

**TCEQ DOCKET NO. 2010-0117-AIR-E**

**IN THE MATTER OF AN  
ENFORCEMENT ACTION AGAINST  
JOHN R. GAVLICK; RN105642243**

**BEFORE THE TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY**

**EXECUTIVE DIRECTOR'S ORDER ASSESSING ADMINISTRATIVE PENALTIES  
AGAINST AND REQUIRING CORRECTIVE ACTION BY JOHN R. GAVLICK  
TCEQ DOCKET NO. 2010-0117-AIR-E  
SOAH DOCKET NO. 582-10-5942**

**REQUEST FOR RECONSIDERATION OR CONTESTED CASE HEARING**

1. John R. Gavlick ("Respondent") hereby requests a hearing for reconsideration or contested case hearing to dismiss said enforcement action against John R. Gavlick.
2. John R. Gavlick  
3410 FM 66  
Waxahachie, TX 75167  
972.937.3972 home phone
3. The penalty and fee should be dismissed as we were never contacted by phone or in person by anyone from the TCEQ Office at the onset of the first violation. Respondent has working land line and answering service. It is incumbent on TCEQ to ensure the rules and regulations are both understood and adhered to. They had every opportunity to educate and ensure understanding but they did not.

The material on the website and other publications are numerous and refer to statutes in many different areas and include numerous exceptions to many of the rules and regulations. The common taxpayer is at a disadvantage in understanding and following the rules.

The first violation should be thrown out due to mishandling by TCEQ and its' officers. The first contact from TCEQ was four months after the alleged burning. Why four months to contact us. We had 21 days to respond to the letter dated 2/19/2009 for the alleged violation in October 22, 2008. We responded on March 17, 2009. We received a letter 9 months later stating "Statements made by Mr. Gavlick in the letter received March 18, 2009, are adequate to resolve the violation from the NOV dated February 19, 2009. No further response is required." TCEQ only fines on the second violation.

There would be no second violation if they had done their job. We maintain that we have "NOT" burned hay bales. The hay is fed to our horses by the round bale and the waste hay (hay that is not eaten) falls to the ground around the hay bale. When the hay bale is gone the left over remnants are raked together and burned. This eliminates/kills any parasites/insects that may be in the hay that does include waste (urine and manure) from the horses.

Farmers and Ranchers in South Texas where I grew up have used this practice of burning left over hay in the pastures. My wife and I have searched the internet to see how prevalent this statute is and have been unable to find anything that suggests burning hay is illegal. In fact several Farm and Ranch blogs have questions regarding "getting rid of waste hay" and all responses from seasoned Ranchers/Farmers have been to burn the hay. In fact, one suggests inviting the neighbors and having a Bon Fire.

The agricultural use exemption on the property does not prevent the private residence from being classified as property designated for and used exclusively as a private residence. In fact, I believe the homeowner's principal residence exemption takes priority over the qualified agricultural property exemption. TCEQ's Investigation Report dated 7/20/2009 states "The John R. Gavlick residence is a private residence."

4. List of relevant material:
  - a. Deed of Trust CCR's
  - b. Ag-use Exemption: Fact or Fiction
  - c. Internet blogs related to burning hay
  - d. March 18<sup>th</sup> letter
  - e. Investigation Report dated 7/20/2009
  - f. Investigation Report dated 10/22/2008

#### FACTS SUPPORTING VIOLATIONS

1. The original complaint was filed by a neighbor who happens to be a police officer in Ellis County. The original complaint was due to an ongoing dispute over non payment on the officers' behalf on the cost of the fence between the properties. I believe this is an abuse of police authority for personal gain or at minimum police misconduct.
2. The officer knows the employee at TCEQ and used the TCEQ Office for retaliation.
3. TCEQ did not attempt to make contact by phone or in person from October 2008 till November 2009. The second TCEQ officer had no problem finding or meeting with us.
4. The first employee who completed the field report did not ever attempt to contact us and we have never spoken to her to date. She may have recused herself due to conflict of interest or she is no longer with TCEQ due to the mishandling of this file.
5. Investigation Report dated 07/20/2009 contains Respondent's home number (attached). That number has an answering device on it. We require an answering service as Respondent lost his voice due to cancer from early 2008 to June 2010 and doctors', nurses', insurance companies, social security, family and friends had to be in touch. We NEVER received any phone call or message from TCEQ. Respondent's wife is Power of Attorney and caretaker for Mother and Aunt and also requires answering device for same.
6. Investigation Report 10/22/2008 shows the Investigator Lindsay McClendon received pictures via e-mail from the police officer next door (this borders on abuse of powers, surveillance, police misconduct, etc.) The report also states Ms. McClendon tried multiple times to contact Mr. Gavlick. This is not true. We were never contacted by Lindsay McClendon or any other member of TCEQ.

