

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §106.494, Pathological Waste Incinerators.

EXPLANATION OF THE PROPOSED RULE

Pathological waste incinerators are authorized at animal feeding operations under 30 TAC Chapter 106, Exemptions from Permitting. Section 106.494(E) authorizes the construction and use of a dual-chambered incinerator with a minimum secondary chamber temperature of 1,400 degrees Fahrenheit and a minimum 1/4-second retention time, provided the unit is located 700 feet from the nearest property line. A significant number of poultry farm owners or operators cannot place incinerators with these specifications on their property and meet the required setback in the exemption. They would either be forced to obtain a permit for the unit, use a different method of disposal, or obtain an incinerator capable of higher secondary chamber temperatures and longer residence time. The commission believes that incineration is a superior method of disposal as opposed to burial, which produces a significant risk of contamination to groundwater sources.

The 75th Texas Legislature, 1997, enacted Senate Bill 1910 (SB 1910), which requires the commission to adopt rules for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses. The legislation states that the rules must specify the acceptable methods of disposal to include, among other methods, incineration. The rules will also prohibit on-site burial except in the event of a major die-off that exceeds the capacity of a facility to dispose of carcasses by the normal means used by the facility. The commission anticipates that with the prohibition against routine burial, incineration of carcasses will be the most widely used method of disposal. While SB 1910 allows

several methods of disposal, the commission believes that incineration is a safe and more convenient method for on-site disposal and will be preferred by most facility operators. The commission reexamined the conditions of §106.494(E) to determine if the property-line setback could be reduced to allow smaller farms to use incinerators while still meeting the property-line particulate matter concentration standards in 30 TAC Chapter 111 and the National Ambient Air Quality Standards (NAAQS) for particulate.

The commission analyzed various setback scenarios using updated air dispersion modeling techniques to assess effects based on operating hours and stack height, given the prescribed hourly rated capacity, temperature, and retention time. The commission found that most incineration units currently available have a stack exit height that will allow proper dispersion of exhaust gases at a setback reduced from the current 700-foot requirement. Consequently, the commission is proposing to retain the current setback and also add a range of reduced setback distance requirements depending on stack height and operating hours. The proposal will include a new table of allowable setback distances based on stack height.

The commission also proposes to rearrange the language of the section to clearly differentiate definitions from the operational conditions of exempted incinerators and to locate definitions at the beginning of the section in accordance with the regulation format of the commission. A definition of "stack height" would also be added. The commission would add a statement concerning the general purpose of definitions according to *Texas Register* formatting rules.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for state government or units of local government as a result of administration or enforcement of the proposed amendments. The proposed amendments are anticipated to provide additional flexibility in the use and placement of pathological incinerators.

SB 1910 required the commission to develop rules for the safe and adequate disposal of poultry carcasses. The commission has determined that incineration of pathological waste, including poultry carcasses, is a safe, adequate, and cost-effective method of disposal. Pathological waste incinerators are authorized at animal feeding operations, such as poultry farms, and are exempted from permitting if the requirements in Chapter 106, Exemption From Permitting, are met. However, a significant number of small poultry farmers cannot place incinerators on their property and meet the existing exemption requirement of a 700-foot setback from the nearest property line. These farms would either be forced to permit the unit or use a different method of disposal. The commission staff has determined that a range of setback distances combined with certain factors of incinerator configuration and operation, including stack height and hourly charge rate, will meet the property line particulate matter concentration standards in Chapter 111, Control of Air Pollution From Visible Emissions And Particulate Matter, the NAAQS, and qualify for permit exemption. This amendment to Chapter 106 does not require incineration as the sole method of pathological waste disposal, but is offered in order to allow greater flexibility in the use and placement of pathological incinerators should the waste generator choose incineration as the method of disposal.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 106 are in effect, the public benefit anticipated from enforcement of and compliance with this rule will be greater flexibility for the regulatory process while maintaining particulate concentration standards in Chapter 111, compliance with the NAAQS, enhanced ease of compliance with pathological waste regulations, and reductions in costs of regulation. Additionally, by providing flexibility in the use of incineration, this proposal should provide convenient options to burial, thus helping to protect groundwater supplies and saving landfill space. The fiscal implications to individuals and small businesses are contained in the Small Business Analysis Section of this fiscal note.

