

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §106.491, concerning Dual Chamber Incinerators. The amendment is adopted without changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2950) and will not be republished.

#### EXPLANATION OF ADOPTED RULE

This amendment is adopted to reduce the possibility that incinerators operated under the conditions of this section will 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 temperature increase represents an accepted industry practice and may cause a slight increase in operating costs for additional fuel to raise the temperature of the secondary incinerator chamber. These conditions will allow exhaust gases to be more completely burned prior to release to the atmosphere. The commission is also reducing the hourly charge rate of incinerators covered under this section from 1,000 pounds to 500 pounds per hour to promote more complete combustion. The amendment specifies a minimum stack height of six feet above the peak of the highest building within 150 feet of the stack to promote 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.

The amendment is adopted to allow the section to be more protective of human health.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission estimates that the amendment, which affects new facilities only, may cause a small increase in fuel use to elevate temperatures in the secondary combustion chambers of incinerators. The amended section requires that the stack of the incinerator be at least six feet above the peak of the highest building within 150 feet of the incinerator. This provision could require that the stack of some incinerators be extended or require that the incinerator be relocated. These cases would likely be isolated, and operators finding themselves in this situation would have the option of placing the unit under permit. The amendment thus will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

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 estimates that the amendment, which affects new facilities only, may cause a small increase in fuel use to elevate temperatures in the secondary combustion chambers of incinerators. The amended section requires that the stack of the incinerator be at least six feet above the peak of the highest building within 150 feet of the incinerator. This provision could require that the stack of some incinerators be extended or require that the incinerator be relocated to meet the setback distance from buildings. These cases would likely be isolated, and operators finding themselves in this situation would have the option of placing the unit under permit. However, these requirements could cause a situation where the specific use of portions of private property might have to be modified or restricted to comply with the regulation. This could conceivably place a burden on the property. The commission does not believe that this burden would be significant or have a lasting effect. Because incompletely burned substances emitted from incinerators can be harmful to human health, the commission is taking this action in response to what it believes to be a real and substantial threat to public health.

#### 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 goal 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas. This action is consistent with 31 TAC §501.14(q), which requires the commission to protect air quality in coastal areas. The amendment to §106.491 will allow more thorough combustion of incinerator exhaust gas, promote its dispersal, and will not allow new emissions.

#### HEARING AND COMMENTERS

A public hearing regarding the proposed rule was held in Austin on April 13, 1998, and the public comment period also closed on April 13, 1998. No oral comments were received at the public hearing, but the Houston Independent School District (HISD) and the United States Environmental Protection Agency (EPA) submitted written comments on the proposal.

HISD questioned whether existing incinerators charging at 800 pounds per hour (pph) would be regulated down to 500 pph by this amendment or a legislative change to 500 pph. The commenter also asked under what regulations incinerators charging at 800 pph would be regulated.

**This amendment will not apply to unmodified existing units which may continue to charge at the higher rate. There is no pending legislation concerning incinerators, and any legislation introduced at the next session of the legislature will require evaluation by the commission to determine the necessary regulation amendments. All incinerators remain subject to the**

**monitoring and recordkeeping requirements of Chapter 111, concerning Control of Air Pollution from Visible Emissions and Particulate Matter. New incinerators that charge above 500 pph will be subject to the permitting requirements of 30 TAC Chapter 116, concerning Control of Air Pollution by Permits for New Construction or Modification. Copies of these rules are available from the New Source Review (NSR) Division at the commission's central office in Austin, from the commission's regional offices, or from the Internet.**

EPA commented that Texas had never submitted the base regulation for the initial adoption of the standard exemption list as a revision to the state implementation plan (SIP). EPA also requested that the commission include a basis for each provision and condition of the new or revised section and that meeting the operation and production limits of the sections will result in emissions less than the 25-ton per year emission threshold that qualifies a source for exemption from permitting. The commenter further stated that the commission should include assurances that emissions will not interfere with the maintenance of air quality standards.

**The current list of standard exemptions was compiled after ongoing evaluations by the commission of the effect of a source category on air quality. The evaluation was based on engineering review, experience with similar or identical sources, and inspections of source operations. In recent years, the commission has reevaluated the exemptions applied to larger facilities or facilities using substances that are potentially harmful with the intent of ensuring that the exemption is protective of human health. This reevaluation was based, in part, on computer dispersion modeling and has resulted in the commission proposing modifications to exemptions applied to operations using**

**heavy metals, ammonia, and other potentially harmful substances. The overall result of the evaluations is that the exemptions remain protective of human health and are not significant contributors to air quality deterioration.**

**The commission has not submitted standard exemptions as SIP revisions since the creation of Chapter 106 in mid-1996. Because the exemptions are used by insignificant sources, the commission desires that monitoring and recordkeeping imposed on these sources remain at a minimum. The commission also believes that it has a state NSR program that is equivalently enforceable with federal programs. The standard exemptions are part of that NSR program. The commission believes that it is important that the protectiveness review of standard exemptions continue and that the result of that review be incorporated into the exemptions. The commission is committed to resolving the issue of the respective roles of the state and federal permitting programs, but believes that this resolution should occur in a separate, non-rulemaking action. This will prevent any delay in amending remaining standard exemptions under protectiveness review.**

#### **STATUTORY AUTHORITY**

The amendment is adopted 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.

## **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 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.

(B) The manufacturer's rated capacity (burn rate) shall be 500 pounds per hour or less.

(C) Stacks shall have unobstructed vertical discharge when the incinerator is operated. Properly installed and maintained spark arrestors are not considered obstructions.

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

(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 Quality in Austin using Form PI-7.

(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%.

(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).