

# Appendix D

## Background

Section 111.201 prohibits outdoor burning within the state of Texas, except as provided in §§111.205 – 111.215. It also prohibits storing spontaneously combustible materials other than “solid fossil fuel” (i.e., coal) outside. The exception for coal was made to be consistent with the intent expressed in the preamble to the 1989 revisions to the rule.

*Land clearing operation.* The last sentence of this definition indicates two different kinds of exclusions. The first, for on-site property waste burns, is covered in §111.209(1); the second, for burns for ecological restoration, is covered in §111.211(1). In practice, prescribed burns and land clearing burns may have similarities: Occasionally it is necessary in a prescribed burn to bulldoze trees or brush into piles to get the appropriate effect. The key difference is the concept of “conversion.” The goal of land clearing is a major change in land use; the goal of a prescribed burn is to restore, maintain, or renew the ecosystem.

*Practical Alternative.* This definition contains four criteria, each of which must be considered to determine whether an alternative is practical. The standard of judgment should be that of a “reasonable person.” For example, an option that is technologically available but not economically affordable or logistically possible to implement is not practical. A method other than burning may not be practical if it cannot achieve the desired ecological outcome. An alternative that is technologically, economically, and logistically feasible is not practical if it also causes a greater ecological harm than burning.

In § 111.205(b), the wording “...at which training routinely will be conducted...” is used to eliminate potential confusion. For example, if training is conducted weekly except during holidays and when meteorological conditions are unfavorable, the facility still would qualify under this subsection of the rule. Other similar situations may also qualify.

Section 111.209(1) specifies that collection of domestic waste by the local governmental agency or authorized agent must occur at the premises where the waste is generated. The governmental provision of a transfer or convenience station to which residents may bring waste does not constitute collection of domestic waste; therefore, burning may take place in that instance. Any authorization of collection services by a governmental entity must be specific and well-defined. For a government merely to say it is okay for anybody to commercially collect garbage within its jurisdiction does not constitute authorized collection for the purposes of this rule.

Section 111.209(5) is a recognition of an agricultural practice that continues in many parts of the state. The key factor is whether a practical alternative exists. Determining whether there is a practical alternative requires evaluating such things as the type of crop, soil moisture level, soil nutrient benefits, cropping sequence, and costs of alternative disposal methods.

Section 111.209(6) was added to deal with situations in which vegetative accumulation has the potential to do such things as obstruct the flow of water and cause flooding or provide habitat for vermin, but where it is not feasible to burn on-site because doing so would create a nuisance or traffic hazard. Each such burn requires prior approval from the regional office. A site cannot be designated by the municipality or county and used continually as a standard operating procedure to augment the normal brush disposal process. By so doing, the municipality or county establishes a de facto landfill, invoking restrictions of the Resource Conservation and Recovery Act (RCRA). RCRA stipulations that allow the “infrequent” burning of vegetative matter provide the rationale for the two-month burn frequency. The intent is that the governmental entity will not conduct such a burn more frequently than once every two months, no matter how many sites it may have available. For example, it is not permissible for a governmental entity to conduct a burn at one site and then have another burn at another site a few days later, in essence circumventing the intent of the rule by staggering off-site fires.

Section 111.211 is a recognition of fire as a necessary management tool for particular situations for which there is no practical alternative. All such burns are subject to the General Requirements for Allowable Outdoor Burning (§111.219).

Section 111.213 provides a mechanism for remediation to avoid additional environmental degradation in an emergency, as by preventing a petroleum substance from entering a waterway. Once the emergency is under control, it is not permissible to burn the material used to absorb the hydrocarbon or other wastes associated with emergency control. This section should not be used to sanction disposal. Note that the Outdoor Burning Rule refers to §101.6 (relating to Notification Requirements for Major Upsets). However, this section has been repealed and replaced by §101.201 (relating to Emissions Events Reporting and Recordkeeping Requirements).

Section 111.219(6)(A) allows flexible burn opportunities with consideration for meteorological conditions conducive to dispersion. The requirement for having a responsible party in attendance during the active burn phase does not mean someone has to be in attendance once the fire is virtually complete and is not advancing – once it is principally glowing coals with possibly some patchy residual fires. The extent of the burn may not be allowed to increase after the one-hour-before-sunset limit. A fire

that has burned down to glowing coals has consumed most of the volatile substances and will not progress as a flame. It is understood that such things as stumps may burn for several days. Residual fires and/or smoldering objects that do not have the potential to create a condition of nuisance or traffic hazard need not be quenched. For example, if one is burning 100 acres with a road on one side and no sensitive structures in other directions from the burn area, it would be prudent to extinguish residual fires and/or smoldering objects within a swath along the boundary with the road where the potential for nuisance or traffic hazard exists, but allow the remaining portion of the burn site to subside at a natural rate.

Section 111.219(7) specifically prohibits the burning of insulated wire without prohibiting the burning of piles created by fence demolition where wire and untreated wood wastes are involved.