SMALL BUSINESS ANALYSIS

The intent of the proposed amendments to Chapter 106 is to provide flexibility for the use of pathological incinerators at locations, such as small poultry farms, where a 700-foot setback from the nearest property line is not feasible. By providing a method of reducing setback distances of incinerators from property lines, while complying with particulate concentration standards and the NAAQS, the commission is expanding the ability of small businesses to use the incineration disposal option available under existing state law. Neither §106.494 nor these proposed amendments require incineration as the sole method for pathological disposal. Therefore, the purchase and operation cost of incinerators will not be addressed in this rulemaking.

This proposal adds flexibility to current disposal options so it does not impose any new costs on operators. Some operators may incur costs by using the minimum property-line setback options under

these proposed amendments. For example, poultry operations with restricted space may have to extend the incinerator stacks to meet the proposed minimum setback distances. Stock incinerators typically have a stack height of 12 to 15 feet. Compliance with the minimum setback of 90 feet could require up to a six-foot extension of the stack. The commission estimates that extending the stacks could cost approximately \$300 per foot. Based on information from the industry concerning geographic size of regulated operations, the commission believes the need to increase stack height will be rare. The commission believes that the range of setbacks contained in the proposed amendments will allow most small businesses to place or modify incinerators within their property and meet exemption criteria. Because the selection of incineration remains the option of the waste generator and this amendment would allow greater flexibility for compliance with existing regulations, the economic effect on small businesses is considered to be positive.

DRAFT REGULATORY IMPACT ANALYSIS

The intent of these amendments is to provide a greater range of flexibility for incineration authorized under §106.494 while still protecting human health. The previous section concerning SMALL BUSINESS ANALYSIS addresses the situation where operators may incur discretionary costs that are directly associated with exercising the flexibility that would be provided by these proposed amendments. The commission believes that the flexibility of these amendments will make these situations unlikely and isolated. This conclusion is based on information from the poultry industry concerning the size of poultry farms and the ability of operators to locate incinerators within the property and meet required setbacks. The commission believes that the overall economic effect of these amendments will be positive. Therefore, this rule 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. It does not meet the definition of a major environmental rule under Government Code, §2001.0225(f)(3). The public may comment on this draft regulatory impact analysis under the Code, §2001.29.

TAKINGS IMPACT ANALYSIS

The proposed amendments are intended to provide greater flexibility for the use of incinerators at animal feeding operations as authorized under §106.494. The effect of the amendments will be to ease existing restrictions in the regulation regarding setback of incinerators from property lines while maintaining the ability to meet the particulate concentrations in Chapter 111 and the NAAQS for particulate. Adoption of these amendments would not require a governmental entity to compensate a private property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution. Neither does this action restrict or limit the owner's right to the property that would otherwise exist in the absence of this proposed action. This proposal, therefore, does not meet the definition of a takings under the Code, §2007.002(5).

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking 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, 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 action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed action in §106.494, the commission has determined that the rule is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. This proposed action allows the option of relocating sources of emissions. It does not allow any new emissions over those currently allowed by the exemption from permitting. The sources that are the subject of this proposal are not addressed by 40 Code of Federal Regulations (CFR), therefore, this proposal is consistent with 40 CFR.

PUBLIC HEARING

A public hearing on this proposal will be held June 8, 1999, at 2:00 p.m. in Room 5108 of Texas Natural Resource Conservation Commission 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 the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 99001-106-AI. Comments must be received by 5:00 p.m., June 14, 1999. For further information, please contact Beecher Cameron, Policy and Regulations Division, (512) 239-1495.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.012, which provides the commission authority to develop a comprehensive plan for the state's air, and §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA. The amendment is also proposed under TCAA, §382.057, which authorizes the commission to exempt certain sources from the requirement to obtain a preconstruction permit under TCAA, §382.0518, if it is found on investigation that such facilities will not make a significant contribution of air contaminants to the atmosphere.

The proposed amendment implements Texas Health and Safety Code, §382.012, concerning the State Air Control Plan; §382.017, concerning Rules; and §382.057, concerning Exemption.

