

(c) No plan shall be considered "filed" until such date as the withdrawing insurer has provided to the Commissioner all information and material necessary to constitute a completed plan of orderly withdrawal, as required under this subchapter.

(d) Within ten business days of the Commissioner's receipt of the withdrawal plan, the insurer will be notified by letter either that the plan is sufficient to constitute a completed plan of orderly withdrawal that meets all of the requirements of this subchapter or that the plan is insufficient to constitute a completed plan of orderly withdrawal that meets all of the requirements of this subchapter and what information and material must be provided in order for the insurer to have filed a completed plan of orderly withdrawal, as required under this subchapter.

§7.1807. Filing of Annual Financial Statement and Other Required Data and Information. Any insurer filing a total withdrawal plan or a substantial withdrawal plan shall continue to file all annual financial statement data, other required statistical and data filings, and any other Department-requested information applicable to any withdrawn line until all policyholder obligations for such line in this state are fulfilled. This section does not exempt an insurer from any filings or information requests required by the Department.

§7.1808. Requirements to Resume Writing Insurance. Any insurer totally or substantially withdrawing from writing any line of insurance in this state and required to file a plan of orderly withdrawal pursuant to the Insurance Code, Article 21.49-2C, may not resume writing the withdrawn line in this state without complying with all applicable statutory and regulatory provisions governing authorization to write such line of insurance in this state and receiving the written approval of the Commissioner to resume such writing.

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 July 1, 1993.

TRD-9325155

Linda K. von Quintus-Durn
Chief Clerk
Texas Department of
Insurance

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For further information, please call:(512) 463-6328

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 requirements for specified sources, with changes to the proposed text as published in the February 16, 1993, issue of the *Texas Register* (18 TexReg 1000).

The amendment to §111.111(a)(4)(B) requires that daily visual observation of gas flares for the purpose of determining the existence of visible emissions be conducted for a minimum of six minutes. The amendment is in response to a petition from the Texas Chemical Council (TCC) requesting that the TACB delete the requirement for daily flare observation. The TACB believes that, in order to maintain enforceability of the rule, a frequency of observation must be retained. Comment and testimony was solicited on the amendment and the concept of daily observation.

A public hearing was held in Austin on March 17, 1993, to consider the proposed revision to §111.111. A total of 23 commenters submitted testimony on the proposal and the daily observation issue during the comment period which closed on March 31, 1993. Twenty-two commenters opposed the proposal and 21 of these opposed the concept of daily observation. The United States Environmental Protection Agency (EPA) registered no comment on the proposal, though they did support the specification of an observation frequency.

The principal issue of the majority of commenters was the potential effectiveness of the rule versus its cost. Marathon Oil Company (Marathon) stated that the large flares at affected facilities are under 24-hour surveillance using video cameras or infrared sensing devices. The commenter contended that this is a more effective method than keeping trained observers on-site for a six-minute observation in a 24-hour period, especially since the only enforcement issue is whether or not the flare is smoking and not a determination of opacity. The commenter also stated that flares are a simple and reliable air pollution control device and daily observation is not necessary. Amoco Chemical Company (Amoco Chem) supported these statements and stated further that smoking flares are usually caused by an upset in plant operating conditions which, in the case of flares, indicate a condition that is costly and is better detected through internal quality control measures. Other companies supporting these positions included Occidental Chemical

Corporation (OxyChem), Union Carbide Chemicals and Plastics Company (Union Carbide), Texas Chemical Council (TCC), Eastman Chemical Company (Eastman), Fina Oil and Chemical Company (Fina), Rohm and Haas Texas Incorporated (Rohm), and Dow Chemical Company (Dow).

