

**Texas Commission on Environmental Quality**

**Texas Administrative Code**

**Chapter 111**

**CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER**

**Subchapter B**

**OUTDOOR BURNING**

**Rule 111.201**

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission.

The provisions of this §111.201 adopted to be effective September 16, 1996, 21 TexReg 8509.

**Rule 111.209**

outdoor burning is authorized for the following:

- (1) domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property.

Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings.

Examples of wastes not considered domestic waste that cannot be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances;

- (4) on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth, by the owner of the property or any other person authorized by the owner, and when the material is generated only from that property:

- (A) in a county that is part of a designated nonattainment area or that contains any part of a municipality that extends into a designated nonattainment area; if the plant growth was generated as a result of right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists.

## Rule 111.219

Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this subchapter.

(1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

(5) Burning must be conducted **downwind of or at least 300 feet** (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall **commence no earlier than one hour after sunrise**. Burning shall be completed on the same day **not later than one hour before sunset, and shall be attended by a responsible party at all times** during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when **surface wind speed** is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) **Burning shall not be conducted** during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

## Rule 111.221

The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable

laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

Texas Local Government Code

Chapter 352

SUBCHAPTER D. OUTDOOR BURNING

Sec. 352.082. OUTDOOR BURNING OF HOUSEHOLD REFUSE IN CERTAIN RESIDENTIAL AREAS.

(c) A person commits an offense if the person intentionally or knowingly burns household refuse outdoors on a lot that is:

- (1) located in a neighborhood; or
- (2) smaller than five acres.

## Outdoor Burning Overview

There are two categories of illegal outdoor burning; felony and misdemeanor. Both types are criminal violations of the Texas Water Code.

- (1) **Felony** illegal burning is simply a violation of the elements listed at TWC Sec. 7.182 or TWC Sec. 183.
- (2) **Misdemeanor** illegal burning is always a criminal violation of TWC Sec. 7.177(a)(5). The "elements" are listed in the various sections of the Texas Outdoor Burning rule [30 Texas Administrative Code Sec. 111(b)].

## Felony Outdoor Burning Intentional/Knowing + Knowing Endangerment

**TWC Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT.**

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

Individual:	\$2,000 to \$500,000 and/or five years confinement;
Person other than individual:	\$5,000 to \$1,000,000

## Felony Outdoor Burning Reckless

**TWC Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT.**

(a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

Individual:	\$1,000 to \$250,000 and/or five years confinement;
Person other than individual:	\$2,000 to \$500,000

Use this one ... its easier!

## Misdemeanor Outdoor Burning

It is a special misdemeanor (\$1,000 to \$50,000 and/or six months confinement for an individual; \$1,000 to \$100,000 for a person other than an individual) to violate the Texas Outdoor Burning Rule [30 TAC 111(b)].

**TWC Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT.**

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:  
(5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

The Texas Outdoor Burning Rule was adopted under Chapter 382 on **September 3, 1996** (published in Texas Register on that date). Your prosecutor will need this information to tie a "violation of the rule" to a "criminal violation of TWC Sec. 7.177(a)(5)."

Individual:	\$1,000 to \$50,000 and/or six months confinement;
Person other than individual:	\$1,000 to \$100,000

## Texas Outdoor Burning Rule

**Violations of the provisions of this rule are both:**

- (1) An ADMINISTRATIVE violation that may be handled by the TCEQ; and,
- (2) A CRIMINAL violation to be handled by the local jurisdiction.

For criminal enforcement, just treat the various sections as sets of elements.

## Outdoor Burning Generally Prohibited

**From Rule Sec. 111.201 General Prohibition**

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission.

## Recreational/Ceremony/Cooking/Warmth Fires OK

**Summary of Rule Sec. 111.207 Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth**

These types of fires OK unless a county burn ban or local emergency declaration is in effect.

The following material cannot be burned: Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber.

## Fire-Fighting Training Fires OK

**Summary of Rule Sec. 111.205 Exception for Fire Training**

Fire departments can conduct fire-fighter training with notice and permission of TCEQ regional offices. Notice requirements vary with size of department. Permission will be lost for doing demolition fires as "fire-fighter" training.

## Some Disposal Fires OK

**Summary of Rule Sec. 111.209 Exception for Disposal Fires**

(1) OK to burn domestic waste, from a single residence (not housing over three families) when the local government (city or county) doesn't "provide or authorize" waste collection services at the residence.

(1a) Which means that commercial waste cannot be burned without a TCEQ permit; and,

(1b) Waste from multi-family residents cannot be burned without a TCEQ permit.

"Domestic waste" does NOT include: such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

(2) OK to burn diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.

(3) OK for veterinarians to burn animal remains in accordance with Texas Occupations Code, §801.361, Disposal of Animal Remains.

(4) OK to burn plant growth waste on the property where it grew, in counties where air quality meets National Ambient Air Quality Standards. This applies to all unincorporated areas and inside cities too, UNLESS the city prohibits such burning by ordinance. Counties cannot prohibit this burning, except during burn bans. In urban areas where the air is poor (i.e., NAAQS not met), onsite plant growth burning is OK only for very limited reasons and only when there are no feasible alternatives (and there always are).

(5) OK to have consolidated plant growth burn sites in counties under 50,000, as long as they are outside the city and each burn is supervised by a full-time professional fire-fighter. Other site management rules apply.

(6) OK to burn crop residue, if done in accordance with the safety rules.

(7) OK for cities, in counties of any size, to burn brush every couple of months at a site they own outside the city limit, with TCEQ's prior approval.

## Prescribed Burns OK

**Summary of Rule Sec. 111.211 Exception for Prescribed Burn**

Prescribed burning for forest, range and wildland/wildlife management purposes (any county), and coastal salt-marsh management burning (in selected counties) is OK.

## TIPS

1. Make sure your own jurisdiction isn't breaking the law by illegally dumping.
2. Consider handling water pollution cases as H&S 365 illegal dumping to keep it simple.
3. Resolve to attend a TCEQ-sponsored 3-day environmental enforcement training.
4. Form local enforcement coalitions with city and county officers.
5. Join the Code Enforcement Association of Texas.
6. Join the Texas Environmental Law Enforcement Association
7. Develop evidence standards with local prosecutors.
8. Provide stories to local print and broadcast media.
9. Join and become active in local Keep Texas Beautiful.