7. Responded to Ms. Smith on March 18, 2009 stating we were not burning hay bales (letter attached). Again we have not ever burned hay bales. We have burned the waste hay left over.
8. Received a notice by mail in July '09 from TCEQ stating that violation was resolved and no further action required. "Statements made by Mr. Gavlick in the letter received March 18, 2009, are adequate to resolve the violation from the NOV dated February 19, 2009. No further response is required."

These are the statements we made. The "plural" of statement is statements and the response from TCEQ suggests all statements are correct.

***We are unaware of any regulation or violation limiting the burning of hay bales and do not nor ever have burned hay bales. We periodically burn the uneaten remnants of hay bales to prevent our livestock from ingesting mold. We understand the burn ban regulations and comply and watch for burn ban updates as we maintain a 100 acre ranch in Avalon and often require outdoor burning of brush.***

*It is difficult to recollect a day back in October of 2008 when the correspondence and notice have been received sometime after that date. We were not aware nor received any visit or notice on the day in question. The 90 day burn ban that was in force on July 14, 2008 ended on October 15, 2008. We have lived in Waxahachie for the last 10 years and have never received any warning or notice from anyone related to the burning of the uneaten remnants of hay bales. We know that others in the rural farming and ranching community of Waxahachie follow the same practice of burning the uneaten remnants of hay bales to prevent livestock from ingesting molded hay (particularly horses).*

*Your brochure refers to hay used for bedding. This hay is outside and not used for bedding. I do not use hay in my stable for bedding and uncertain if there is a distinction between the two. The rules related to exceptions to outdoor burning in your investigation were adopted in 2006 according to the document and not widely publicized to farmers and ranchers from what I can gather.*

*There has been no outdoor burning on the property since October of 2008.*

9. Received visit in November '09 from TCEQ (Amy Pritchett; this is the first time ever that we spoke with a TCEQ employee) at our residence stating we were illegally burning hay bales. I did not speak with Ms. Pritchett as during this time I had vocal chord cancer and could not speak so my wife handled my affairs. My wife spoke with Ms. Pritchett at our front gate and referenced our letter and the notice and explained in great detail that we were not burning hay bales. She also reiterated that in Ellis County farmers and ranchers burn hay in pastures and there was no enforcement to my knowledge. She told Ms. Pritchett that she wanted to consult with someone else mainly the Fire Marshall in Ellis County.
10. Consulted with the Fire Marshall of Ellis County (Jim Pharr) and he stated farmers/ranchers in Ellis County burn hay in pastures and it is not a problem unless there is a burn ban in effect. He stated he did not enforce the rule. Since that conversation with the Fire Marshall we have not burned any hay on the property.

11. In March 2010 received a Notice of Enforcement Action citing damages of \$1,585.00. Again we never received contact from anyone at TCEQ until November 2009 and no follow up after that day.
12. My wife contacted TCEQ and set up a meeting. She was told on the phone that a meeting would not be needed as the report was final and no further discussion was warranted. She insisted that we have a meeting with the TCEQ. My wife and I met with TCEQ (both enforcement and the investigator) on March 24<sup>th</sup> to explain the situation (even under doctor's orders not to talk) and timeline of events. In the meeting the Enforcer (Judy Kluge) was willing to waive the damages and dismiss the case. The Investigator (Amy Pritchett) and Manager (Alyssa M. Taylor) were not. It was quite evident there was dissension in the Group. TCEQ did not document that meeting which shows good faith on Respondents' part to understand and resolve the violation.
13. Sometime after that meeting and prior to our contested hearing TCEQ recalculated the penalty to be \$1,085.00. Again no communication from TCEQ regarding their actions.
14. The 5 acre tract was purchased from the State of Texas and was part of the now defunct Super Collider project. The State of Texas agreed to keep the land rural (before the State of Texas claimed eminent domain it was all rural land farms/ranches). Deed restrictions on the five acres designate the tract as residential. The agricultural use exemption on the property does not prevent the private residence from being classified as property designated for and used exclusively as a private residence. In fact, the homeowner's principal residence exemption takes priority over the qualified agricultural property exemption. Investigation Report dated 7/20/2009 from TCEQ states the John R. Gavlick Residence is a private residence.
15. The letter received in July 2009 did mislead in the fact we admitted to burning of hay and concluded it was a common practice in rural Ellis County. The TCEQ letter in July 09 stating "Statements made by Mr. Gavlick in the letter received March 18, 2009, are adequate to resolve the violation from the NOV dated February 19, 2009. No further response is required." led us to believe we were not doing anything illegal. If Respondent is under the impression that Respondent was not doing anything illegal why would it be incumbent on Respondent to check with TCEQ? Their letter did not state call us before burning anything on your property.
16. Respondent lives in an unincorporated area of the county on five acres therefore outdoor burning is permitted. Our property is a private residence.
17. Good faith efforts on Respondents part:
  - a. There is no history of any complaint in the past five years or ever.
  - b. There have been no enforcement issues for this property in the past five years or ever.
  - c. Respondent showed good faith by initiating contact with TCEQ to resolve.
  - d. Respondent has ceased all outdoor burning on property.
  - e. Respondent contracted for private garbage pickup.
  - f. Respondent has complied with every request by TCEQ and SOAH.

