



TCEQ REGULATORY GUIDANCE

Field Operations Division

RG-049 (Revised)

February 2005

Outdoor Burning in Texas

The purpose of this guidance document is to assist the general public, the regulated community, and responsible state and local officials in interpreting the revised Outdoor Burning Rule, Title 30 Texas Administrative Code (TAC), Sections 111.201 through 111.221.

This guidance document covers all aspects of the outdoor burning rule, including:

- Exceptions for allowable outdoor burning;
- General requirements for allowing outdoor burning;
- Notification requirements for allowable outdoor burning; and
- Frequently asked questions related to outdoor burning.

State and local officials may find Appendices C and D – a copy of the rule itself and background information for each section of the rule – to be particularly useful.

This guidance document is not a substitute for the actual rule. A current copy of the rule can be obtained from the Texas Commission on Environmental Quality (TCEQ) by calling 512/239-0028, or at:

www.tceq.state.tx.us/rules

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The Outdoor Burning Rule Explained

The current version of the Outdoor Burning Rule is the result of a concerted effort to produce a streamlined, unambiguous rule that could be applied consistently and fairly throughout Texas. The purpose of the rule is to protect the environment, promote public health and safety, and avoid nuisance conditions through the sensible regulation of outdoor burning.

Summary of the Rule

The Outdoor Burning Rule first prohibits outdoor burning anywhere within the state of Texas, and then allows for exceptions for specific situations in which burning is necessary or does not pose a threat to the environment. The rule also prescribes conditions that must be met to protect the environment and avoid other adverse impacts when burning is allowed. If burning seems necessary, but the situation does not fit an exception stated in the rule, then it is possible to request from the TCEQ a special authorization to conduct burning.

Exceptions to the Prohibition

The standard exceptions, explained below, cover the most common situations in which burning is an acceptable practice. In most of these instances, the burning must follow the general requirements outlined later in this document. It may be necessary to notify the TCEQ, local governmental agencies, and neighbors before conducting burning under one of these exceptions. See Table 1 in Appendix A for details on notification requirements in specific situations. There may be local ordinances or county burn bans that regulate burning; if so, the requirements and restrictions of those ordinances must also be met.

Firefighter Training

Entities that conduct firefighter training may obtain authorization to conduct outdoor burning for training, including training in the operating of fire extinguishers. To obtain the 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. For a list of regional offices, see Appendix B.

If training occurs regularly at a dedicated facility, it may be possible to notify the regional office of all such training events with one annual written notification. If a dedicated training facility conducts training

regularly but less frequently than weekly, a telephone or fax notification will be necessary 24 hours in advance of each event.

Burning conducted to train firefighters does not have to conform with the general requirements for other forms of allowable outdoor burning, but the burning must not cause a nuisance or traffic hazard. The TCEQ may revoke this authorization if it is used in an attempt to avoid complying with other portions of the Outdoor Burning Rule.

Fires for Recreation, Ceremony, Cooking, or Warmth

Outdoor burning is allowed when used solely for recreational or ceremonial purposes, in the noncommercial preparation of food, or exclusively as a means to provide warmth in cold weather. In other words, campfires, bonfires, and cooking fires are allowed. Fires built under this exception may not contain electrical insulation, treated lumber, plastics, construction or demolition materials not made of wood, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items containing natural or synthetic rubber. The other general requirements on allowable outdoor burning do not apply to fires covered by this exception, but the burning must not cause a nuisance or traffic hazard.

Fires for Disposal or Land Clearing

This broad exception covers the six more specific categories described below.

Domestic waste. Domestic waste – in other words, household trash or rubbish – may be burned when the local governmental entity that has jurisdiction over such matters does not provide on-premises trash collection service or authorize a business or other entity to provide on-premises trash collection service. To qualify for this exception, the waste must come from a property that is both designed to be a private residence and used exclusively as a private residence for no more than three families. The waste must also be burned on the property where it was produced. According to TCEQ rules (30 TAC Section 101.1), *domestic wastes* includes those wastes that normally result from the function of life within a residence – for example, kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings. Such things 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 this practice must not cause a nuisance or traffic hazard.

