulfur dioxide ($SO_2$) rules to include combinations of similar requirements, the removal of obsolete language, and an overall simplification of this undesignated head. The sections also satisfy federal requirements for the installation and use of continuous emission monitoring systems (CEMS) for $SO_2$ and rule enforceability.

Public hearings were held in Houston on May 21, 1992, and in Beaumont on May 22, 1992. A total of 20 commenters submitted testimony on the proposal during the comment period which was extended until July 9, 1992. All of the commenters opposed the proposal.

The emission limits and standards proposed for $SO_2$ were drafted initially to address exceedances of the $SO_2$ standard in the Houston/Galveston and Beaumont/Port Arthur areas. However, the proposals were very stringent and were anticipated to be quite costly. The staff believes that, under developing circumstances, it would be preferable to conduct workshops and form working groups to reach a consensus on appropriate controls. Since the exceedances in the Beaumont/Port Arthur area were attributable to source upset conditions and since EPA has expressed a willingness to reconsider the nonattainment status of the Houston/Galveston area, the immediate need for these stringent measures has diminished. Industry within the area is offering voluntary reductions which the staff believes will be sufficient to demonstrate attainment. Additionally, there have been no monitored $SO_2$ exceedances in the area for eight consecutive quarters. The TACB staff, United States Environmental Protection Agency (EPA), and a private contractor have developed a modeling protocol for the attainment demonstration. For these reasons, the staff has withdrawn all provisions within the proposal not associated with federal CEMS requirements and enforceability improvements.

The Greater Houston Partnership (GHP) commented extensively on the Houston $SO_2$ modeling activity. GHP also stated that the four new industrial categories added to the rule, fluid catalytic cracking units (§112.10), catalyst reclamation plants (§112.11), carbon black plants (§112.12), and refinery fuel gas combustion units (§112.13), were not mentioned in the preamble, nor did they contain a compliance schedule. GHP also stated that new $SO_2$ standards proposed in §112.3(a)