Respondent remains steadfast in our claim that TCEQ's lack of communication and failures within the organization caused the second violation. Respondent had to make full disclosure of all documents and testimony prior to the hearing in March. TCEQ provided "NO" information to Respondent prior to the hearing which led to our unpreparedness and concern at the testimony against us.

We are requesting TCEQ to disclose all documents, pictures and records on file including the next door neighbor who filed the initial complaint. We also request to meet with the first TCEQ employee (Ms. Lindsay McClendon) who investigated and completed the report. Respondent has the right to demand the nature and cause of the accusation against him and to have a copy thereof. Respondent has the right of being heard by himself or counsel or both and shall be confronted with the witnesses against him and shall have compulsory process for obtaining witnesses in his favor.

Respondent is compelled and feels strongly that this was entrapment on the part of TCEQ and complainant. Respondent respectively request dismissal.

Respectively submitted,

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Waxahachie, TX 75167  
972.937.3972

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**Exhibit "B"**  
**Level 2 Restrictions**

This conveyance is made and accepted subject to any and all covenants, conditions, and restrictions (CCR's), if any, relating to the property, but only to the extent they are still in effect, shown of record in Ellis County, Texas, and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities. This conveyance is also made and accepted subject to the following CCR's:

1. No residential dwelling shall contain less than 1,500 square feet of floor space with a minimum of 1,000 square feet on the ground floor. "Square footage of floor space" excludes porches and open or closed carports or garages. Such square footage is that amount of area contained in the dwelling space only. No more than two residences may be built on any five acre tract. A guest house or servants quarters may be built behind a main residence location, but must be less than 900 square feet.
2. The tract is designated as residential, and shall be used primarily for that purpose. If the owner does conduct any business activities from the property they shall not interfere with the residential quality of the neighboring property.
3. A recreational vehicle (RV), not used as a dwelling may be stored on the property.
4. No commercial signage will be allowed on residential tracts less than 16 acres. One commercial sign will be allowed on tracts 16 acres or greater, providing it does not exceed nine square feet.
5. No debris, inoperative or junk motor vehicles/equipment will be allowed to remain on the property in open view.
6. No manufactured (mobile) homes or industrialized housing will be allowed on the tract.
7. All construction including barns and outbuildings must be completed within 180 calendar days of date construction commences.
8. Livestock and poultry shall be permitted as specified: (a) less than 16 acres: one large animal per acre, no more than 12 fowl per tract, and one swine per five acres. No more than four ratites (emu and ostrich) on any tract of less than 16 acres; (b) 16 acres or more: no more than one animal or fowl of any type per acre except swine, which require five acres per animal.
9. Fences will be constructed of wood, chain link or other industry standard fencing material. Sheet metal fences will not be allowed.
10. This tract shall not be used as a dumping ground for rubbish, trash, garbage or any form of waste, including, but not limited to, hazardous wastes, toxic wastes, chemical wastes, or industrial byproducts.
11. The term of these CCR's are to run with the land and shall be binding on all persons in title to the tract, in whole or part for a period of twenty (20) years from the effective date of this deed, after which time they shall be renewed automatically for successive periods of ten years unless changed by agreement of 80% of adjoining property owners.

The CCR's set forth herein may be enforced by any adjoining landowners by action in the appropriate Court of Ellis County, but only after 30 days written notice of an alleged violation of these CCR's to the landowner.

