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TCEQ REGULATORY GUIDANCE

Small Business and Environmental Assistance Division

RG-422

May 2005

Outdoor Burning: A Guide for Local Governments

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Texas Commission on Environmental Quality • PO Box 13087 • Austin, Texas • 78711-3087

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This guide is part of our Local Government Guides series.

To Get Outdoor Burning Authorization

Contact your TCEQ regional office.

A directory is available at

www.tceq.state.tx.us (click on “Contact Us”).

The Outdoor Burning Rule

The Texas Outdoor Burning Rule prohibits most outdoor burning, but allows exceptions for specific situations in which burning is necessary or does not pose a threat to the environment or public health. The rule also establishes certain requirements in order to protect the environment and avoid adverse environmental impacts when burning is allowed.

The purpose of this guidance document is to assist local officials in interpreting the revised Outdoor Burning Rule, which can be found in Title 30 of the Texas Administrative Code (TAC), Sections 111.201 to 111.221.

Primarily, it informs municipalities and counties as to their responsibilities to enforce the rule, their requirements for complying with the rule, and their options regarding alternatives to burning.

This document complements and summarizes the information in *Outdoor Burning in Texas* (RG-049), which can be ordered from TCEQ's Publications section at (512) 239-0028. These publications are not a substitute for the actual rule. The most current, official copy of the rule can be obtained from the Secretary of State's office by calling (512) 305-9623. Copies of the rule are available on the TCEQ's Web site (www.tceq.state.tx.us).

Responsibilities for Applying the Rule

State Level

The TCEQ regulates outdoor burning as a part of its responsibility to safeguard air quality. The agency provides a basic framework for regulation throughout the state, and delegates primary responsibility for administering the rule to its regional offices.

The Texas Forest Service (at txforestservation.tamu.edu) is a resource for information on burn bans due to drought conditions, and on burning for forest management.

Local Level

Municipalities and counties have the statutory authority to administer the Outdoor Burning Rule, which includes county burn bans (see "Exemptions Related to County Burn Bans").

A city or town may draft its own ordinance to regulate outdoor burning if the state requirements do not meet its needs. For municipalities, restrictions must be in the form of one or more municipal ordinances or county-adopted orders.

Counties (which do not have ordinance-making authority) may enact full or partial county burn bans prohibiting outdoor burning pursuant to the Local Governmental Code, Section 352.081, and based on drought conditions as determined by the Texas Forest Service. These restrictions must be in the form of adopted orders.

Local municipalities may enact and enforce stricter restrictions on burning according to the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382). However, in two instances, local regulations may not be stricter than state law, as follows.

1. A local government may not prohibit residents from burning household waste unless that local government, having jurisdiction over waste disposal, provides (on its own or through an authorized contractor) on-premises trash collection service.
2. Veterinarians located outside the corporate boundaries of a municipality may burn animal remains and associated medical waste (not including sharps) on their own property if the animal had been previously treated by the veterinarian, or if it was owned by a current or previous customer of the veterinarian.

The TCEQ encourages local authorities to educate individuals and businesses about how to check local regulations on outdoor burning.

Kinds of Outdoor Burning Allowed under the Rule

As stated above, the Outdoor Burning Rule prohibits most outdoor burning in Texas, but allows exceptions for a number of specific situations. The exceptions to the general ban on outdoor burning fall under five general categories.

- Firefighter Training
- Disposal or Land Clearing
- Prescribed Burns
- Pipeline Breaks and Oil Spills
- Recreation, Ceremony, Cooking, or Warmth

Firefighter Training

Governmental entities and businesses that engage in firefighter training must obtain authorization to conduct outdoor burning for training purposes. To obtain authorization, the entity responsible for the training must send a written request to the local air pollution control agency or, if there is no such agency, the TCEQ regional office.

If outdoor burning occurs regularly at a dedicated training facility, it may be possible to notify the regional office of all such training events with one annual written request. If a dedicated facility conducts training regularly, but less frequently than weekly, a telephone or fax notification will be necessary 24 hours in advance of each event.

The TCEQ may revoke this authorization if it is used to avoid complying with other portions of the Outdoor Burning Rule. Otherwise, burning conducted to train firefighters does not have to conform with the general requirements for other forms of allowable outdoor burning.

