TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Adoption of Rules Review & Readoption of Chapter 111

AGENDA REQUESTED: February 7, 2024

DATE OF REQUEST: January 19, 2024

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2023-0071-MIS. Consideration for the adoption of the rules review and readoption of 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter. This review is in accordance with Texas Government Code, Section 2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The Notice of Intention to Review was published in the August 25, 2023 issue of the *Texas Register* 48 TexReg 4675). (Elizabeth Sartain, Abigail Adkins) (Non-Rule Project No. 2023-077-111-AI)

Richard C. Chism
Director

Donna F. Huff
Division Deputy Director

Gwen Ricco
Agenda Coordinator

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** January 19, 2024

Thru: Laurie Gharis, Chief Clerk
Kelly Keel, Executive Director

From: Richard C. Chism, Director *RCC*
Office of Air

Docket No.: 2023-0071-MIS

Subject: Commission Approval for Adoption of Rules Review and Readoption of Rules
Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter
Rules Review of 30 TAC Chapter 111
Non-Rule Project No. 2023-077-111-AI

What the adopted action would do:
This action will approve the rules review of Chapter 111, and readopt the chapter.

This action constitutes a determination by the Texas Commission on Environmental Quality (TCEQ), after opportunity for public review and comment, that the initial reasons for adopting the rules of this chapter continue to exist.

Applicable law:
The review of the rules is authorized under the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Texas Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

Reason rules are needed:
Executive director's staff conducted a review of the rules in Chapter 111 and determined that the reasons for adopting these rules continue to exist. The rules in Chapter 111 were developed to regulate air pollution from visible emissions and particulate matter (PM) from different emission sources, process types, and outdoor burning. The two subchapters within Chapter 111: Subchapter A, Visible Emissions and Particulate Matter, and Subchapter B, Outdoor Burning, include emission limits, control requirements, and monitoring and sampling methods.

Specifically, the rules in Subchapter A, Division 1 limit visible emissions from all sources and provide the procedure for approval of alternate opacity limits from stationary vents. Subchapter A, Divisions 2 - 7 establish PM emission limits and control requirements for specified source categories that apply in addition to the Division 1 rules. The rules in Subchapter B contain a general prohibition against outdoor burning, except for the activities explicitly listed, in which case the methods to gain approval for outdoor burning are given. These rules also include the requirements applicable to those activities allowed to conduct outdoor burning.

Portions of the Chapter 111 rules are included as part of the State Implementation Plan (SIP) to attain or maintain compliance with the national ambient air quality standards for PM. Rules that are not a part of the approved SIP include §§111.123 - 111.125, §111.127, and §111.129, relating to incineration, and §§111.131, 111.133, 111.135, 111.137, and 111.139, relating to abrasive blasting of water storage tanks by portable operations.

Rules found to be obsolete:

- While the reasons for adopting Chapter 111 rules continue to exist, there are many references to predecessor agencies to TCEQ such as Texas Air Control Board (TACB) and Texas Natural Resource Conservation Commission (TNRCC) in many sections. These references should be updated in a future rulemaking to use the current agency name.
- The reference in §111.125(2) to Chapter 5 of the Sampling Procedures Manual should be updated to Chapter 6 and the date updated to July 2003. These changes would reflect the current location of test methods for hydrogen chloride emissions from Single-, Dual-, and Multiple-Chamber Incinerators and the current version of the Sampling Procedures Manual.
- The rules at §111.127(a) reference incorrect and outdated names of sections §106.491 and §106.494. The name of §106.491 should be updated from “Dual Chamber Incinerators” to “Dual-Chamber Incinerators” to correct the name of section §106.491 but adding the dash. In a rulemaking adopted in 2018 (Project Number 2018-019-106-AI), the name of §106.494 was updated from “Pathological Waste Incinerators” to “Non-commercial Incinerators and Crematories.” The reference to §160.494 should be updated so it uses the current name of the section.
- The references to §111.155 in §111.175 and §111.181 should be removed because it no longer exists.
- At §111.171, §111.173, and §111.175 the references to the Texas Clean Air Act, §3.10(e) should be updated to the §382.020 of the Texas Health and Safety Code. Section 3.10(e) of the Texas Clean Air Act no longer exists and the provisions originally found in §3.10(e) are currently located in §382.020 of the Texas Health and Safety Code.
- Section 111.213 references §101.6, which no longer exists. This reference should be updated to §101.201 to reflect the current location of the applicable emissions event reporting and recordkeeping requirements.

Public comment:
A public hearing was not offered for this review. The comment period for the rules review closed on September 26, 2023. No comments were received.

Affected agency program(s):
The program areas responsible for implementing these rules are the Air Quality Division, Air Permits Division, and the Office of Compliance and Enforcement.