A Reprint from *Tierra Grande*, the Real Estate Center Journal

# Ag-use Exemption: Fact or Fiction?

By Judon Fambrough

**P**rospective buyers of rural or fringe property generally inquire about the tax status of the land. They want to know if the property qualifies and receives the agricultural use (ag use) exemption. A substantial tax saving may be achieved if it does.

While the question is valid, any answer is suspect. The Texas Tax Code (the code) affords no land a tax reduction known as an ag use exemption. The confusion stems from the misuse of terms.

Some land in Texas receives tax reductions known as *exemptions*. All exemptions are found in Chapter 11 of the code. The rural homestead exemption (Section 11.13) is a good example. However, rural land as a whole receives substantial tax saving by qualifying for one of two types of special *appraisal* methods.

The first type is called "Assessments of Lands Designated for Agricultural Use" authorized by Texas Constitution Article VIII, Section 1-d and described in Sections 23.41 through 23.47 of the code. The other is called "Open-Space Land" authorized by Texas Constitution Article VIII, Section 1-d-1 and further described in Sections 23.51 through 23.59 of the code.

Generally, when people speak of receiving an ag-use exemption, they are actually referring to the open-space appraisal method found in Section 1-d-1, not the agricultural-use appraisal method found in Section 1-d.

With more and more rural land being converted to subdivisions or into smaller tracts, the question of which, if either, rural appraisal method the property qualifies for becomes important. Likewise, because of the stiff penalties for tax rollbacks when the land no longer qualifies for either appraisal, buyers and sellers must consider this factor when negotiating the price of land.

This article discusses both types of appraisals, the qualifications for each and the tax rollback consequences.

## Agricultural-Use Appraisal (Section 1-d)

The Section 1-d appraisal method is reserved for landowners whose primary occupation and source of income are

agriculture. Under this section, both the landowner and the land must qualify.

According to the statutes, the landowner and the land must meet four requirements as of January 1 of each year.

- The land must have been devoted exclusively to or developed continuously for agriculture during the past three years.
- The owner's primary occupation and source of income are agriculture.
- The owner intends to use the land for agriculture and as an occupation or business for profit during the coming year.
- The owner files an application by sworn statement with the chief appraiser before May 1 of each year with all the documentation required to determine the validity of the claim. For good cause, the chief appraiser may extend the filing deadline 60 days.

After reviewing the application and all the relevant information, the chief appraiser must:

- approve the application and allow the appraisal as agricultural use,
- disapprove the application and request additional information or
- deny the application.

Except for six limited circumstances, all the information filed in support of the application (primarily, the sources and amounts of the applicant's income) must be kept confidential.

The statute defines two important terms for this appraisal method. *Agriculture* means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions but does not include the processing of harvesting or the production of timber or forest products.

The term *occupation* includes employment and a business venture that requires continual supervision or management.

If the chief appraiser approves the application, the property is valued on its capacity to produce agricultural products, not its market value. This is determined by capitalizing the average

net income that the land would have been earned during the past five years using prudent agricultural management practices.

Also, the chief appraiser appraises the land at its market value and places this figure in the appraisal records. If the land is sold or diverted to a non-agricultural use, the difference between the two appraisals for the preceding three years, plus interest, must be recaptured. The additional taxes and interest are due by the next February 1 occurring 20 days after the bill for the additional taxes is delivered to the present owner of the land.

To secure payment, a tax lien attaches to the land whenever the sale or change of use occurs. This is commonly referred to as the three-year ag-use tax rollback even though the term "rollback" is never used in the statutes and even though the reversion covers four years, the present plus the past three.

## Open-Space Appraisal (Section 1-d-1)

The other appraisal method, better known as Open-Space or Section 1-d-1 land, requires the land, not the landowner, to qualify. The owner's occupation, business and sources of income are irrelevant.

According to the statutes, there are three primary requirements for receiving the exemption.

- The land must be currently devoted principally to **agricultural use** to the degree of intensity generally accepted in the area.
- The land has been devoted principally to **agricultural use** or production of timber or forest products for five of the preceding seven years.
- The owner files a prescribed form provided by the appraisal office with the chief appraiser before May 1 with all the necessary information to determine the validity of the claim. For good cause, the chief appraiser may extend the filing deadline 60 days.

## Land Ineligible for Open-space Appraisal

Section 23.56 lists three categories of land that do not qualify for open-

space appraisal. These include the following.

