

TEXAS OPEN BURNING RULES AND REGULATIONS

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I. OVERVIEW

Open burning can be an efficient method of waste disposal. However, burning is also an extremely hazardous practice that should be performed carefully. Texas laws and administrative regulations govern open burning—including open burning for agricultural purposes.

II. GENERAL RULES – TEXAS STATUTES

The Texas Health & Safety Code (§382.018) gives the Texas Commission on Environmental Health and Quality (TCEQ) the authority to promulgate burning rules, within some defined parameters. It directs the commission to authorize the burning of “trees, brush, grass, leaves, branch trimmings, or other plant growth” as waste, provided that this burning occurs on land where the waste was generated, and the burn is done by the owner of the property or someone authorized to do so by the owner (*Tex. Health & Safety Code §§382.018(b)(1&2)*). This does not mean that only these items may be burned, it just means that the commission cannot prohibit these items from being burned.

Note: An open burn must also meet federal ambient air quality standards (*Id*). These standards are accessible via the Environmental Protection Agency’s website: <https://www.epa.gov/criteria-air-pollutants/naaqs-table#1>.

The commission cannot subject burns of trees, brush, grass, leaves, branch trimmings, or other plant growth to its individual approval, nor can it only authorize burns when there are no other alternatives to disposal of the waste (*Tex. Health & Safety Code §382.018(c)(1&2)*).

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Outdoor burning of waste may be done at any time at a site designated for burning of waste from specific residential properties located outside a municipality in counties where less than 50,000 people reside if a firefighter (e.g., professional or volunteer) acting under the authority of the fire department is observing, provided the waste came from a site from which the burn area is designated to accept waste (*Tex. Health & Safety Code §382.018 (d)(1&2)*).

III. ADMINISTRATIVE RULES FOR OUTDOOR BURNING

Interestingly, Texas law prohibits all outdoor burning, with the exception of that which is expressly allowed by the TCEQ regulation, or for which written permission from the TCEQ executive director is obtained (*30 TAC §111.201*). For authorized burns, there are certain rules that must be followed.

A. General Rules.

The TCEQ sets forth the following general rules on authorized burns. According to the commission, burning must abide by the following time and weather conditions:

1. Burning may not be started earlier than an hour after sunrise; it also must be concluded on the same day by an hour before sunset at the latest. A responsible party must monitor the burning at all times it is actively burning. Once the fire is residual or smoldering, the smoke must be extinguished if it potentially could be a nuisance or create a traffic hazard. The extent of the burn area may not increase after the active burn phase.

2. Burning may not be started if wind is supposed to be less than 6 mph or more than 23 mph while the burn is being conducted.
3. Burning is prohibited during “periods of actual or predicted persistent low-level atmospheric temperature inversions” (30 Texas Admin. Code §111.219(6)).

B. Weather Conditions.

Additionally, wind direction and other meteorological conditions must be monitored. Burning may not be done if smoke and other pollutants will adversely affect “any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s)” (30 Texas Admin. Code §111.219(3)).

C. Location.

The burn site must be outside a city or town’s corporate limits, unless the city or town has an ordinance permitting burning within its limits (30 Texas Admin. Code §111.219(2)). Should burning cause or tend to cause smoke to blow over a road or highway, the person conducting the burning must post flag-persons on the road (30 Texas Admin. Code §111.219(4)). The burning must be conducted downwind of (or at least) 300 feet away from “any structure containing sensitive receptors located on adjacent properties,” unless written approval is obtained beforehand from the possessory occupant of the property (30 Texas Admin. Code §111.219(5)).

D. Prohibited Items.

Certain items may not 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” (30 Texas Admin. Code §111.219(7)).

Note: The Texas Forest Service must be notified if the purpose of the burn is for forest management (30 Texas Admin. Code §111.219(1)).

E. County Burn Bans.

In times of drought, local commissioners may ban outdoor burning altogether. *Tex. Local Gov’t Code §352.081(c)* allows a county commission court to prohibit burning if the Texas Forest Service has determined that a drought exists, or if the commission court finds that outdoor burning would exacerbate a public safety hazard due to drought conditions. If such a ban is imposed, it may not last for more than 90 days (*Tex. Local Gov’t Code §352.081(d)*). The ban

expires when drought conditions no longer exist or the commissioners determine conditions no longer cause outdoor burning to exacerbate a public safety hazard (*Tex. Local Gov’t Code §352.081(e)*). A person who knowingly or intentionally violates a prohibition established by this section, is committing an offense that is a Class C misdemeanor (*Tex. Local Gov’t Code §352.081(h)*).

Note: A ban imposed during drought conditions does not prohibit burns supervised by a Certified and Insured Prescribed Burn Manager, burns relating to “public utility, natural gas pipeline, or mining operations,” or burns relating to “planting or harvesting of agriculture crops” (*Tex. Local Gov’t Code §352.081(f)*).