Disposal or Land Clearing

There are six categories of fires for disposal or land clearing, as described below.

Domestic Waste

Residents may burn domestic waste (household trash or rubbish) when the local governmental entity having jurisdiction over such matters does not provide on-premises trash collection service or authorize a business or other entity to provide that service.

The waste must come from a property that is both designed to be a private residence and used exclusively as a private residence by no more than three families. The waste must also be burned on the property where it was produced. Under the rule, domestic waste is defined as those wastes that normally result from the activities of life within a residence. Examples of domestic waste are kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings.

Items and materials such as tires, construction debris that is not wood, furniture, carpet, electrical wire, and appliances are not considered to be domestic waste, and cannot be burned. Other conditions of the general requirements for outdoor burning do not apply to the burning of domestic waste, but the practice may not cause a nuisance condition or traffic hazard.

Diseased Animal Carcasses

Diseased animal carcasses may be burned when burning is the most effective means of controlling the spread of disease. The general requirements for outdoor burning do not apply to this exception.

Animal Remains

Animal remains and associated waste materials may be burned by a veterinarian under the following conditions:

- the veterinarian is currently licensed to practice veterinary medicine

- ☐ the burning is conducted on property owned by the veterinarian
- ☐ the burning is conducted outside the boundaries of any municipality
- ☐ the animal was previously treated by the veterinarian, or owned by a current or previous customer of the veterinarian
- ☐ the associated waste material **does not** include sharps or other unburnable items

Maintenance or Land Clearing

Trees, brush, and other plant overgrowth may be burned to maintain rights-of-way, to clear land, or to maintain the banks of water canals when there is no practical alternative* and when the materials were generated only from the property on which the burning occurs. Burning carried out under this condition must conform with all of the general requirements for outdoor burning and must not produce adverse effects for structures containing sensitive receptors.

Crop Residues

When there is no practical alternative,* crop residues may be burned for agricultural management. This burning must meet the same conditions as maintenance burns, unless an order of enforcement specifically for the crop in question establishes other conditions.

Brush, Trees, and Other Plant Material, Off-site

A county or municipal government may request site and burn approval from the TCEQ regional office to burn accumulations of brush, trees, and other plant material that create a condition detrimental to public health and safety. The burn must occur at a site owned by the local government and may be authorized only when there is no practical alternative.* Such burns may be done no more frequently than every two months, and may not be used in place of other sound brush-management practices.

Burning conducted under this condition must conform to the general requirements for outdoor burning. The burning may not occur at a municipal solid waste landfill without obtaining prior permission from the TCEQ.

Prescribed Burns

Prescribed burns are used to manage forests, rangeland, wildland and wildlife, and, in 14 counties, coastal salt marsh. All of these forms of burning are subject to the general requirements for allowed burning. Coastal salt-marsh burning also entails more specific notification requirements, which are stated in Subsections 111.211(2)(A) and (B) of Title 30 of the Texas Administrative Code.

* See “Practical Alternatives to Burning Waste” on page 8.

Pipeline Breaks and Oil Spills

In the case of pipeline breaks or oil spills, the spill itself may trigger a requirement to notify the appropriate TCEQ regional office. Contact your regional TCEQ office for more information with respect to spill reporting (upset notification). Once notified of the spill, the TCEQ regional office staff will decide whether burning is necessary to protect the public welfare. If permission to burn is given, sampling and monitoring to determine and evaluate environmental impacts also may be required.

Recreation, Ceremony, Cooking, or Warmth

Outdoor burning is allowed when used exclusively for recreational or ceremonial purposes, in the non-commercial preparation of food, or as a means to provide warmth in cold weather. In other words, campfires, bonfires, and cooking fires are allowed. Fires built under this condition may not contain electrical insulation, treated lumber, plastic, construction or demolition material not made of wood, heavy oil, asphaltic material, potentially explosive material, chemical waste, or items containing natural or synthetic rubber.

Other Exemptions under the Rule

Situations Not Covered in the Rule

If a situation seems to require outdoor burning but is not covered by the exceptions stated previously, TCEQ permission to burn may be requested. In considering whether to approve such a request, the regional office staff, acting on behalf of the executive director, will consider:

- whether there is a practical alternative,
- whether the burning will cause or contribute to a nuisance or traffic hazard, and
- whether the practice will violate any federal or state primary or secondary ambient air quality standard.

Such an authorization may require that certain procedures be followed to control or abate emissions. The authorization may be revoked at any time if the burning is found to cause a nuisance, violate any provision of an applicable permit, cause a violation of any air quality standard, or not conform with the specified conditions.

Exemptions Related to County Burn Bans

In addition to outdoor burning ordinances or orders, counties have the statutory authority to impose burn bans for public health and safety. Individuals must comply with these bans when local regulations are stricter than state regulations.

At the local level, the burn ban law (HB 2620) identifies only three cases in which exemptions may be allowed.

- firefighter training
- public utility, natural-gas pipeline, or mining operations
- harvesting

At the state level, the TCEQ interprets these burn ban exemptions as follows.

- Outdoor burning for firefighter training may be authorized during a burn ban, provided that approval is obtained from the local government issuing the burn ban and also from the authority as described in Section 111.205 of the Outdoor Burning Rule.
- Public utilities and others may be authorized to use outdoor burning for maintenance or disposal along a right-of-way during a burn ban only when there is a public health and safety issue (such as might occur when windstorm damage debris must be cleared from an electric utility right-of-way). Disposal for economic or convenience reasons can be delayed until the seriousness of the fire danger has passed.
- Burning related to agricultural crops during a ban would be authorized only when the burning is absolutely necessary and intrinsic to the harvesting of an existing crop, such as is the case with sugarcane production. Authorization would not be granted for post-harvest burning, or burning related to preparation for subsequent planting.

Practical Alternatives to Burning Waste

Local governmental entities are encouraged to consider practical alternatives to outdoor burning (defined in the rule as “an economically, technologically, ecologically, and logistically viable option”). The following methods can sometimes serve as practical alternatives to burning as a means to dispose of waste.

Recycling

Salvageable metals can be manually or mechanically separated from other material, and sold at a salvage yard.

Composting

Wastes from landscape maintenance can often be composted on a site easily and cleanly. Other similar wastes—even paper, in some instances—can be composted under the right conditions.

Mechanical Chipping or Mulching

This could be the first step in composting wastes, or the mulch that is produced could be used as is to enrich soil and help it retain moisture. Many local governments have saved money in park maintenance expenses

by using mulch produced from discarded brush. If the material cannot be used as a landscape mulch, chipping can still be useful by reducing the volume of waste that must be disposed of by some other means.

Logging

Timber can sometimes be converted to a marketable product—lumber, pulp, or firewood—as one way to reduce the costs of disposal. The remaining small limbs and brush are then much easier to dispose of through one of the other alternatives.

Landfills

Some landfills have recycling centers, with chippers for wood waste and collection bins for paper, plastic, and glass. Certain small, local landfills (Type IV) accept brush.

Trench Burning

Portable devices known as trench burners or air curtain incinerators can be used to dispose of brush or untreated lumber with minimized emissions. Many trench burner contractors and distributors provide leasing services. (Please refer to 30 TAC, Section 106.496, for rules regarding trench burner operations.)

With creative thinking and the help of the local TCEQ regional office, your community may be able to propose still other ways for residents and businesses to avoid burning waste.

Requirements for Outdoor Burning

General Requirements

The Outdoor Burning Rule sets the following general requirements for anyone authorized to burn outdoors.

1. Notify the Texas Forest Service before carrying out any prescribed or controlled burns that are intended for forest management (www.tamu.edu/ticc/preventionmap.jpg).
2. Burn only outside the corporate limits of a city or town, unless the city or town legally permits burning and still complies with Subchapter E of the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382).
3. Begin or continue burning only when the wind direction and other weather conditions are such that the smoke and other pollutants will not present a hazard to any public road, landing strip, or navigable water (such as a lake, river, stream, or bay), or have an adverse effect on any off-site structure containing “sensitive receptors.” (A sensitive

receptor is any living thing that might possibly be affected by an air pollutant, such as people, animals, or plants.)