First, land located within the corporate limits of a town or city where:

- the city is providing governmental and proprietary services comparable to other parts of the city with similar topography, land utilization and population density,
- the land has not been devoted principally to agricultural use continuously for the preceding five years or
- the land has not been devoted principally to agricultural use or to production of timber or forest products continuously for the preceding five years and is used for wildlife management.

Second, land owned by an individual who is a nonresident alien or by a foreign government that is required to register the ownership or acquisition under federal law.

Third, land owned by a corporation, partnership, trust or other legal entity that is required by federal law to register its ownership or acquisition of the property because nonresident aliens or foreign governments (or any combination thereof) own a majority interest in the entity.

To assist the chief appraiser, the statute contains an extensive definition of *agricultural uses* that qualify for open-space appraisal. Without going into detail, the definition contains the following:

- planting and producing crops,
- raising or keeping livestock or exotic animals,
- devoting the land to floriculture, viticulture and horticulture,
- producing or harvesting logs and posts for agricultural improvements and
- wildlife management.

After the application is received and all relevant information reviewed, the chief appraiser must:

- approve the application and permit the appraisal as open space,
- disapprove the application and request additional information or
- deny the application.

None of the information accompanying the application must be kept confidential.

If the application is approved, the chief appraiser places the land in the category to which it is principally devoted. The categories include, but are not limited to, irrigated and dry croplands, native and improved pastures, orchards and wastelands. The categories may be further divided according to soil type and capability, general

topography, geographic features and other factors influencing productivity.

The chief appraiser then appraises the categorized land using an income capitalization approach. This involves a two-part process. First, the net average annual income for the preceding five years must be determined based on what the land category would have earned had ordinary, prudent management practices been employed. The calculation includes income from hunting and recreational activities.

Second, the five-year net average annual income is then divided by a capitalization rate for the appraised tax value. The capitalization rate is the greater of 10 percent or the Farm and Credit Bank of Texas interest rate on December 31 of the preceding year plus 2.5 percentage points.

Also, the chief appraiser appraises the land at its market value and places this figure in the appraisal records. If the land use changes, an additional tax equal to the difference in the two appraisals will be assessed on the current owner for the five years preceding the land-use change.

In addition, interest at an annual rate of 7 percent will be imposed on the additional taxes due on a year-by-year basis. Consequently, the additional tax due five years ago will be subject to the 7 percent interest five times but without compounding. The taxes and interest are payable by the next February 1 occurring 20 days after the bill for the additional taxes is delivered to the present owner.

To secure the payment, a tax lien attaches to the land on the date the land-use changes. This is commonly referred to as the five-year open-space tax rollback even though the statute never uses the term "rollback" and even though reversion covers six years, the present plus the past five.

### What's the Difference?

Other than the use of confusing terminology, significant differences exist between the ag-use appraisal (1-d) and the open-space appraisal (1-d-1) that have not been addressed. Here is a list of several.

- The purpose for ag use is to assist legitimate, full-time farmers and ranchers, while open space is to promote the preservation of open-space land.
- Landowners must make annual applications to receive ag use, while an approved application for open space lasts until a change of use or shift within a category occurs.
- Landowners are not penalized for failing to tell the chief appraiser of a change of ownership or a change of use under ag use while

the landowners must notify the chief appraiser immediately of either a change of use or a shift to another category under open space or be assessed a 10 percent penalty in addition to the rollback and interest.

- The rollback consequences when part of the land no longer qualifies for ag use is not addressed in the statutes, while, in the same circumstances, the rollback applies only to the portion of the property where the change occurs under open space.
- No mention is made for a change of use that avoids a rollback under ag use while several changes of use avoid the rollback for open space. These include changes resulting from a sale of land for rights-of-way, condemnation, transfers of land to the state and eight others listed in Section 23.55 of the code.
- To qualify for ag use, the land must be devoted exclusively to or developed continuously for **agriculture**, while open space requires the land to be devoted principally to **agricultural use**.
- The ag-use rollback is limited to three years in addition to the present one, while the open-space rollback may go back five years with a possible five additional years plus the present one. Section 23.54(j) of the code allows the chief appraiser to assess a rollback for land erroneously allowed open-space valuation in any of the past five years. In addition, Section 23.55(a) allows the chief appraiser to impose an **additional tax** for each of the five years preceding the year in which the change of use occurs. The additional tax is the difference between the two appraisals plus 7 percent annual interest. Thus, a literal reading of the statutes results in a possible ten-year rollback, not five, depending on when the change of use occurs. The 7 percent annual interest, though, would apply only to the last five of the ten years.

