The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §106.491, concerning Dual Chamber Incinerators.

EXPLANATION OF PROPOSED RULE

This amendment is proposed to ensure that incinerators operated under the conditions of this section will not cause human exposure to potentially harmful substances or cause nuisances. The amendment requires an increase in the minimum afterburner, or secondary chamber, temperature from 1,200 to 1,400 degrees Fahrenheit and requires that combustion gases be retained in the chamber for at least 0.5 seconds. This represents an accepted industry practice and should cause no increase in operating costs. These conditions will ensure that gases are more completely combusted prior to release to the atmosphere. The amendment also specifies a minimum stack height of six feet above the peak of the highest building within 150 feet of the stack to ensure proper exhaust gas dispersal and reduce the chances of exhaust gases affecting persons on the ground or in nearby structures. Incinerators operated under this exemption will be required to register with the commission and to maintain records as specified in 30 TAC Chapter 111. This will improve the ability of the commission to enforce the conditions of this section.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations, has determined that for the first five-year period the section is in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the section.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section is in effect, the anticipated public benefit will be a reduced risk of exposure to harmful or irritating exhaust from incinerators operated under the amended section. There will be a minimal effect on small businesses. There are minimal anticipated economic costs to persons who are required to comply with the section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to reduce the risk of human exposure to harmful or irritating exhaust from incinerators operated under the exemption from permitting conditions contained in §106.491. This proposal does not constitute a taking of private, real property.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking action is consistent with the applicable CMP goals and policies. There will be no increase in emissions as a result of these amendments.

PUBLIC HEARING

A public hearing on this proposal will be held April 13, 1998, at 11:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, 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 will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97165-106-AI. Comments must be received by 5:00 p.m., April 20, 1998. For further information, please contact Dale Beebe-Farrow, New Source Review Permitting Division, (512) 239-1310, or Beecher Cameron, Air Policy and Regulations Division, (512) 239-1495.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.057.

SUBCHAPTER V : THERMAL CONTROL DEVICES

§106.491. Dual Chamber Incinerators (Previously SE 2).

Dual-chambered incinerators which burn only waste generated on-site and which meet the [following] conditions of this section are exempt. [:] Incinerators used in the processing or recovery of materials or to dispose of pathological waste as defined in §106.494 of this title (relating to Pathological Waste Incinerators (Previously SE 90)), hospital waste, and/or infectious waste are not authorized by this section.

(1) The incinerator shall meet the following design requirements.

(A) The incinerator shall be equipped with an afterburner automatically controlled to operate with a minimum temperature of 1,400 degrees Fahrenheit and a minimum gas retention time of 0.5 seconds [A burner in the secondary chamber shall maintain a temperature of 1,200 degrees Fahrenheit or higher in the secondary chamber].

(B) The manufacturer's rated capacity (burn rate) shall be 500 [1,000] pounds per hour or less [for Type 0, Type 1, and Type 2 waste only, in which:]

[(i) Type 0 (trash) wastes - principal components are highly combustible waste, paper, wood, cardboard cartons, including up to 10% treated papers, plastic, or rubber scraps. Moisture content less than or equal to 10%; noncombustible solids less than or equal to 5.0%; and]

[(ii) Type 1 (rubbish) wastes - principal components are trash, rags, wood scraps, garbage (animal and vegetable wastes), and combustible floor sweepings. Garbage content cannot exceed 20%. Moisture content less than or equal to 25%; noncombustible solids less than or equal to 10%; and]

[(iii) Type 2 (refuse) wastes - principal components are trash and rubbish. Garbage content cannot exceed 50%. Moisture content less than or equal to 50%; noncombustible solids less than or equal to 7.0%.]

(C) <u>Stacks shall have unobstructed vertical discharge</u> [There shall be no obstruction to stack flow, such as by rain caps, unless such devices are designed to automatically open] when the incinerator is operated. Properly installed and maintained spark arrestors are not considered obstructions<u>.</u> [;]

<u>(D) Stack height shall be six feet above the peak of the highest building within 150 feet.</u>

(2) The incinerator shall meet the following operational conditions.

(A) Before construction begins, the facility shall be registered with the commission's Office of Air Quaility in Austin using Form PI-7 [The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions].

(B) (No change.)

(C) This facility shall be used solely for the disposal of the following waste materials generated on-site: paper, wood, cardboard cartons, rags, garbage (animal and vegetable wastes as defined in Chapter 101 of this title (relating to General Rules)), and combustible floor sweepings; containing overall not more than 10% treated papers, plastic, or rubber scraps. Neither garbage content nor moisture content shall exceed 50% and noncombustible solids shall not exceed 10% [Incinerators used in the processing or recovery of materials or to dispose of pathological, hospital, and/or infectious waste are not covered by this section. Pathological waste shall be defined only as carcasses, gauze dressings, blood, body fluids, tissue, human and/or animal remains, and the associated wood, cardboard, paper, or non-chlorinated plastic waste containers. Heat recovery, where no auxiliary fuel is burned, is allowed by this section].

(D) The manufacturer's recommended operating instructions shall be posted at the incinerator and the unit shall be operated in accordance with these instructions.

(E) Incinerator owners and operators shall meet the monitoring, testing, reporting and recordkeeping requirements found in Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter).