

SUBCHAPTER B: OUTDOOR BURNING
§§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213,
111.215, 111.219, 111.221
Effective July 19, 2006

§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. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term "executive director," as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

Adopted August 21, 1996

Effective September 16, 1996

§111.203. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Commission on Environmental Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) **Extinguished**--The absence of any visible flames, glowing coals, or smoke.
- (2) **Landclearing operation**--The 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 burning following clearing for ecological restoration.
- (3) **Neighborhood**--A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.
- (4) **Practical alternative**--An economically, technologically, ecologically, and logistically viable option.
- (5) **Prescribed burn**--The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

(6) **Refuse**--Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(7) **Structure containing sensitive receptor(s)**--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation that has potential to be damaged by smoke and heat, examples of which include, but are not limited to, nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(8) **Sunrise/Sunset**--Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

(9) **Wildland**--Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

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§111.205. Exception for Fire Training.

(a) Outdoor burning shall be authorized 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.

(b) Facilities dedicated solely for fire-fighting training, at which training routinely will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.

(c) 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 one-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.

(d) 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 subchapter.

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§111.207. Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth.

Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of §111.219(7) of this title (relating to General Requirements for Allowable Outdoor Burning).

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§111.209. Exception for Disposal Fires.

Except as provided in Local Government Code, §352.082, 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. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in §101.1 of this title (relating to Definitions).

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;

(2) diseased animal carcass burning when burning is the most effective means of controlling the spread of disease;

(3) veterinarians in accordance with Texas Occupations Code, §801.361, Disposal of Animal Remains;

(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. Such burning is subject to the

requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). Commission notification or approval is not required; or

(B) in a county that is not part of a designated nonattainment area and that does not contain any part of a municipality that extends into a designated nonattainment area; this provision includes, but is not limited to, the burning of plant growth generated as a result of right-of-way maintenance, landclearing operations, and maintenance along water canals. Such burning is subject to local ordinances that prohibit burning inside the corporate limits of a city or town and that are consistent with the Texas Clean Air Act, Chapter 382, Subchapter E, Authority of Local Governments, and the requirements of §111.219(3), (4), (6), and (7) of this title. Commission notification or approval is not required.

(5) at a site designated for consolidated burning of waste generated from specific residential properties. A designated site must be located outside of a municipality and within a county with a population of less than 50,000. The owner of the designated site or the owner's authorized agent shall:

(A) post at all entrances to the site a placard measuring a minimum of 48 inches in width and 24 inches in height and containing, at a minimum, the words "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. For more information call {PHONE NUMBER OF OWNER OR AUTHORIZED AGENT}." The placard(s) must be clearly visible and legible at all times;

(B) designate specific residential properties for consolidated burning at the designated site;

(C) maintain a record of the designated residential properties. The 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;

(D) ensure that all waste burned at the designated site consists of trees, brush, grass, leaves, branch trimmings, or other plant growth;

(E) ensure that all such waste was generated at specific residential properties for which the site is designated; and

(F) ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the fire protection personnel, as defined by Texas Government Code, §419.021, and is acting in the scope of the person's employment. The fire department employee shall notify the appropriate commission regional office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn. The commission

shall provide the employee with information on practical alternatives to burning. Commission approval is not required;

(6) crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of the intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order; and

(7) brush, trees, and other plant growth causing a detrimental public health and safety condition burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

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Effective July 19, 2006

§111.211. Exception for Prescribed Burn.

Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify 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.

(C) Such burning shall be subject to the requirements of §111.219 of this title.

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§111.213. Exception for Hydrocarbon Burning.

Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in §101.6 of this title (relating to Notification Requirements for Major Upset), and if the executive director has determined that the burning is necessary to protect the public welfare. Sampling and monitoring may be required to determine and evaluate environmental impacts.

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§111.215. Executive Director Approval of Otherwise Prohibited Outdoor Burning.

If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal or state primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

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§111.219. General Requirements for Allowable Outdoor Burning.

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.

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§111.221. Responsibility for Consequences of Outdoor Burning.

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.

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