Diseased animal carcasses. These 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, but burning under this exception must not cause a nuisance or traffic hazard.

Animal remains burning by a veterinarian. A veterinarian may burn animal remains and medical waste associated with the animal, not including sharps (e.g., needles), in his or her care on his or her property if the property is located outside the corporate boundaries of a municipality (or within the corporate boundaries of a municipality if annexed on or after September 1, 2003). This section prevails over any other law that authorizes a governmental entity to abate a public nuisance (Section 801.361, Occupations Code).

Maintenance or land clearing. Trees, brush, and other plant growth may be burned to maintain rights-of-way, clear land, or maintain the banks of water canals when there is no practical alternative and when the materials are generated only from the property on which the burning occurs. Burning carried out under this exception must conform to the general requirements for outdoor burning and may not produce adverse effects for structures containing sensitive receptors – for example, occupied buildings, barns, or greenhouses.

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 administrative order specifically for the crop in question establishes other conditions.

Brush, trees, etc., 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 growth that cause 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 exception must conform to the general requirements for allowable outdoor burning. The burning may not occur at a municipal solid waste landfill without obtaining permission from the TCEQ beforehand.

Prescribed Burns

This exception covers the use of fire 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 allowable outdoor burning. Coastal salt-marsh burning also entails more specific notification requirements, which are stated in subsections 111.211(2)(A) and (B).

Pipeline Breaks and Oil Spills

An oil spill or pipeline break itself may trigger a requirement to notify the appropriate TCEQ regional office. Once notified of the spill, the 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.

Other Situations

If a situation seems to require outdoor burning, but it is not covered by the previously described exceptions, permission to burn may be requested from the TCEQ regional office. 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.

General Requirements for Burning

The Outdoor Burning Rule sets the following general requirements for allowable outdoor burning. These requirements apply to the specific situations for which they are mentioned above. They are designed to reduce the likelihood that burning will create a nuisance, cause a hazard, or harm the environment. The party responsible for the burn remains liable for damages, injuries, or other consequences that may result from burning, even when it is carried out in compliance with these regulations.

1. Notify the Texas Forest Service before carrying out any prescribed or controlled burns that are intended for forest management.
2. Burn only outside the corporate limits of a city or town, unless the incorporated city or town has an ordinance that permits burning and is consistent with the Texas Clean Air Act Subchapter E (TCAA).
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 (e.g., lake, river, stream, or bay) or have an adverse effect on any off-site structure containing "sensitive receptors" (e.g., a residence, business, farm building, or greenhouse).

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 that contains sensitive receptors. This requirement may be waived only with the prior written approval of whoever owns or rents the adjacent property *and* either resides or conducts business there.
6. Begin burning no earlier than one hour after sunrise, end it the same day and no later than one hour before sunset, and 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 objects 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 6 miles per hour; no temperature inversions) and for you to be able to control the fire (winds no faster than 23 miles per hour).
7. Don't burn any electrical insulation, treated lumber, plastics, construction or demolition materials not made of wood, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items that contain natural or synthetic rubber.

Practical Alternatives to Burning

The Outdoor Burning Rule defines a *practical alternative* 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. With creative thinking and the help of the local TCEQ regional office, you may be able to develop still other ways to avoid burning your waste.

Recycling. Manually or mechanically separate salvageable metals from other material, and sell them at a salvage yard.

Composting. Wastes from landscape maintenance can often be composted on-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 put to use for soil enrichment and moisture retention. In some cases, the mulch could become a marketable product, be put to use where it is produced, or be given to individuals or nurseries. If the material cannot be used as a landscape mulch, chipping can still be useful to reduce the volume of waste that must be disposed of by some other means.

Logging. Timber sometimes can 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. Type IV landfills accept brush. Contact your local landfills for details.

Air curtain incineration (trench burning). Many land clearing contractors have portable devices, known as *trench burners* or *air curtain incinerators*, that can be used to dispose of brush or untreated lumber with minimized emissions. These facilities must be authorized by the TCEQ prior to their construction at a burn site. Many of the contractors and distributors provide leasing services.