### Liability for Tax Rollback, Interest and Penalties

According to the statutes, the party responsible for triggering the rollback is not necessarily the one liable for the additional taxes, interest and penalties. A lien attaches to the land when the rollback is triggered to secure the payments. Thus, the burden may fall on a buyer following a sale even if the buyer is innocent of causing the rollback.

To remedy the problem, Texas Property Code Section 5.010 was added effective September 1, 1997. The new law makes the seller personally liable for any additional taxes and interest (but not penalties) triggered because of the sale of land or a prior change of use occurring five years before the sale unless:

- a prescribed statutory provision entitled "Notice Regarding Possible Liability for Additional Taxes" is included in the sales contract in bold-faced type or

- a separate paragraph in the sales contract expressly provides for the payment of any additional ad valorem taxes and interest triggered by a sale of the land or a subsequent change in the use of the land.

Unfortunately, the new law does not extinguish the lien against the property to secure repayment. Instead, the statute permits the present owner to personally pursue the prior owner (seller) for the amount without stat-

ing whether attorney's fees and court costs are recoverable.

The Texas Property Code contains other exceptions when the seller is not liable for the rollback regardless of whether the notice or special provision are included in the sales contract. These transactions parallel the instances in which a property disclosure statement is not required. ✚



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10-08-2006, 10:02 PM

**snickers**

Bombproof Member



Join Date: Aug 2005  
Location: Twilight Zone  
Posts: 9,931



Yes, the hay is not good for horses once it is moldy. Your horses can get a good case of colic and can get severe.

I would burn it.

3-year member ★★ ★

Actually going on 5 years  
The "real" FACE of white trash is not here.  
<http://diamondpfarm.webs.com/>

10-12-2006, 07:29 AM

**Rocking Horse**

Started



Join Date: Mar 2005  
Location: Central Florida  
Posts: 2,477



Dusty hay can be rinsed down to cut the dust. Moldy hay needs to go to the burn pile.

My horses won't touch bad hay, that's how I know it's bad, even if I can't smell or see it...

I'm not sure about this but: I've heard horses can get Botulism (sp?) from badly molded hay....

2-year member ★★ ★

~ My treasures do not clink together nor glitter, they gleam in the sun and neigh in the night ~

Author	Message
<p><b>Crookham Farm</b></p> <p>Joined: 27 Apr 2009  <b>Posts: 1258</b>  Location: Forest of Dean</p>	<p>□ Posted: Wed May 06, 09 8:00 am    Post subject: Old Hay    <a href="#">Quote</a>    <a href="#">Recipe</a></p> <p>When we moved into our new house last august, we discovered that approximately 300 bales of old hay had been left in the big tin shed at the bottom of the hill. It's at least 3 years old, and I certainly wouldn't feed it to any animals unless I was desperate!</p> <p>But what do we do with it, and how on earth do we get rid of it?! 🤔</p> <p>I've stuck some into the compost, but there's a limit to how much the heaps can take! We've used some of the intact bales to build pig housing (along with some fencing posts and crinkly tin to hold it all together). But we still have about 250 bales (most of which have had thier string chewed by the smallholder's favourite rodent!</p> <p>Does anyone have any suggestions? All ideas gratefully received 😊</p>
<p><b>Brownbear</b></p> <p>Joined: 28 May 2007  <b>Posts: 14930</b>  Location: South West</p>	<p>□ Posted: Wed May 06, 09 8:03 am    Post subject:    <a href="#">Quote</a>    <a href="#">Recipe</a></p> <p>Bonfire night - invite the public, sell tickets, sell food on the night. Build a bale castle or something and put a match to it.</p>
<p><b>Green Rosie</b></p> <p>Joined: 13 May 2007  <b>Posts: 5756</b>  Location: Calvados, France</p>	<p>□ Posted: Wed May 06, 09 6:58 pm    Post subject:    <a href="#">Quote</a>    <a href="#">Recipe</a></p> <p>We burnt <b>ours back in January</b> although it did go better when we cut open the bales and scattered it a bit.</p>

John and Ruth Gavlick  
3410 FM 66  
Waxahachie, TX 75167

**COPT**

March 17, 2009

Elizabeth M. Smith  
Air Section Work Leader  
DFW Region Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, TX 76118-6951

Dear Ms. Smith:

We are unaware of any regulation or violation limiting the burning of hay bales and do not nor ever have burned hay bales. We periodically burn the uneaten remnants of hay bales to prevent our livestock from ingesting mold. We understand the burn ban regulations and comply and watch for burn ban updates as we maintain a 100 acre ranch in Avalon and often require outdoor burning of brush.