IV. TYPES OF BURNING

The TCEQ authorizes the following types of outdoor burns:

Note: The following paragraphs discuss the types of burns subject to *Tex. Local Gov’t Code §352.082(c)*, which prohibits outdoor burning of household refuse in particular residential areas. Before burning household refuse, ensure this statutory provision does not prohibit doing so.

A. Fire Training.

Outdoor burning is allowed for training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 10 working days after the date of postmark or the date of personal delivery of the request.

Facilities dedicated solely for fire-fighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any 1-week period, provided the initial telephone/facsimile notice includes all such sessions. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.

Authorization to conduct outdoor burning under this provision may be revoked by the executive director

if the authorization is used to circumvent other prohibitions of this sub-chapter.

B. Recreation, Ceremony, Cooking, and Warmth.

Defined as fires used solely for recreational or ceremonial purposes, or in the non-commercial preparation of food—or used exclusively for the purpose of supplying warmth during cold weather (30 Texas Admin. Code §111.207). This type of burning is subject to the requirements in §111.219(7) General Requirements for Allowable Outdoor Burning).

C. Domestic Waste.

Burning of waste may be conducted at private residence housing (not more than three families) if the local government entity does not provide or authorize collection of domestic waste by the local government and waste only comes from that specific property (30 Texas Admin. Code §111.209(1)). Domestic waste includes: “Wastes normally resulting from the function of life within a residence,” including kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings (30 Texas Admin. Code §111.209(1)). Items such as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances would not qualify (30 Texas Admin. Code §111.209(1)).

Outdoor burning of certain types of waste may also be done at a site designated for burning of waste from residential properties, provided the waste came properties designated to send waste to be burned at the site (30 Texas Admin. Code §111.209(5)). Importantly: This is limited to the burning of trees, brush, grass, leaves, branch trimmings, or other plant growth and does not include other types of domestic waste (30 Texas Admin. Code §111.209(5)(D)). Placards with dimensions of 48 x 24 inches must be placed at all entrances to the site and read as follows: “DESIGNATED BURN SITE – No burning of any material is allowed except for trees, brush, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties for which this site is designated. All burning must be supervised by a fire department employee or a volunteer firefighter. For more information call: {PHONE NUMBER OF OWNER OR AUTHORIZED AGENT}.” (30 Texas Admin. Code §111.209(5)(A)). People must be able to see and read them at all times *Id.*)

A record must be kept of the properties designated to have their waste burned at the site. This record “must contain the description of a platted subdivision and/or a list of each property address. The description must be made available to commission or local air pollution control agency staff within 48 hours (if requested).” (30 TAC §111.209(5)(C).)

A firefighter (e.g., professional or volunteer) acting under the authority of the fire department must observe the burn at all times. Additionally, this supervisor must notify “the appropriate commission regional office,” either with a phone call or an “electronic facsimile notice” 24 hours before a scheduled burn. Though the commission should provide the firefighter with information about practical alternatives, its approval is not required (30 Texas Admin. Code §111.209(5)(F)).

D. Animal Carcasses.

Carcasses of diseased animals may be burned, but only “when burning is the most effective means of controlling the spread of disease.” (30 Texas Admin. Code §111.209(2)). Certified veterinarians have greater leeway in disposing of animal carcasses by burning (See: 30 Texas Admin. Code §111.209(3)).

E. Brush.

In certain instances, trees, brush, grass, leaves, branch trimmings, or other plant growth may be burned—provided that the burning occurs on land where the waste was generated, and the burn is done by the owner of the property or someone authorized to do so by the owner (30 Texas Admin. Code §111.209(4)). The ability to conduct these types of burns will depend on whether they will be conducted in a county that is a designated non-attainment area for national ambient air quality standards.

If the burn will occur in a county that has not attained national ambient air quality standards (i.e., a designated non-attainment area), burning is limited to plant growth that became waste as part of “right-of-way maintenance, land clearing operations, and maintenance along water canals.” Materials generated from other means may not be burned. In addition, for designated non-attainment counties, it is only permissible to burn if there is not a practical alternative to burning.

If the county in which the burn will occur has attained national ambient air quality standards, this limitation does not exist and any material from trees, brush, grass, leaves, branch trimmings, or other plant growth may be burned (30 Texas Admin. Code §111.209(4)). These burns are subject to local ordinances and other applicable regulations noted above.

If “brush, trees, and other plant growth” are detrimental to the public’s health, or creating dangerous conditions, local governments may burn them at a site they own. This site must be approved by the commission’s executive director, and burns may not occur at these locations with less than two months in between burns. In addition, the burns are only permissible when there is no practical alternative. A landfill is not a permissible

site unless the executive director approves it (30 Texas Admin. Code §111.209(7)).

F. Agricultural Burns.

Crop residue may be burned for agricultural management purposes. However, this is only if there is no practical alternative. Structures containing sensitive receptors must not suffer adverse consequences from the burn. The regulation requires those conducting burns to notify the commission in advance (if possible), but the commission's approval is not required. Crop burning ordered by an administrator is not subject to this rule (30 Texas Admin. Code §111.209(6)).