Related TCEQ Publications

The TCEQ has a variety of publications available on issues related to outdoor burning. Several of them provide detailed explanations of specific alternatives to outdoor burning, for example:

- RG-325: *Used Oil Recycling Handbook: Guidance for Used Oil Handlers*
- GI-036: *Composting and Mulching*
- RG-419: *Disposal of Domestic or Exotic Livestock Carcasses*

To order single copies of these or other TCEQ publications, call TCEQ Publications Distribution at 512/239-0028 or write:

TCEQ Publications
MC-195
PO Box 13087
Austin TX 78711-3087

Frequently Asked Questions

The questions in this section were compiled by the TCEQ regional offices. They are actual questions frequently asked about outdoor burning by the general public and the regulated community.

General Questions

Burning Permit?

How do I obtain a burning permit from the TCEQ?

You don't: The TCEQ does not issue burning permits. Outdoor burning in general is prohibited in the state of Texas, although the TCEQ Outdoor Burning Rule (Appendix C) does allow certain exceptions. If your situation fits all requirements for one of the exceptions described in the rule, you may conduct burning, as long as you comply with the burn conditions specified in the rule. Depending on the circumstances, you may also need the approval of the appropriate regional office before you burn. Remember to also check local ordinances or other regulations about burning. (See the next question for further details.)

Not an Exception, but No Practical Alternative

My situation doesn't fit any of the exceptions given in the rule, but I still think that burning is the only practical alternative. What can I do?

Submit a written request to the TCEQ regional office that serves the area where you think you need to conduct outdoor burning. Acting on behalf of the executive director, the regional staff will review your request and evaluate the claim of no practical alternative. If they agree that none can be found, they will provide you a written authorization to burn that outlines specific conditions you must follow to control the emissions.

When to Notify the TCEQ?

The rule authorizes (or the TCEQ has authorized) my outdoor burning. Before I actually set the fire, do I have to notify the TCEQ?

It depends. For certain types of burning, the rules require you to notify the TCEQ regional office. For others, you are not required to notify the TCEQ. But before you strike that match, remember that you may also have to contact other agencies – or even your neighbors – as well as the TCEQ. See Table 1 in Appendix A for the notification requirements for the various kinds of burning covered under the rule. Even if the rule doesn't require you to notify the TCEQ, you will find that the local regional office has up-to-date information about weather conditions and other factors you should consider before doing any outdoor burning – for example, which way (and how fast) the wind is blowing, whether winds are expected to shift, whether your area is under a temperature inversion, the exact local time of sunrise or sunset, and whether high ozone levels are forecast.

What about My Neighbors?

It looks like I can get the TCEQ's approval to burn, but my neighbors may complain. Do I have to worry about what they think?

Yes. Besides the issue of common courtesy, the Outdoor Burning Rule requires that certain kinds of burning be conducted downwind of or at least 300 feet from any structure containing sensitive receptors (for example, a residence, business, barn, or greenhouse) located on adjacent properties unless written approval is obtained beforehand from the owner or occupant – the one who will suffer adverse effects – of the adjacent or downwind property. Also, the burning may not cause a nuisance or traffic hazard.

Do Local Rules Apply?

We are burning in compliance with TCEQ regulations, but the local fire marshal objects. Is our compliance with state rules not enough?

Your compliance with TCEQ regulations does not mean that other, stricter laws, regulations, or ordinances cannot be enforced by city, county, or other governmental entities. You must comply with all such regulations (e.g., county burn bans) as well as the TCEQ rules.

Reporting Illegal Burning

How do I report somebody who is conducting illegal outdoor burning?

Report the burning to the local air pollution control office, or the nearest TCEQ regional office.

Firefighter Training

We want to conduct fire training for our volunteer fire department (VFD). Can we burn this abandoned house?

The training of firefighters may be authorized as an exception to the prohibition on outdoor burning. Submit a written request on behalf of the VFD to the local air pollution control agency, or, if there is no local agency, the TCEQ regional office having jurisdiction. Authorization may be granted orally or in writing. According to the rule, the burning shall be authorized unless your VFD receives a notice of denial within 10 working days after the date of postmark or the date of personal delivery of the request. (Working days do not include Saturdays, Sundays, or state or federal holidays.) To ensure that the fire would not cause the formation or dispersion of toxic substances, the local air pollution control agency or the

reviewing TCEQ regional office may require that the building be stripped of many common construction materials – including electrical wiring, lead flashing, carpet, asbestos, and many others – before the fire is ignited.