4. Post someone to flag traffic if at any time the burning causes, or may tend to cause, smoke to blow onto or across a road or highway.
5. Keep fires downwind of, or at least 300 feet away from, any neighboring structure (such as a residence, business, farm building, school, or greenhouse) that contains sensitive receptors. This requirement may be waived only with the prior written approval of whomever owns or rents the adjacent property and either resides or conducts business there.
6. Begin burning no earlier than one hour after sunrise, and end it the same day, no later than one hour before sunset. Also ensure that it is conducted in a responsible manner.

Example

- If sunrise is at 6:18 a.m., you can start burning no earlier than 7:18 a.m.
- If sunset is at 5:32 p.m., you must finish no later than by 4:32 p.m.

Make sure that a responsible party is present while the burn is active and the fire is progressing.

At the end of the burn, extinguish isolated residual fires or smoldering embers if the smoke they produce can be a nuisance or a traffic hazard.

Don't start burning unless weather conditions are appropriate for smoke to dissipate (winds of at least six miles per hour; no temperature inversions) and for you to be able to control the fire (winds no faster than 23 miles per hour). If you need assistance with determining your current weather conditions, the National Weather Service has a Web site (www.nws.noaa.gov) that can provide the forecast for your area.

7. Don't burn any electrical insulation, treated lumber, plastic, heavy oil, asphaltic material, potentially explosive material, chemical waste, construction or demolition material not made of wood, or items that contain natural or synthetic rubber.

Additionally, outdoor burning must not cause a nuisance condition or traffic hazard according to 30 TAC, Sections 101.4 and 101.5.

The Outdoor Burning Rule does not exempt or excuse any person responsible for the consequences, damages, or injuries resulting from the burning, nor does it exempt or excuse anyone from complying with all

other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction.

Requirements for Local Governments

There are three provisions of the Outdoor Burning Rule that apply mainly to local governments.

1. Outdoor burning **may not** be used to dispose of municipal solid waste.
2. A county or municipal government **may** burn brush that is collected at a site that it owns after obtaining site and burn approval from the local TCEQ regional office. To obtain this approval, the governmental entity must prove that there no practical alternative, and that burning is necessary to protect public health and safety.
3. Any entity that uses outdoor burning to train firefighters must satisfy certain notification requirements (see the table, “Notification Requirements for Outdoor Burning”).

Table. Notification Requirements for Outdoor Burning

Purpose of Burning	Notify the TCEQ ...		Rule Subsection Number (30 TAC)
	In Writing	Verbally	
Firefighter Training			
Statewide	10 working days prior	Not required	111.205(a)
Dedicated facility, used at least once per week	Annually	Not required	111.205(b)
Dedicated facility, used less frequently	Annually	Required, 24 hours before event	111.205(c)
Disposal			
Domestic waste	Not required	Not required	111.209(1)
Diseased animal carcasses	Not required	Not required	111.209(2)
Animal remains, by veterinarian	Not required	Not required	4 TOC 801.361*
On-site, clearing	When possible	When possible	111.209(3)
Crop residue	When possible	When possible	111.209(4)
Brush, off-site, by county or city	Need prior approval	When possible	111.209(5)
Prescribed Burns			
Other than coastal salt marsh	When possible	When possible	111.211(1)
Coastal salt marsh	15 working days prior	Required	111.211(2)
Other			
Oil spills	Upset notification**	Required	111.213
Ceremonial fires	Not required	Not required	111.207

* Texas Occupational Code (Statute)

** See "Pipeline Breaks and Oil Spills" in "Kinds of Outdoor Burning Allowed under the Rule."

TCEQ REGIONS

(including counties in each region)

Region 1 - Amarillo
806/353-9251

Armstrong	Hemphill
Briscoe	Hutchinson
Carson	Lipscomb
Castro	Moore
Childress	Ochiltree
Collingsworth	Oldham
Dallam	Parmer
Deaf Smith	Potter
Donley	Randall
Gray	Roberts
Hall	Sherman
Hansford	Swisher
Hartley	Wheeler

Region 2 - Lubbock
806/796-7092

Bailey	King
Cochran	Lamb
Crosby	Lubbock
Dickens	Lynn
Floyd	Motley
Garza	Terry
Hale	Yoakum
Hockley	