It is difficult to recollect a day back in October of 2008 when the correspondence and notice have been received sometime after that date. We were not aware nor received any visit or notice on the day in question. The 90 day burn ban that was in force on July 14, 2008 ended on October 15, 2008. We have lived in Waxahachie for the last 10 years and have never received any warning or notice from anyone related to the burning of the uneaten remnants of hay bales. We know that others in the rural farming and ranching community of Waxahachie follow the same practice of burning the uneaten remnants of hay bales to prevent livestock from ingesting molded hay (particularly horses).

Your brochure refers to hay used for bedding. This hay is outside and not used for bedding. I do not use hay in my stable for bedding and uncertain if there is a distinction between the two. The rules related to exceptions to outdoor burning in your investigation were adopted in 2006 according to the document and not widely publicized to farmers and ranchers from what I can gather.

There has been no outdoor burning on the property since October of 2008.

Sincerely,

John R. Gavlick

# Texas Commission on Environmental Quality Investigation Report

**GAVLICK, JOHN R  
CN603421280**

**JOHN R GAVLICK RESIDENCE  
RN105642243**

**Investigation # 762857**  
**Investigator: LINDSAY MCCLENDON**

**Incident #**

**Site Classification**

**Conducted: 07/20/2009 -- 07/20/2009**  
**Program(s): AIR QUALITY NON PERMITTED**

**SIC Code: 8811**

**Investigation Type : Compliance Invest File Review**

**Location :**

**Additional ID(s) :**

**Address: 3410 FM 66;  
WAXAHACHIE, TX 75167**

**Activity Type :**

**REGION 04 - DFW METROPLEX  
AIRFI - Follow-up Compliance Investigation**

**Principal(s) :**

Role	Name
RESPONDENT	MR JOHN R GAVLICK

**Contact(s) :**

Role	Title	Name	Phone
Regulated Entity Contact	OWNER	MR JOHN GAVLICK	Home (972) 937-3972

**Other Staff Member(s) :**

Role	Name
Supervisor	ELIZABETH SMITH

**Associated Check List**

<u>Checklist Name</u>	<u>Unit Name</u>
AIR OUTDOOR BURNING	Unauthorized Burning
COMPLAINT INVESTIGATION - AIR	Unauthorized Burning

**Investigation Comments :**

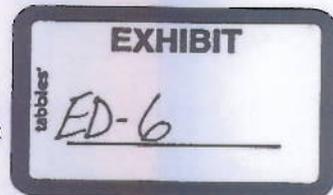
**INTRODUCTION**  
Introduction

This in-house investigation was conducted in response to a letter received on March 18, 2009, in the Texas Commission on Environmental Quality (TCEQ) DFW Region Air Section, regarding an illegal outdoor burn on the property of Mr. John Gavlick located at 3410 FM 66, Waxahachie, Ellis County, Texas. The letter was sent in response to a violation found during an investigation conducted on October 22, 2008. A Notice of Violation (NOV) letter was sent to Mr. Gavlick on February 19, 2009. The NOV was sent for a violation of 30 Texas Administrative Code (TAC) §111.201 (General Prohibition on Outdoor Burning). The NOV letter was sent by certified mail and signed for on February 21, 2009, by R. Gavlick.

**Daily Narrative**

On July 20, 2009, Ms. Lindsay McClendon, TCEQ DFW Region Air Section Investigator, reviewed the responses sent by Mr. Gavlick. In the letter received on March 18, 2009, Mr. Gavlick stated that

I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.  
 Rick Thomas, Custodian of Records  
 Texas Commission on Environmental Quality  
 STATE OF TEXAS  
 COUNTY OF TRAVIS  
 MAR 16 2011



there had been no outdoor burning on the property since October of 2008.

Exit Interview

No violations were found during this investigation and no exit interview was performed.

GENERAL FACILITY AND PROCESS INFORMATION

Process Description

The John R. Gavlick Residence is a private residence

BACKGROUND

Current Enforcement Action

There were no violations noted during this investigation.

Agreed Orders, Court Orders and Other Compliance Agreements

There have been no orders issued for this property in the past five years.

Complaints

There has been one complaint concerning outdoor burning in which an NOV was issued on February 19, 2009. That NOV is being resolved in this investigation.

