

TEXAS OUTDOOR BURNING

Summary of Criminal Laws To Be Enforced Locally

Handout to TARC Solid Waste Coordinators July 19, 2006

1. **Felony Illegal Burning**

- a. Texas Water Code Sec. 7.183
Intentional or Knowing Emission of Air Contaminant and Knowing Endangerment
Fine: \$2,000 to \$500,000 and/or five years confinement
Not commonly charged at local level
- b. Texas Water Code Sec. 7.182
Reckless Emission of Air Contaminant and Endangerment
Fine: \$1,000 to \$250,000 and/or five years confinement
Frequently charged at local level in both urban and rural counties

2. **Misdemeanor Illegal Burning**

- a. Violations of Texas Outdoor Burning rule
 - (1) Violations are both administrative *and* criminal violations
 - (2) TCEQ handles administrative violations; local governments do criminal enforcement
 - (3) Texas Outdoor Burning rule is the same as 30 TAC 111(b)
 - (4) Breaking this rule = criminal violation of Texas Water Code Sec. 7.177(a)(5)
 - (5) Fine: \$1,000 to \$50,000 and/or up to 180 days confinement
- (6) Provisions of Texas Outdoor Burning rule
 - (a) Outdoor burning generally prohibited; only rule and TCEQ authorizes
 - (b) Burning OK for **fire training** exercises [Outdoor Burning Rule § 111.205]
 - (c) Burning OK for **recreation, ceremony, cooking, warmth** fires [§ 111.207]
 - (d) **No domestic waste burning** [§ 111.209]
 - [1] **Domestic waste from three or fewer families private residence**
 - [a] Only OK where local government does not “provide” or has not “authorized” waste collection services (i.e., prohibited inside all cities and in counties that have “authorized” domestic waste collection);
 - [b] Municipalities cannot “authorize” domestic waste burning by ordinance;

- [c] Counties that allow domestic waste burning enforcement *without* “authorizing” waste collection are not complying with the rule and may lose cases as defense attorneys become more knowledgeable;
 - [d] Some county commissioners courts, including Smith County (Tyler), are making policy to allow rural trash burning through not “authorizing” waste collection;
 - [e] Counties gain another benefits by “authorizing” waste collection
- [2] **Domestic waste burning by over three families** burning is not allowed in the Texas Outdoor Burning rule, and hence cannot legally be done without permit or authority from the TCEQ
- (e) **No commercial waste outdoor burning** is allowed under the rule except with state-issued permit

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- (f) **On-site burning of plant growth** by owner/designee where it grew
- [1] **In state NAAQS nonattainment counties** AND counties bordering nonattainment county and sharing a city [§ 111.209(4)(A)]
- [a] OK for right-of-way maintenance, landclearing, water canal maintenance ONLY
 - [b] Only OK when “no practical alternative to burning exists”
 - [c] All General requirements of § 111.219 apply, including the need for a city to pass an ordinance allowing this sort of burning to take place inside the city, should the city want to allow it at all
- [2] **All other counties** [§ 111.209(4)(B)]
- [a] Burn plant growth waste for any reason, including right-of-way maintenance, etc.
 - [b] City may prohibit by ordinance that is compatible with Texas Health & Safety Code Sec. 382.113 (be sure to have city attorney read this section as it sets requirements unique to burning)
 - [c] Only general restrictive provisions (3), (4), (6) and (7) of § 111.219 apply
 - [d] Since provision § 111.219(2) does not apply, a city not having an ordinance prohibiting this type of burning must allow it
- (g) **Consolidated burn sites** [§ 111.209(5)]
- [1] Only in counties with population under 50,000
 - [2] No reference to NAAQS nonattainment
 - [3] Burning for **pre-designated residential properties only**
 - [4] Lots of rules make will make this burning rare
 - [a] Signs at entrances with specific size/language requirements
 - [b] Owner must maintain registry of residential properties using
 - [c] Property list must be detailed and available for inspection
 - [d] Trees, brush, grass, leaves, branch trimmings, etc. only
 - [e] Actively manage the site to assure authorized users only
 - [f] All burning to be supervised by professional fireman
 - i. As designated in Government Code Sec. 419.012
 - ii. Permanent, full-time arson investigators
 - iii. **Permanent full-time firemen ... not volunteers**

iv. Advanced notice to TCEQ required

- (h) **Crop residue burning** OK when no practical alternative [§ 111.209(6)]
- (i) **Occasional plant growth burning by city or county** on property it owns [§ 111.209(7)]
- (j) Prescribed burning for forest, range, wildland/wildlife/coastal salt-marsh management [§ 111.211]
- (k) Hydrocarbon burning at pipeline breaks and oil spills upon notice [§ 111.213]
- (l) Anytime TCEQ ED approves otherwise prohibited burning [§ 111.215]

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- b. Violation of Local Government Code Sec. 352.082 [§ 111.209: First sentence]
 - (1) Applies to unincorporated areas of Montgomery County only
 - (2) And then only to lots under 5 acres and “neighborhoods”
 - (3) **Class C Misdemeanor to burn household refuse outdoors**
 - (4) Required 60 hours community service abating litter or in recycling facility
 - (5) Support the spread of this useful law to all Texas counties
- 3. **Who may approve burning?**
 - a. Texas Outdoor Burning rule
 - b. TCEQ by permit or orders or written authorization of the Executive Director
 - c. One of the 21 “local air pollution control agencies” for **fire training burns only**
 - d. Cities in NAAQS nonattainment counties (limited plant waste burning where no option)
 - e. Cities wanting to allow in city burning of brush, trees, etc. under Sec. 111.209(6) & (7)
 - f. **Not fire fighters, professional or volunteer**
- 4. **Who may prohibit burning?**
 - a. Texas Outdoor Burning rule
 - b. Cities may ban plant growth burning with proper ordinance
 - c. Commissioners court by burn ban under Local Government Code Sec. 382.081
 - d. County judge or mayor by local emergency declaration under Government Code Sec. 418.108
 - e. Law enforcement through criminal enforcement and fire fighters through suppression
- 5. **Assistance and questions**
 - a. Remember that virtually all of the TCEQ’s staff deal with *administrative* issues, so calling the agency with a question about *criminal* enforcement may result in an “apples to oranges” conversation; however, all of the TCEQ regional offices have staff very knowledgeable in the contents of the Texas Outdoor Burning rule. Look to other sources for answers to *criminal* enforcement.
 - b. Criminal enforcement of outdoor burning violations -- both felonies and misdemeanors -- is the responsibility of local government; the TCEQ Special Investigations (criminal) section is available for help on the biggest crimes, but virtually all criminal environmental violations, including criminal burning, are a local problem.
 - c. Feel free to contact John Ockels at Texas Illegal Dumping Resource Center for questions and training concerning illegal burning and illegal dumping at ockels@tidrc.org and 903/891-3632.