Note that the burning of abandoned buildings by a fire department is not automatically considered fire training. There must be a specific benefit to the fire department. Simply preventing the spread of fire from an abandoned building to neighboring property is not considered training. Such situations constitute an attempt to circumvent the prohibitions in the Outdoor Burning Rule. In cases in which such circumvention is present, the outdoor burning is prohibited.

Fires for Disposal

At Landfills

What may be burned at municipal solid waste landfills?

No routine burning is allowed at municipal solid waste landfills, unless otherwise authorized by the TCEQ in writing.

Land Clearing

Inside City Limits

I have some uncleared property inside the city limits that I would like to develop. Hauling the trees and brush off would not be practical because it is too expensive. May I dispose of the trees and brush by burning?

Unless the county or municipal government has enacted ordinances that permit burning consistent with state law, this situation does not meet any of the exceptions to the prohibition on outdoor burning. You may need to consider alternatives such as chipping or trench burning. If there is no practical alternative, you may request written permission from the TCEQ for authorization to burn. Such requests are evaluated on a case-by-case basis. Contact the appropriate TCEQ regional office for guidance.

Trench Burning

Why are housing subdivisions allowed to dig pits and burn their land clearing materials within city limits?

They are using a process called air curtain incineration (trench burning), which is authorized under a permit by rule or standard permit. Companies

that specialize in that business must obtain prior TCEQ approval and follow specific written operating procedures.

Plant Materials

Tree Trimming Service

I am in the business of trimming people's trees and shrubs in town. I realize that the tree limbs and trimmings can't be burned in town, but I own some land outside of town. May I take it out there and burn it?

No. The Outdoor Burning Rule allows the burning of land clearing materials only at the site where the land clearing is done. In order to burn under state law, that site must be outside of municipal corporate limits, unless the city or town has an ordinance that permits burning and is consistent with state law.

Brush Piles

There are tree limbs in an area of our community that pose a public safety risk. What are our options for solving this problem?

Brush, trees, and other forms of plant growth that present a detriment to public health and safety may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the TCEQ. Such burning can only be authorized when there is no practical alternative, and it may be done no more than once every two months. The local government has the burden of proving that there is no practical alternative and that the growth poses a detriment to public health or safety. This procedure may not be used continually as a standard operating procedure to augment the normal brush disposal process. Such burning cannot be conducted at municipal solid waste landfills unless authorized in writing by the TCEQ.

Storm Damage

A bad storm knocked a lot of trees down in our community. May we burn the debris? May we haul it to the landfill and burn it?

Regardless of whether the brush is to be burned onsite or at the landfill, this type of burning is not specifically authorized in the exceptions to the prohibition on outdoor burning. However, an authorization to dispose of storm debris may be granted if there are no practical alternatives. Such requests are evaluated on a case-by-case basis. Contact the appropriate TCEQ regional office for guidance.

Domestic Trimmings

May I burn trees that I have cut down in my backyard?

Grass, leaves, and hedge and branch trimmings from residences are all considered to be “domestic waste.” If your local government provides or authorizes a private collector to provide the collection of domestic waste, this type of material may not be burned. If such collection is not available, then it may be burned. However, the burning must not create a nuisance or traffic hazard, and you must comply with any applicable local rules or ordinances.

Trash

Can't Afford Collection Service

I live in a small rural town where most people have their trash picked up by a commercial trash collection service. I can't afford to pay that money each month. May I burn my trash in a 55-gallon drum in my backyard?

If the local city ordinance does not make it mandatory that trash be picked up, or there is no governmentally authorized or provided on-premises trash collection service, you may burn domestic waste on the property where it is produced, as long as it is not prohibited by local rule or ordinance and does not create a nuisance or a traffic hazard.

Domestic Waste?

What is considered to be domestic waste?