Texas Mid-Continent Oil and Gas Association (TMOGA), Mobil Oil Corporation (Mobil), ARCO Pipeline Company (ARCO), ARCO Oil and Gas Company (AOGC), Dow, Amoco Chem, Rohm, Texaco Inc. (Texaco), and Chevron Port Arthur Refinery (Chevron) all stated that a six-minute observation is a tiny fraction of the operating time of a process flare, and the proposed daily readings require resources to be borrowed from other activities that would better prevent upsets and visible emissions. The TCC, Phillips Petroleum Company (Phillips), Ethyl Corporation (Ethyl), Chevron, Amoco Chem, and Monsanto Company (Monsanto) testified that the proposal is burdensome and expensive with little environmental benefit. Union Carbide commented that the efforts associated with a six-minute observation yield little, if any, benefit though the regulation is not overly burdensome. The purpose of any TACB regulation is to control air pollution, so the first consideration of any proposal is the effectiveness of the rule. This is certainly not the only consideration, as the benefit of a measure must be weighed against the cost. While the staff believes that the commenters have overestimated their compliance costs, other testimony raises serious questions about the effectiveness of a daily six-minute observation. It is clear that many plant policies, operating procedures, and monitoring equipment are already providing daily or more frequent checks of continuous flares. In the case of infrared devices, which are not dependent on visible light, the monitoring system is superior to visible observation. The staff agrees with these comments, and the rule has been revised to minimize the need for six-minute observations and provide alternative means of compliance.

Marathon, TCC, Chevron, Eastman, AOGC, Dow, Ethyl, Rohm, Warren Petroleum Company (Warren), and Monsanto testified that the TACB has underestimated the costs of the amendment. The TCC states that a 40 flare facility will spend \$500,000 yearly to comply with the daily observation. Eastman estimated that each flare will require 30 minutes of observation, travel, and recordkeeping time. OxyChem estimated that, allowing for vacations and illnesses, a minimum of five people per shift would be necessary to cover the proposed requirements. The staff based cost estimates on a large facility containing 30 to 40 flares with a read time of six minutes per flare. The TACB agrees that some allowance should be made for travel between flares, but also believes that much of this travel would be offset by reading more than one flare from the same position. This is a reasonable assumption given that a large facility likely would have several flares within a common field of view meeting the necessary lighting requirements.

TMOGA and Mobil suggested deletion of the compliance determination required in §111.111(a)(4)(B). Exxon suggested with-

drawal of the six-minute observation requirement. Section 111.111 (a)(4)(B) must remain in the rule to meet federal enforcement requirements. For reasons stated later in this evaluation, the daily six-minute observation is changed to a simple visual check for flare smoke and a minimum recording rate for the data is specified.

Exxon Company, U.S.A. (Exxon) stated that the daily observation has no relation to actual plant operation as many flares are only used as needed, and the only continual source of emissions is the small pilot light used to ignite gas as it is vented to the flare. DuPont Agricultural Products (DuPont), TMOGA, Mobil, ARCO, AOGC, and Dow also testified that the proposed six-minute observation does not give an accurate indication of the operation of this type of process or emergency flares. OxyChem, Phillips, AOGC, Monsanto, and Chevron urged exempting emergency and other infrequently used flares from the daily observation requirement. ARCO specifically requested an exemption for flares on liquid petroleum pipelines and other remote unmanned locations. The testimony has brought out instances where daily observation is clearly impractical, such as emergency, upset, or infrequently used process flares. A daily visual check of these flares is no guarantee of their proper operation when needed. Additionally, many of these flares are located at sites that are not normally staffed and are used only in case of upsets. Staffing or visiting these sites for the sole purpose of a daily observation is an unreasonable requirement when it will not ensure proper flare operation. Flares used only in emergencies or upsets are exempt from a specified frequency of visual observation checks.

The issue of process flares that are operated less than continuously remains. Reference Method 9 or 22 will be performed should a process change occur. The staff further recommends that flares that are operated daily, but less than continuously, be required to use a spot check system as is used for continuous flares.

Union Carbide, Phillips, TMOGA, Mobil, ARCO, and AOGC stated that plant policy concerning upsets sensitizes employees to report smoking flares and that visual observations are routinely made by plant personnel, a procedure that is more effective than the one six-minute observation. Marathon, OxyChem, Union Carbide, DuPont, TCC, Chevron, Fina, and Ethyl stated that flare smoke only occurs during abnormal conditions, in this case meaning a release of process gas to the flare, and that these conditions are already reported under TACB upset rules if they exceed five minutes in a two-hour period. The proposed observation time and frequency were not meant to supplant upset rules, but rather as a check on normal flare operation. The staff disagrees with the comment that a major upset is the only case that can cause flares to smoke, and believes that slight adjustments may be necessary under normal conditions to maintain clean flare operation. The primary issue remains whether a daily observation using EPA Reference Methods 9 and 22 is a cost-effective check on flare operation.