Region 3 - Abilene
325/698-9674

Archer	Kent
Baylor	Knox
Brown	Mitchell
Callahan	Montague
Clay	Nolan
Coleman	Runnels
Comanche	Scurry
Cottle	Shackelford
Eastland	Stephens
Fisher	Stonewall
Foard	Taylor
Hardeman	Throckmorton
Haskell	Wichita
Jack	Wilbarger
Jones	Young

Region 4 - DFW
817/588-5800

Collin	Johnson
Cooke	Kaufman
Dallas	Navarro
Denton	Palo Pinto
Ellis	Parker
Erath	Rockwall
Fannin	Somervell
Grayson	Tarrant
Hood	Wise
Hunt	

Region 5 - Tyler
903/535-5100

Anderson	Marion
Bowie	Morris
Camp	Panola
Cherokee	Rains
Cass	Red River
Delta	Rusk
Franklin	Smith
Gregg	Titus
Harrison	Upshur
Henderson	Van Zandt
Hopkins	Wood
Lamar	

Region 6 - El Paso
915/834-4949

Brewster	Hudspeth
Culberson	Jeff Davis
El Paso	Presidio

Region 7 - Midland
432/570-1359

Andrews	Martin
Borden	Midland
Crane	Pecos
Dawson	Reeves
Ector	Terrell
Gaines	Upton
Glasscock	Ward
Howard	Winkler
Loving	

Region 8 - San Angelo
325/655-9479

Coke	Menard
Concho	Reagan
Crockett	Schleicher
Irion	Sterling
Kimble	Sutton
Mason	Tom Green
McCulloch	

Region 9 - Waco
254/751-0335

Bell	Limestone
Bosque	Lampasas
Brazos	Leon
Burleson	Madison
Coryell	McLennan
Falls	Milam
Freestone	Mills
Grimes	Robertson
Hamilton	San Saba
Hill	Washington

Region 10 - Beaumont
409/898-3838

Angelina	Polk
Hardin	Sabine
Houston	San Augustine
Jasper	San Jacinto
Jefferson	Shelby
Nacogdoches	Trinity
Newton	Tyler
Orange	

Region 11 - Austin
512/339-2929

Bastrop	Hays
Blanco	Lee
Burnet	Llano
Caldwell	Travis
Fayette	Williamson

Region 12 - Houston
713/767-3500

Austin	Harris
Brazoria	Liberty
Chambers	Matagorda
Colorado	Montgomery
Fort Bend	Walker
Galveston	Waller
	Wharton

Region 13 - San Antonio
210/490-3096

Atascosa	Karnes
Bandera	Kendall
Bexar	Kerr
Comal	Medina
Edwards	Real
Frio	Uvalde
Gillespie	Wilson
Guadalupe	