“Domestic wastes,” defined in 30 TAC Section 101.1(23), is the garbage and rubbish normally resulting from the functions of life within a residence. It includes food waste, food packaging, residential yard, grass, leaves and branch trimmings, and clothing. It does not include tires, construction debris that is not wood, furniture, carpet, appliances, and other items that residential households do not normally generate as waste.

Waste from a Business

I want to burn boxes from my business. The TCEQ rules say that I may burn waste from my residence, but what about waste from my business?

According to the Outdoor Burning Rule, you can't burn business waste. The exception that allows the burning of domestic waste applies only if the property is used exclusively as a private residence and the local governmental entity does not provide or authorize the collection of waste at the premises where the waste is generated. There is no such exception for businesses. You might want to look into the possibility of recycling your boxes or investigate ways that you or your neighbors could reuse the boxes.

Scrap Tires

We have a real hard time disposing of scrap tires. Will the TCEQ let us burn them?

No, for at least two good reasons. First, the rule specifically prohibits the outdoor burning of tires – and any other items that contain natural or synthetic rubber – because of the air pollution that would result. Second, Texas is at least as innovative as anywhere else in the world in finding good uses for waste tires. The TCEQ's Scrap Tire Program can give you better ideas for disposing of those old tires.

Oil and Hydrocarbons

Oil Spills

If my company has an oil spill, may we burn the oil to dispose of it?

Perhaps. The burning of oil or other hydrocarbons spilled from pipeline breaks may be allowed, if the TCEQ determines that the burning is necessary to protect the public welfare. Ask for guidance from the appropriate TCEQ regional office.

Oil Filters

May I burn my old oil filters in a metal barrel on my property?

No. Take oil filters to an authorized recycling site, along with your used oil.

Animal Remains Burning by a Veterinarian

I am a licensed veterinarian. Do I need authorization to burn animals that died while in my care?

No, as long as you are located outside the corporate boundaries of a municipality (or within the corporate boundaries of a municipality if annexed on or after September 1, 2003) and you burn the animal remains on property owned by you. You can also burn medical waste associated with the animal, with the exception of sharps (e.g., needles). See section 801.361 of the Texas Occupations Code for details.

Agricultural Management

Sugarcane Fields

Why are the sugar growers allowed to burn the cane fields?

There are no technically or economically feasible alternatives. Years ago, the Rio Grande Valley Sugar Growers, Inc., requested the authorization to burn the cane fields in association with each harvest. The TCEQ, after extended air monitoring studies, concluded that no practical alternative existed for this industry. The agency then adopted an agreed order that outlines conditions under which the sugarcane industry could conduct burning.

Crop Residue

The burning of corn stubble produces a great amount of smoke. Is this type of burning authorized?

Burning for crop management is allowed if there is no practical alternative, if it is conducted under appropriate weather conditions and at appropriate times, and if it does not cause a nuisance or traffic hazard.

Prescribed Burning

Who can I contact for technical information relating to prescribed burning?

A good source is the Prescribed Burning Board (PBB). The PBB was established within the Texas Department of Agriculture during the 76th Texas Legislature in 1999. The PBB sets standards for prescribed burning, develops a comprehensive training curriculum for prescribed burn managers, sets standards for certification, recertification and training of burn managers, establishes minimum education and professional requirements for instructors for the approved curriculum, and sets minimum insurance requirements for prescribed burn managers.

Recreational and Other Purposes

Outdoor Grills

May I cook food on my charcoal grill in my backyard?

Yes. Fires used in the noncommercial preparation of food are allowed.

Fireplaces

May I build a fire in my fireplace?

Yes. Indoor fires are not regulated by the outdoor burning rule. Domestic-use fireplaces are authorized under the TCEQ's *de minimis* rules in 30 TAC Section 116.119.

Campfires

Are campfires allowed inside the city limits?

Fires used solely for recreational or ceremonial purposes are allowed by state law; however, local ordinance may prohibit this burning. Make sure no oils, asphalt, synthetic rubber, or other materials that produce heavy smoke are in the fire: they could release toxic gases or cause a nuisance or traffic hazard.