

4. Criminal Outdoor Burning

Outdoor Burning Overview

There are two categories of illegal outdoor burning: felony and misdemeanor. Both types are criminal violations of the Texas Water Code.

(1) **Felony** illegal burning is simply a violation of the elements listed at TWC Sec. 7.182 or TWC Sec. 183.

(2) **Misdemeanor** illegal burning is always a criminal violation of TWC Sec. 7.177(a)(5). The "elements" are listed in the various sections of the Texas Outdoor Burning rule [30 Texas Administrative Code Sec. 111(b)].

Felony Outdoor Burning Intentional/Knowing + Knowing Endangerment

TWC Sec. 7.183. INTENTIONAL OR KNOWING EMISSION OF AIR CONTAMINANT AND KNOWING ENDANGERMENT.

(a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, emits an air contaminant with the knowledge that the person is placing another person in imminent danger of death or serious bodily injury unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

Individual:	\$2,000 to \$500,000 and/or five years confinement;
Person other than individual:	\$5,000 to \$1,000,000

Felony Outdoor Burning Reckless

TWC Sec. 7.182. RECKLESS EMISSION OF AIR CONTAMINANT AND ENDANGERMENT.

(a) A person commits an offense if the person recklessly, with respect to the person's conduct, emits an air contaminant that places another person in imminent danger of death or serious bodily injury, unless the emission is made in strict compliance with Chapter 382, Health and Safety Code, or a permit, variance, or order issued or a rule adopted by the commission.

Individual:	\$1,000 to \$250,000 and/or five years confinement;
Person other than individual:	\$2,000 to \$500,000

Use this one ... its easier!

Misdemeanor Outdoor Burning

It is a special misdemeanor (\$1,000 to \$50,000 and/or six months confinement for an individual; \$1,000 to \$100,000 for a person other than an individual) to violate the Texas Outdoor Burning Rule [30 TAC 111(b)].

TWC Sec. 7.177. VIOLATIONS OF CLEAN AIR ACT.

- (a) A person commits an offense if the person intentionally or knowingly, with respect to the person's conduct, violates:
- (5) an order, permit, or exemption issued or a rule adopted under Chapter 382, Health and Safety Code.

The Texas Outdoor Burning Rule was adopted under Chapter 382 on **September 3, 1996** (published in Texas Register on that date). Your prosecutor will need this information to tie a "violation of the rule" to a "criminal violation of TWC Sec. 7.177(a)(5)."

Individual:	\$1,000 to \$50,000 and/or six months confinement;
Person other than individual:	\$1,000 to \$100,000

Texas Outdoor Burning Rule

Violations of the provisions of this rule are both:

- (1) An ADMINISTRATIVE violation that may be handled by the TCEQ; and,
- (2) A CRIMINAL violation to be handled by the local jurisdiction.

For criminal enforcement, just treat the various sections as sets of elements.

Outdoor Burning Generally Prohibited

From Rule Sec. 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.

Recreational/Ceremony/Cooking/Warmth Fires OK

Summary of Rule Sec. 111.207 Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth

These types of fires OK unless a county burn ban or local emergency declaration is in effect.

The following material cannot be burned: 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.

Fire-Fighting Training Fires OK

Summary of Rule Sec. 111.205 Exception for Fire Training

Fire departments can conduct fire-fighter training with notice and permission of TCEQ regional offices. Notice requirements vary with size of department. Permission will be lost for doing demolition fires as "fire-fighter" training.

Some Disposal Fires OK

Summary of Rule Sec. 111.209 Exception for Disposal Fires

(1) OK to burn domestic waste, from a single residence (not housing over three families) when the local government (city or county) doesn't "provide or authorize" waste collection services at the residence.

(1a) Which means that commercial waste cannot be burned without a TCEQ permit; and,

(1b) Waste from multi-family residents cannot be burned without a TCEQ permit.

"Domestic waste" does NOT include: such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances.

(2) OK to burn diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.

(3) OK for veterinarians to burn animal remains in accordance with Texas Occupations Code, §801.361, Disposal of Animal Remains.

(4) OK to burn plant growth waste on the property where it grew, in counties where air quality meets National Ambient Air Quality Standards. This applies to all unincorporated areas and inside cities too, UNLESS the city prohibits such burning by ordinance. Counties cannot prohibit this burning, except during burn bans. In urban areas where the air is poor (i.e., NAAQS not met), onsite plant growth burning is OK only for very limited reasons and only when there are no feasible alternatives (and there always are).

(5) OK to have consolidated plant growth burn sites in counties under 50,000, as long as they are outside the city and each burn is supervised by a full-time professional fire-fighter. Other site management rules apply.

(6) OK to burn crop residue, if done in accordance with the safety rules.

(7) OK for cities, in counties of any size, to burn brush every couple of months at a site they own outside the city limit, with TCEQ's prior approval.

Prescribed Burns OK

Summary of Rule Sec. 111.211 Exception for Prescribed Burn

Prescribed burning for forest, range and wildland/wildlife management purposes (any county), and coastal salt-marsh management burning (in selected counties) is OK.

TIPS

1. Make sure your own jurisdiction isn't breaking the law by illegally dumping.
2. Consider handling water pollution cases as H&S 365 illegal dumping to keep it simple.
3. Resolve to attend a TCEQ-sponsored 3-day environmental enforcement training.
4. Form local enforcement coalitions with city and county officers.
5. Join the Code Enforcement Association of Texas.
6. Join the Texas Environmental Law Enforcement Association
7. Develop evidence standards with local prosecutors.
8. Provide stories to local print and broadcast media.
9. Join and become active in local Keep Texas Beautiful.