An individual supported the concept of daily observations, suggesting that readings be conducted when conditions are most likely to lead to flare smoking or upsets. The individual also stated that the six-minute observation period is inconsistent with the five-minute emissions in a two-hour period currently allowed in the regulation. The nature of industrial process upsets makes them difficult if not impossible to predict. The staff does not see a practical method of specifying a visible emission test during a period of likely upsets. A six-minute visible emission test and the five-minute allowable visible emission limit are not inconsistent. The six-minute observation was meant as a check on flare operation. The five-minute allowable limit is an emission standard.

Union Carbide stated that TACB inspectors can observe flares from numerous points outside a plant if they suspect a problem or are responding to a complaint. The commenter further stated that flares are highly visible and subject to public observation.

Union Carbide also recommended that a daily check of flares be deleted for plants having a written policy to report upsets and that the visible emission test be performed quarterly. The commenter is correct about the ability of the TACB inspectors or the public to observe flares at a considerable distance. This does not relieve the operator of the responsibility to provide internal checks on their operation. The internal policy of a facility regarding the reporting of upsets is not at issue. All facilities are currently required by TACB General Rules to report upsets and should have the necessary internal practices to comply with this requirement. The intent of the proposal was to require a visual check of flares to confirm that operating parameters and conditions result in a clean burn.

Phillips recommended that a spot check be included in the daily operating logs of flares to indicate on a checklist whether the flare is smoking or not. TMOGA endorsed the concept of a simple visual observation, but recommended it be performed every six months. The check suggested by Phillips is a simple addition to existing records and requires a few seconds of observation time and no separate recordkeeping. Given that a six-minute observation would represent only a fraction of the operating time of the flare, the staff believes the spot check recommended by Phillips to be equally effective and has added this alternate procedure for continuous process flares to the proposed rule. The staff believes this will meet EPA requirements for the specification of an observation frequency. Flares observed smoking would be required to undergo a compliance check. If any flare undergoes a process change, Reference Method 9 or 22 will be required as a performance check.

Eastman and AOGC testified that the proposal does not make allowances for weather conditions which prevent visual observation. The TACB has adopted a spot check of continuous or daily operated flares rather than an extended observation as required by Reference Methods 9 and 22. Unless the weather is unusually severe, it should have little effect on this spot check.

DuPont, TCC, Chevron, Ethyl, and Amoco stated that EPA Method 9 is not appropriate for gas flare observation. DuPont also stated that its first position is that an observation frequency not be specified. A second position would be to specify an annual observation. Amoco Chem recommended an annual or process change test. Monsanto and Rohm recommend an annual or semiannual check. The TCC, Ethyl, Exxon Chemicals Americas (Exxon Chem), and Amoco suggested visible emissions testing be performed for process changes and for initial compliance testing. The TACB regulations do not require an opacity determination for gas flares, but simply a check for visible emissions. In this case, EPA Reference Method 22 is the most appropriate option. Acid gas flares are subject to opacity limits and require that Reference Method 9 remain in the regulations as an approved method of determining compliance. EPA requires that an observation frequency be specified to meet federal enforceability guidelines. The staff also recommends opacity testing anytime a flare undergoes a process change. For permitted flares, an initial compliance test is covered under permit requirements. The staff believes that visible emissions testing will be difficult to conduct during emergency or upset conditions. Readings will not be required during emergency flare operation.