Region 14 - Corpus Christi
361/825-3100

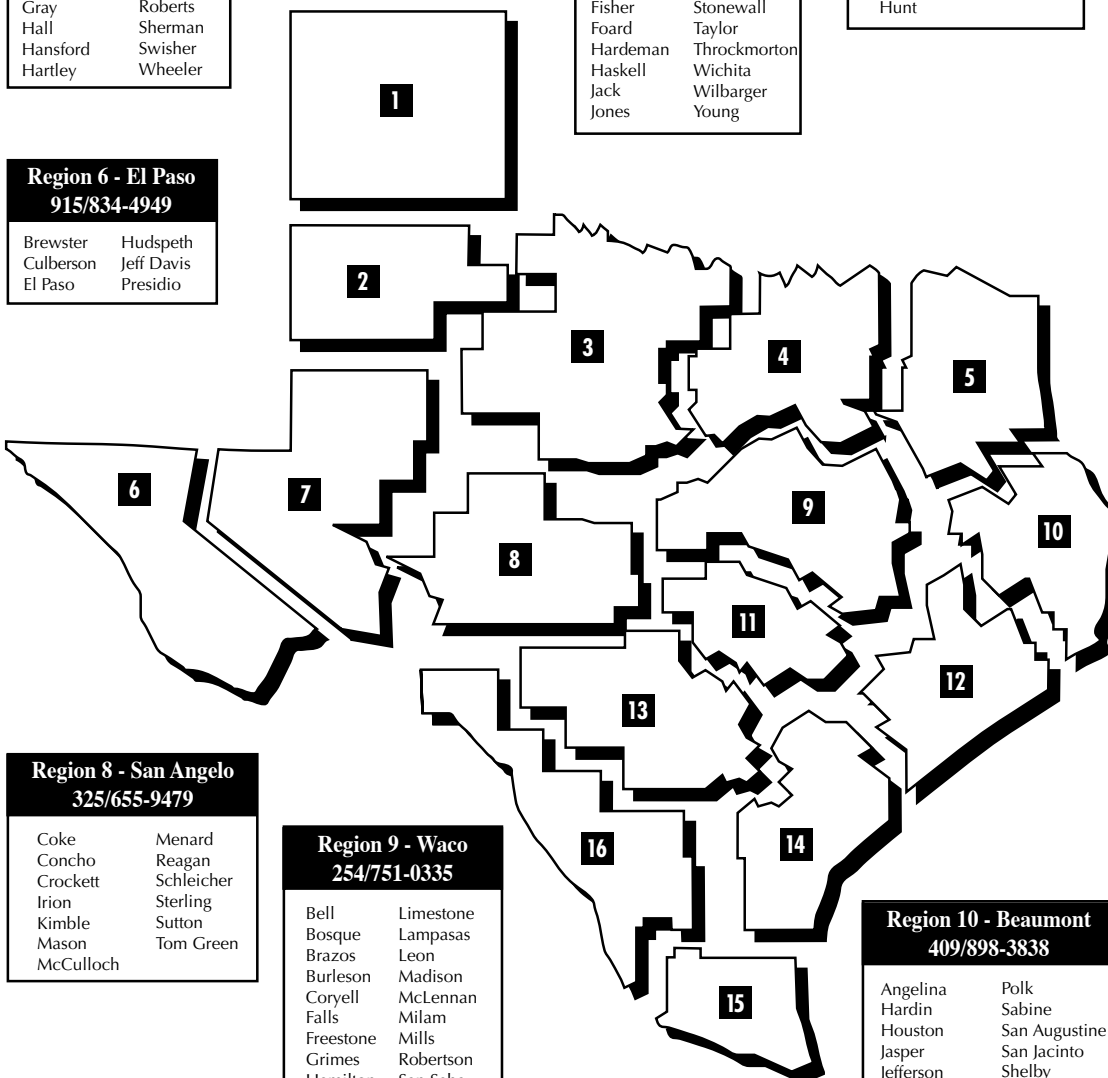
Aransas	Kleberg
Bee	Lavaca
Calhoun	Live Oak
De Witt	Nueces
Goliad	Refugio
Gonzales	San Patricio
Jackson	Victoria
Jim Wells	

Region 15 - Harlingen
956/425-6010

Brooks	Kenedy
Cameron	Starr
Hidalgo	Willacy
Jim Hogg	

Region 16 - Laredo
956/791-6611

Dimmit	McMullen
Duval	Val Verde
Kinney	Webb
La Salle	Zapata
Maverick	Zavala



Who can I call for more information?

For confidential environmental compliance assistance for small businesses and local governments:

Small Business & Local Government Hotline, (800) 447-2827

To report a spill 24 hours a day:

Spill Reporting, (800) 832-8224

To report an environmental complaint or violation:

Environmental Violations Hot Line, (888) 777-3186

For information about air permits:

TCEQ Air Permits Division, (512) 239-1250

For information about waste registrations:

TCEQ Registration, Review & Reporting Division,
(512) 239-2106

For information about water quality issues:

TCEQ Water Quality Division, (512) 239-4671

For information about drinking water or water supply issues:

TCEQ Water Supply Division, (512) 239-4691

For questions about burn bans or fire risk assessment:

Texas Forest Service, (979) 458-6530, txforests-service.tamu.edu

For information about emergency response activities:

Texas Interagency Coordination Center (TICC),
(936) 875-4786, www.tamu.edu/ticc

For information on how to receive fire-fighting training:

Rural Fire Defense Department, (936) 639-8130