Agency contacts:
Elizabeth Sartain, Project Manager, Air Quality Division, (512) 239-3933

Re: Docket No. 2023-0071-MIS

Booker Harrison, Senior Attorney, Environmental Law Division, (512) 239-4113
Abigail Adkins, Staff Attorney, Environmental Law Division, (512) 239-2496
Gwen Ricco, Texas Register/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:
Texas Register publication of Notice of Intention to Review

cc: Chief Clerk, 7 copies

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) will review all sections in 28 Texas Administrative Code:

-Chapter 102 (Practices and Procedures--General Provisions);

-Chapter 104 (General Provisions--Rule-Making);

-Chapter 109 (Workers' Compensation Coverage for State Employees);

-Chapter 110 (Required Notices of Coverage);

-Chapter 112 (Scope of Liability for Compensation);

-Chapter 114 (Self-Insurance); and

-Chapter 116 (General Provisions--Subsequent Injury Fund).

This review complies with the requirements for periodic rule review under Texas Government Code §2001.039.

DWC will consider whether the reasons for initially adopting these rules continue to exist, and whether these rules should be repealed, readopted, or readopted with amendments.

Comments

To comment on this review, you must:

-Submit your written comments by 5:00 p.m., Central time, on October 3, 2023.

-Specify the rule to which your comment applies.

-Include any proposed alternative language.

Send your written comments or hearing request to RuleComments@tdi.texas.gov or to:

Legal Services, MC-LS

Texas Department of Insurance, Division of Workers' Compensation

P.O. Box 12050

Austin, Texas 78711-2050

DWC may consider any suggested repeals or amendments identified during this rule review in future rulemaking under Texas Government Code Chapter 2001 (Administrative Procedure).

TRD-202302977

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: August 15, 2023

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Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 111 continue to exist.

Comments regarding suggested changes to the rules in Chapter 111 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 111. Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *https://tceq.commentinput.com/*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Non-Rule Project Number 2023-077-111-AI. Comments must be received by September 26, 2023. For further information, please contact Elizabeth Sartain, Air Quality Division, at (512) 239-3933.

TRD-202302993

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: August 16, 2023

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The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 Texas Administrative Code Chap-

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4675).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 111 were developed to regulate air pollution from visible emissions and particulate matter (PM) from different emission sources, process types, and outdoor burning. The two subchapters within Chapter 111, Subchapter A, Visible Emissions and Particulate Matter, and Subchapter B, Outdoor Burning, include emission limits, control requirements, and monitoring and sampling methods.

The review resulted in a determination that the following rules are obsolete: references to predecessor agencies that should be updated throughout the chapter; references to the Sampling Procedures Manual, permits by rule, a reference to emissions event report and recordkeeping requirements should be updated to reflect current versions and locations of these items; an update to a citation to the Texas Clean Air Act the provisions of which have been moved to another section; and the removal of references to a rule that no longer exists.

While the reasons for adopting Chapter 111 rules continue to exist, there are many references to predecessor agencies to TCEQ such as Texas Air Control Board (TACB) and Texas Natural Resource Conservation Commission (TNRCC) in many sections. These references should be updated in a future rulemaking to use the current agency name.

The reference in §111.125(2) to Chapter 5 of the Sampling Procedures Manual should be updated to Chapter 6 and the date updated to July 2003. These changes would reflect the current location of test methods for hydrogen chloride emissions from Single-, Dual-, and Multiple-Chamber Incinerators and the current version of the Sampling Procedures Manual.

The rules at §111.127(a) reference incorrect and outdated names of sections §106.491 and §106.494. The name of §106.491 should be updated from “Dual Chamber Incinerators” to “Dual-Chamber Incinerators” to correct the name of section §106.491 but adding the dash. In a rulemaking adopted in 2018 (Project Number 2018-019-106-AI), the name of §106.494 was updated from “Pathological Waste Incinerators” to “Non-commercial Incinerators and Crematories.” The reference to §160.494 should be updated so it uses the current name of the section.

The reference to §111.155 in §111.175 and §111.181 should be removed because it no longer exists.

At §111.171, §111.173, and §111.175 the references to the Texas Clean Air Act, §3.10(e) should be updated to the §382.020 of the Texas Health and Safety Code. Section 3.10(e) of the Texas Clean Air Act no longer exists and the provisions originally found in §3.10(e) are currently located in §382.020 of the Texas Health and Safety Code.

Section 111.213 references §101.6, which no longer exists. This reference should be updated to §101.201 to reflect the current location of the applicable emissions event reporting and recordkeeping requirements.

Public Comment

The public comment period closed on September 26, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 111 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039. Changes to the rules identified as part of this review process may be addressed in a separate rulemaking action, in accordance with the Texas Administrative Procedure Act.

Texas Commission on Environmental Quality

ORDER ADOPTING RULES REVIEW AND READOPTING RULES

Docket No. Docket No. 2023-0071-MIS
Non-Rule Project No. 2023-077-111-AI

On February 7, 2024, the Texas Commission on Environmental Quality (Commission) approved the rules review of 30 Texas Administrative Code (TAC) Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter in accordance with the requirements of Texas Government Code, § 2001.039, which requires a state agency to review and consider for readoption each of its rules every four years. The Notice of Intention to Review was published in the August 25, 2023, issue of the *Texas Register* (48 TexReg 4675).

IT IS THEREFORE ORDERED BY THE COMMISSION, that the rules review of 30 TAC Chapter 111 is hereby adopted. The rules and the preamble to the rules approved by the Commission are incorporated by reference in this Order as if set forth at length verbatim in this Order.

IF ANY PORTION OF THIS ORDER is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman

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Date Signed

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