SUBCHAPTER V : THERMAL CONTROL DEVICES

§106.494

§106.494. Pathological Waste Incinerators (Previously SE 90).

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Pathological waste (as defined in 25 TAC §1.132 (relating to Definitions)) -

Includes, but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, including body parts, tissues, fetuses, organs, and bulk blood and body fluids, regardless of the period of gestation;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(2) Human remains (as defined in Health and Safety Code (H&SC), §711.001) - The body of decedent.

(3) Carcasses - Dead animals, in whole or part.

(4) Crematory (as defined in the H&SC, §711.001) - A structure containing a furnace used or intended to be used for the cremation of human remains.

(5) Animal feeding operations - A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.

(6) Non-commercial incinerator - An incinerator which does not accept pathological waste or carcasses generated off-site for monetary compensation.

(7) Stack height - Elevation of the stack exit above the ground.

(b) Conditions of exemption. Crematories and non-commercial incinerators used to dispose of pathological waste and carcasses which meet the following conditions of this section are exempt.[:]

Incinerators used in the recovery of materials are not covered by this section.

(1) Design [design] requirements.

(A) - (D) (No change.)

(E) In lieu of subparagraph (D) of this paragraph, incinerators at animal feeding operations that:

(i) (No change.)

(ii) are located a minimum of 700 feet from the nearest property line, shall be designed to maintain a secondary chamber temperature of 1,400 degrees Fahrenheit or more with a gas residence time of 1/4 second or more. Alternatively, incinerators may be located in accordance with Table 494, provided the total manufacturer's rated capacity (burn rate) of all units

located less than 700 feet from a property line shall not exceed 200 pounds per hour (lb/hr). Setback distances shall be measured from the stack exit. Figure: 30 TAC §106.494(b)(1)(E)(ii)

Table 494

| Stack Height (feet) | Property Line Distance (feet) | |
|---------------------|-------------------------------|-----------------------------|
| | For 24-hour Operation | For *Daytime-only Operation |
| 8 or less | 210 | 150 |
| > 8 and ≤ 12 | 200 | 140 |
| > 12 and ≤ 16 | 180 | 130 |
| > 16 and ≤ 20 | 160 | 110 |
| > than 20 | 140 | 90 |

*Sunrise to sunset

(F) (No change.)

(2) Operational [operational] conditions.

(A) - (D) (No change.)

[(E) Incinerators used in the recovery of materials are not covered by this section.]

(E) [(F)] Incinerators installed and operated in accordance with the conditions of this section shall not be used to dispose of any medical waste, other than pathological waste and/or carcasses.

(F) [(G)] Incinerators installed and operated in accordance with the conditions of this section shall also meet the requirements of §§111.121, 111.123, 111.124, 111.125, 111.127, and 111.129 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators; Medical Waste Incinerators; Burning Hazardous Waste Fuels in Commercial Combustion Facilities; Testing Requirements; Monitoring and Recordkeeping Requirements; and Operating Requirements).

(G) [(H)] Crematories shall be used for the sole purpose of cremation of human remains and appropriate containers.

[(3) definitions.]

[(A) Pathological waste (as defined in 25 TAC §1.132 (relating to Definitions)) - Includes, but is not limited to:]

[(i) human materials removed during surgery, labor and delivery, autopsy, or biopsy, including:]

[(I) body parts;]

[(II) tissues or fetuses;]

[(III) organs; and]

[(IV) bulk blood and body fluids;]

[(ii) products of spontaneous or induced human abortions, including body parts, tissues, fetuses, organs, and bulk blood and body fluids, regardless of the period of gestation;]

[(iii) laboratory specimens of blood and tissue after completion of laboratory examination; and]

[(iv) anatomical remains.]

[(B) Human remains (as defined in Health and Safety Code (H&SC), §711.001) - The body of decedent.]

[(C) Carcasses - Dead animals, in whole or part.]

[(D) Crematory (as defined in the H&SC, §711.001) - A structure containing a furnace used or intended to be used for the cremation of human remains.]

[(E) Animal feeding operations - A lot or facility (other than an aquatic animal feeding facility or veterinary facility) where animals are stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season.]

[(F) Non-commercial incinerator - An incinerator which does not accept pathological waste or carcasses generated off-site for monetary compensation.]