The TCC, Eastman, Ethyl, and Amoco stated that it is not clear what problem the proposal is meant to correct. The TCC, Ethyl, and Amoco stated that the TACB currently has the authority to impose more frequent monitoring if a flare or facility is causing a problem. Amoco Production Company suggested exempting process flares of less than 24,000 standard cubic feet throughput per day and those covered by or meeting the requirements of a standard exemption. OxyChem stated that deploying a person to read a flare during upset conditions could threaten that person's safety. The TCC, Texaco, Dow, and Exxon requested that flare operators be given the option of performing a Reference Method 9 or 22 to determine compliance on a smoking flare or simply conceding noncompliance and reporting the flare in upset. The TACB is not aware of any current operational problem with flares. The proposal was intended to satisfy EPA requirements for federal rule enforceability and to provide a mechanism for regular checks on flare operation. The TACB seeks to accomplish these goals in the least burdensome manner to the regulated community. The TACB will retain its authority to monitor and require additional testing when necessary, but this is a separate issue from internal checking. The TACB staff disagrees that flares covered or meeting standard exemption requirements or burning less than 24,000 cubic feet per day be exempted on that basis. These flares may be exempt from permitting, but remain subject to general emission limitations that are applied to a variety of unpermitted sources covered by Regulation I. Reference Methods 9 and 22 are time consuming compliance methods and could pose a problem for lightly staffed facilities, particularly when the staff time might be better spent in correcting a smoking flare. Flare operators will be given the option of performing the compliance methods or conceding

noncompliance and reporting the flare in upset.

TCC, Ethyl, and Amoco stated that the specification for daily observation was not in the original April 1992 proposal when Regulation I was amended to meet federal requirements for continuous emission monitoring where feasible. The commenters are correct in their statement that the daily observation was not in the April 1992 proposal. This was added later as a rule clarification and to meet EPA requirements to specify an observation frequency. The TACB agreed that this issue should be reopened for public comment, as was advocated in the petition submitted by TCC.

Amoco Chem suggested deleting the phrase "unless otherwise stated" from §111.111(a)(4)(B). The staff agrees that the phrase is not necessary and it has been deleted.

The amendment is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistent with the policies 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)-(3) (No change.)
- (4) Gas flares.

(A) Visible emissions from a process 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). Process gas flares are those used in routine or scheduled facility operations. 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. Beginning September 1, 1993, compliance with this subparagraph for process gas flares shall be determined:

(i) anytime there is an operational change in the flare that requires a permit amendment under TACB Regulation VI. Compliance shall be determined using Reference Method 22 (40 Code of Federal Regulations 60, Appendix A), Reference Method 9 (40 Code of Federal Regulations 60, Appendix A), or an alternative test method approved by the Executive Director and the United States Environmental Protection Agency (EPA). The observation period for this compliance demonstration shall be no less than two hours unless non-compliance is determined in a shorter time period or operational changes are made to the flare that stop any observed smoking; and

(ii) by a daily notation in the flare operation log that the flare was observed including the time of day and whether or not the flare was smoking. For flares operated less frequently than daily, the observation will be made for each operation. The flare operator shall record at least 98% of these required observations. If smoking is detected, compliance with the emission limits of this paragraph shall be determined using Reference Method 22, Reference Method 9, or an alternative test method approved by the Executive Director and EPA. The observation period for this compliance determination shall be no less than two hours unless noncompliance is determined in a shorter time period or operational changes are made to the flare that stop the smoking. A Method 22 or Method 9 observation will be waived provided the operator reports the flare to be in an upset condition under the requirements of §101.6 of this title (relating to Notification Requirements for Major Upset).

(B) Flares used only during emergency or upset conditions are exempt from the compliance monitoring requirements of subparagraph (A)(i) and (ii) of this paragraph.

(5)-(8) (No change.)

(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 July 1, 1993.

TRD-9325234 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: July 23, 1993

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Program for All-inclusive Care for the Elderly (PACE)

• 40 TAC §48.2811

The Texas Department of Human Services (DHS) adopts an amendment to §48.2811, concerning reimbursement methodology for program for all-inclusive care for the elderly

(PACE), without changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3353).

The justification for the amendment is to reflect Medicare participation in the third year of the waiver, instead of in the second year.

The amendment will function by providing a more accurate understanding of Medicare participation in the waiver.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 July 1, 1993.

TRD-9325148 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date: August 15, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512) 450-3765

Chapter 54. Family Violence Program

Shelter Center Services

• 40 TAC §54.306

The Texas Department of Human Services (DHS) adopts an amendment to §54.306, concerning services for resident children without changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 Tex Reg 3354).

The justification for the amendment is to clarify that shelter center services for children are not subject to day care licensing.

The amendment will function by providing, in addition to the services which must be provided by shelter centers, that shelter center services for children are not subject to day care licensing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs, and Chapter 51, which provides the department with the authority to contract for family violence shelter-center services and to adopt rules to implement them.