G. Prescribed Burning.

Prescribed burns for "forest, range and wildland/wildlife management, and wildfire hazard mitigation purposes" are permissible (30 Texas Admin. Code §111.211(1)). This does not include coastal salt-marsh management burning. Again, structures containing sensitive receptors must not be negatively affected. Notification should be made to the commission (if possible), but the commission's approval is not required. A special rule exists allowing for "coastal salt-marsh management burning" in: Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda Nueces, Orange, Refugio, and San Patricio Counties. These burns are allowed if the land is registered with the commission's regional office using a map that identifies: "Significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site." This registration must be received 15 days before the burn is conducted (30 Texas Admin. Code §111.211(2)(A)). A verbal or written request must be made to the appropriate commission regional office, which must authorize the burn. This notification requires it to state: "The specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period." (30 Texas Admin. Code §111.211(2)(B).)

The TCEQ regulations define a "land clearing operation" as "uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include prescribed burning or burning following clearing for ecological restoration." (30 TAC §111.203(3).)

H. Hydrocarbon Burning.

If land has a pipeline or an oil derrick on it, and there is a spillage, the hydrocarbons that leak out may be burned if the executive director is notified and determines that burning is necessary to protect the public welfare. There may be sampling and monitoring requirements to determine and evaluate environmental impacts (30 TAC §111.213).

I. Burns Approved by the Executive Director.

If not otherwise allowed by TCEQ regulations, outdoor burning may be authorized by the TCEQ upon written permission from the Executive Director (30 TAC §111.215). The executive director must find that there is no practical alternative and that the burn will not cause or contribute to nuisance, traffic hazard, or is in violation of air quality standards. In authorizing the burn, the executive director may require certain procedures or methods to control emissions (30 TAC §111.215).

V. PENALTIES AND LIABILITIES FOR PROBLEMS WITH BURNS

The most likely penalty for an improper burn is civil liability, which can be imposed upon a court finding that the person conducting the burn owed a duty of care—where the duty was breached—and that the breach caused damages. Texas is an ordinary negligence state, meaning that generally, liability is imposed if a burner fails to exercise reasonable care under the circumstances of the burn. (See: *Pfeiffer v. Aue*, 115 S.W. 300 (Tex. Ct. Civ. App. 1908.) ("One kindling fire on his own land is not liable for the escape of the fire to the property of another, unless he is negligent."))

Statutory liability limitations on liability can apply to landowners, a "burn boss," as well as a "certified and insured prescribed burn manager (CIPBM) in certain situations involving prescribed burns. (See: *Lashmet and Treadwell*, 2021, *Prescribed Burning Liability Considerations RWFM-PU-107*.)

The statute provides that landowners, lessees, or occupiers of agricultural or conservation land are not liable for damages caused by a prescribed burn if the burn is conducted under the supervision of a CIPBM (Tex. Nat. Res. Code §153.081(a)). Additionally, the statute provides that a burn boss is not liable for property damage, personal injury, or death caused by or resulting from the burn in excess of the insurance requirements established by the board for certified and insured prescribed burn managers under Section 153.046 if the burn boss has completed an accredited prescribed burning training course approved by the board, has

satisfied the minimum experience requirements prescribed by the board, and has liability insurance coverage equal to or in excess of statutory amounts (*Tex. Nat. Res. Code §153.084(b)*).

A “burn boss” is a person who directs a prescribed burn in accordance with a written prescription plan (*Tex. Nat. Res. Code §153.084(a)*). Finally, for a CIPBM, the statute provides that a CIPBM acting as a burn boss would receive the same limited liability as applicable to all burn bosses—but additionally, CIPBMs are not liable for damages caused by smoke more than 300 feet from the burn. A “certified and insured prescribed burn manager” is a person who has met certain statutory requirements, including the completion of an approved training program (*Tex. Nat. Res. Code §153.048*). These statutory limitations on liability provide an incentive for landowners (and tenants) to utilize certified and insured prescribed burn managers for conducting prescribed burns.

Note: If a prescribed burn is conducted in accordance with a written plan, a person may be held liable for property damage, personal injury, or death caused by (or resulting) from the burn only if the person is the burn boss and is otherwise liable under the other Texas law (*Tex. Nat. Res. Code §153.083(b)*).

Failure to follow burn regulations could also result in criminal prosecution. It is not necessary that the improper burn be discovered in process. For example: In *Ristoff v. State*, 985 S.W.2d 623, 1999 Tex. App. LEXIS 218 (*Tex. Ct. App. Jan. 14, 1999*), the court had evidence that Ristoff had illegally started fires on his land in the past and that he was present during the illegal fire that was the subject of this litigation. That was sufficient evidence for the court to sustain his conviction. As noted above, failure to comply with certain regulations is a criminal offense.

The fact that a burn is legally authorized does not automatically absolve the burner from liability. According to *30 Texas Admin. Code §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.”

VI. CONCLUSION

There are numerous legal considerations that should be made before conducting any type of outdoor burn. Landowners and anyone involved in conducting an outdoor burn should take the time and care to understand the applicable statutes and regulations, and to ensure that they are followed during the outdoor burn.

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