

§101.12. Board Seal.

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 December 5, 1994.

TRD-9451998

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: January 18, 1995

For further information, please call: (512) 239-1966

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**Chapter 105. Enforcement
Rules**

- 30 TAC §§105.1, 105.3, 105.11, 105.13, 105.15, 105.21, 105.23, 105.25, 105.31, 105.33, 105.35, 105.41

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeal of §§105.1, 105.3, 105.11, 105.13, 105.15, 105.21, 105.23, 105.25, 105.31, 105.33, 105.35 and 105.41 concerning air quality enforcement.

The proposal is required by, and premised upon, the adoption of the new proposed §§337.1-337.6, 337.21-337.58, and 337.71 that will serve as the procedural rules for TNRCC enforcement generally, the TNRCC's contested enforcement case hearings, and the TNRCC's mandatory enforcement hearings, respectively.

Stephen Minick, Division of Budget and Planning, has determined that, for the first five-year period these repeals, as proposed, are in effect, there are no significant fiscal implications anticipated for state or local government or small businesses as a result of enforcement or administration of the repeals.

Mr. Minick also has determined that for the first five years these repeals, as proposed, are in effect, the public benefit anticipated as a result of administration of and compliance with these repeals will be more efficient and effective enforcement of the environmental laws, rules and regulations that are within the jurisdiction of the TNRCC. There are no known costs anticipated to any person required to comply with these repeals, as proposed.

Comments on this proposal may be submitted to Glen Grunberger, Enforcement Coordination and Litigation Division, Texas Natural Resource Conservation Commission, P.O.

Box 13087, Austin, Texas 78711-3087. The deadline for the submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*.

The repeals are proposed under the Texas Water Code, §§5.103 and 5.105, which provide the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

There are no other codes or statutes affected by the repeal of these sections.

§105.1. Definitions

§105.3. Delegation of Authority

§105.11. Notice of Violation

§105.13. Violations That Materially Affect Human Health and Safety

§105.15. Violations That Do Not Materially Affect Human Health and Safety

§105.21. Initiation of Administrative Proceedings

§105.23. Response to Administrative Proceedings

§105.25. Compliance Hearing

§105.31. Payment of Administrative Penalty

§105.33. Disposition of Administrative Penalties

§105.35. Public Notice of Penalty Assessments

§105.41. Appeal of Compliance Orders

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 December 5, 1994.

TRD-9451855

Mark Jordan
Director, Water Policy
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: January 13, 1995

For further information, please call: (512) 239-4640

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

Outdoor Burning

- 30 TAC §111.103

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §111.103, concerning Exceptions to Prohibitions of Outdoor Burning. This rule allows municipal solid waste burning until prohibited by the federal Resource Conservation and Recovery Act (RCRA).

RCRA Subtitle D is found under 40 Code of Federal Regulations (CFR), Part 257, and was promulgated on September 13, 1979. This criteria bans the open burning of residential, commercial, institutional, or industrial solid waste. This criteria does not apply to the infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land clearing debris, diseased trees, debris from emergency cleanup operations, and ordinance. The Texas Department of Health established August 31, 1989 as the compliance date for cessation of the practice of open burning as part of the permit program to comply with 40 CFR, Part 257.

Stephen Minick, Strategic Planning and Appropriations Division, 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.

Mr. Minick 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 in the elimination of rules that are redundant or no longer apply. 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 the proposal will be held January 12, 1995 at 10:00 a.m. in Room 365 of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through January 12, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on January 12, 1995 will be considered by the Commission prior to any final action on the proposal. Please mail written comments to the attention of Lisa Martin, Office of Policy and Regulatory Development, P.O. Box 13087, Austin, Texas 78711-3087. Copies of the revision are available at the central office of the TNRCC located at 12118 North IH-35,

Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Monica Pesek at (512) 239-1971.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

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

The proposed amendment implements the Texas Clean Air Act, §382.017, concerning Rules.

§111.103. Exceptions to Prohibition of Outdoor Burning.

(a) (No change.)

(b) Outdoor burning shall also be authorized in each of the following instances:

(1)-(7) (No change.)

[(8) municipal solid waste burning may be conducted until such time as it is eliminated by the federal Resource Conservation and Recovery Act and as long as the following conditions are met.

[(A) Municipal solid waste burning may be conducted at Texas Department of Health (TDH) permitted Type II or III landfill sites (sites serving less than 5,000 population equivalent) located in any county with a population of 100,000 or less as determined by the latest United States population census if authorization is obtained from the Executive Director of the TACB. Any authorization provided hereunder must be consistent with all TDH regulations and in accordance with 40 Code of Federal Regulations 257, Criteria for Classification of Solid Waste Disposal Facilities and Practices.

[(B) Brush and demolition or construction wood waste burning may be conducted at TDH permitted Type IV landfill sites, as defined by the TDH, located in the counties described in subparagraph (A) of this paragraph if authorization is obtained from the Executive Director of the TACB. Any authorization provided hereunder must be consistent with the criteria referenced in subparagraph (A) of this paragraph.

[(C) Such burning shall be subject to §111.105(7) of this title (relating to General Requirements for Allowable Outdoor Burning).]

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

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Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

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For further information, please call: (512) 239-1966

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Chapter 323. Waste Disposal Approvals

The Texas Natural Resource Conservation Commission (Commission) proposes the repeal of §§323.1-323.6 and §§323.31-323.33, relating to the review and approval of plans and specifications for waste disposal systems other than public sewage disposal systems and the notice of applications for state water quality certification of NPDES permits, respectively.

The repeal of §§323.1-323.6 is to provide for a performance based review of such systems based upon the technical report submitted with the application pursuant to §305.45(a)(8) and §305.48(b) of this title relating to application contents, rather than prescribe the engineering details necessary to meet performance standards. This approach is not available, however, applications relating to public sewage disposal systems. Requirements contained in Texas Water Code §26.034 and state financial assistance conditions provided by Texas Water Code §15.104(b) specifically require the review and approval of plans and specifications for these systems.

The repeal of §§323.31-323.33 is being proposed because these sections are duplicative and/or inconsistent with more recent provisions contained in Chapter 279, Water Quality Certification, relating to the notice of an application for State Water Quality Certification pursuant to §405 of the federal Clean Water Act.

Stephen Minick, Division of Budget and Planning, has determined that, for the first five-year period these sections, as proposed, are in effect, there are no significant fiscal implications anticipated for state or local government or small businesses as a result of enforcement or administration of the sections.

Mr. Minick also has determined that for the first five years these sections, as proposed, are in effect, the public benefit anticipated as a result of administration of and compliance with these sections will be more efficient permit streamlining. There are no known costs anticipated to any person required to comply with these sections, as proposed.

Comments on this proposal may be submitted to Mark Jordan, Water Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. The deadline for the receipt of written comments is the 30th day from the date of publication of this proposal in the *Texas Register*.

Review and Approval of Plans and Specifications For Disposal Systems

• 30 TAC §§323.1-323.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Water Code, §5.103 and §5.105, which provide the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

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§323.1. Application of Subchapter.

§323.2. Approval Required.

§323.3. Purpose of Review.

§323.4. Design Report Required.

§323.5. Review and Approval by Executive Director.

§323.6. Appeal.

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

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TRD-9452025

Mark Jordan
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Division
Texas Natural Resource
Conservation
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For further information, please call: (512) 239-4640

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