

The commission adopts the repeal of §§121.1, 121.3, 121.11, 121.13, 121.15, and 121.21, concerning Control of Air Pollution from Municipal Solid Waste Facilities, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8385). This adoption removes obsolete Chapter 121, which no longer applies to the review and issuance of agency permits for municipal solid waste (MSW) facilities. Current MSW permitting activities by the agency are not affected by this repeal.

BRIEF EXPLANATION OF THE RULES. Chapter 121 was adopted in 1986 in response to amendments to the Solid Waste Disposal Act (SWDA), enacted by House Bill (HB) 2358 of the 69th Legislature in 1985. The HB 2358 amendments, referred to as “one-stop permitting,” simplified permitting procedures for MSW facilities by specifying that a permit from the former Texas Air Control Board (TACB) was not required for facilities subject to Texas Department of Health (TDH) permit requirements. In addition, the amendments required the TACB to perform air quality reviews of permit applications submitted to the TDH, but this requirement applied only to MSW facilities that incinerated waste. The intent of one-stop permitting was to consolidate the permitting process and eliminate duplicative requirements and procedures of the individual agencies responsible for permit review.

Senate Bill (SB) 2, enacted by the 72nd Legislature and effective September 1, 1993, created the Texas Natural Resource Conservation Commission by merging the TACB, TDH MSW Division, and other regulatory entities. As a result, the agency’s MSW Division has taken over the TDH's responsibility

for handling MSW facility permits relating to solid waste issues, while the agency's New Source Review Division reviews and issues permits relating to air quality issues. SB 2 also repealed the one-stop permitting sections contained in the SWDA, thus making the provisions of Chapter 121 obsolete. MSW permitting activities continue to be carried out by the agency's respective divisions.

In order to facilitate the issuance of air quality permits for MSW facilities, the commission adopted amendments to Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification, on March 29, 1996. The amendments created new §116.621, regarding Municipal Solid Waste Landfills, which specifies criteria for new or modified MSW facilities and MSW landfills to obtain a standard permit. Standard permits offer a simplified, streamlined alternative to the general new source review process by establishing standardized conditions for specific industries or types of facilities. The repeal of Chapter 121 is not directly related to the recent adoption of the standard permit rule for MSW facilities. However, the standard permit provisions help assure expedited permit review and issuance for MSW facilities in the absence of a one-stop permitting process.

TAKINGS IMPACT STATEMENT. The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, §2007.043. The commission has determined that adoption of the repeal will not affect private real property because the change is only to eliminate obsolete procedures for permitting MSW facilities.

HEARING AND COMMENTERS. A public hearing on this proposal was held September 26, 1996, at the commission's Austin offices. Two written comments were received on the proposed amendments, one in favor and one opposing the proposal.

ANALYSIS OF TESTIMONY. The Galveston-Houston Association for Smog Prevention expressed opposition to the proposal, citing the air, odor, groundwater, and other environmental problems that can arise from MSW facilities. The commenter opposed standard permits or streamlined methods of permitting MSW facilities because of these factors.

Repeal of Chapter 121, the subject of this rulemaking, does not concern standard permits for MSW facilities. In its review and issuance of such permits, the staff will apply appropriate technical criteria to ensure that all regulatory requirements are met.

The City of Houston, Department of Solid Waste Management supported simplification of the MSW permitting process through repeal of Chapter 121. The department recommended periodic review by the agency to further streamline all regulations pertaining to MSW facilities.

The commission acknowledges support for the repeal, and will continue to look for ways to facilitate MSW permitting through the regulatory review process.

STATEMENT OF STATUTORY AUTHORITY. The repeal is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

**CHAPTER 121: CONTROL OF AIR POLLUTION FROM
MUNICIPAL SOLID WASTE FACILITIES**

§121.1. Definitions.

§121.3. Applicability.

§121.11. Permit Conditions.

§121.13. Representations in Applications for Permits.

**§121.15. Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility
Units Which Burn or Incinerate Solid Waste.**

**§121.21. Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or
Incinerate Solid Waste.**

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 20, 1996.