Prior Enforcement Issues

There have been no other enforcement issues for this property other than the violation being resolved in this investigation.

ADDITIONAL INFORMATION

Conclusions and Recommendations

An NOV Resolve letter will be sent to Mr. Gavlick, and no further response will be required.

Additional Issues

None at this time.

ALLEGED VIOLATION(S) NOTED AND RESOLVED

Track No: 353358

Resolution Status Date: 7/20/2009

Violation Start Date: 10/22/2008

Violation End Date: 3/18/2009

30 TAC Chapter 111.201

5C THSC Chapter 382.085(b)

Alleged Violation:

Investigation: 722813

Comment Date: 01/06/2009

Failure to meet an exception to the general prohibition on outdoor burning. The unauthorized outdoor burning that occurred at the John Gavlick Residence could not meet an exception (30 TAC §111.205-111.215) to the general prohibition on outdoor burning (30 TAC §111.201). It was determined that old hay bales were being burned by Mr. Gavlick on his property.

**Recommended Corrective Action:** Immediately cease all unauthorized outdoor burning. Please submit within 30 days of the date of this letter a written description of corrective action taken to achieve compliance.

**Resolution:** Statements made by Mr. Gavlick in the letter received March 18, 2009, are adequate to resolve the violation from the NOV dated February 19, 2009. No further response is required.

**Texas Commission on Environmental Quality  
Investigation Report**

**GAVLICK, JOHN R  
CN603421280**

**JOHN R GAVLICK RESIDENCE  
RN105642243**

**Investigation # 722813  
Investigator: LINDSAY MCCLENDON**

**Incident # 115126**

**Site Classification**

**Conducted: 10/22/2008 -- 10/22/2008  
Program(s): AIR QUALITY NON PERMITTED**

**SIC Code: 8811**

**Investigation Type : Compliance Investigation**

**Location :**

**Additional ID(s) :**

**Address: 3410 FM 66;  
WAXAHACHIE, TX 75167**

**Activity Type : REGION 04 - DFW METROPLEX  
AIRCOMPL - Air Complaint Investigation  
BURNCH111 - Chapter 111, Subchapter B, Outdoor  
Burning Compliance Investigation**

I hereby certify this is a true and correct copy of a  
 Texas Commission on Environmental Quality (TCEQ)  
 document, which is filed in the Records of the Commission  
 Given under my hand and the seal of office.  
 Rick Thomas, Custodian of Records  
 Texas Commission on Environmental Quality

STATE OF TEXAS  
 COUNTY OF TRAVIS

MAR 16 2011

**Principal(s) :**

Role	Name
RESPONDENT	MR JOHN R GAVLICK

**Contact(s) :**

Role	Title	Name	Phone
Regulated Entity Contact	OWNER	MR JOHN GAVLICK	Home (972) 937-3972

**Other Staff Member(s) :**

Role	Name
QA Reviewer	CHESTER RAYFORD
Supervisor	ELIZABETH SMITH

**Associated Check List**

<u>Checklist Name</u>	<u>Unit Name</u>
COMPLAINT INVESTIGATION - AIR	Unauthorized Burning
AIR OUTDOOR BURNING	Unauthorized Burning

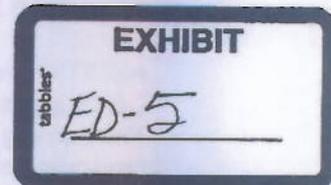
**Investigation Comments :**

**INTRODUCTION  
Introduction**

This investigation was conducted in response to citizen complaint (Incident No. 115126) received by the Texas Commission on Environmental Quality (TCEQ) DFW Region Air Section on October 2, 2008. The complaint stated that smoke from the burning of old hay bales at 3410 FM 66, Waxahachie, Ellis County, Texas, is causing a nuisance for the complainant. On October 6, 2008, Ms. Lindsay McClendon, TCEQ DFW Region Air Program Investigator, contacted the complainant to let them know that she would be handling the investigation.

**Daily Narrative**

On October 22, 2008, Ms. McClendon arrived at 3410 FM 66 (see Attachment 1 for a property



location map), at 12:45 p.m. The entry to the residence was gated and locked so Ms. McClendon could not go onto the property. She turned down a county road and did observe the back of the property and saw a burned area behind the barn. The area was round and hay debris was surrounding it. Ms. McClendon took pictures from her location (see Attachment 2 for photographs) and left the area at 1:10.

Ms. McClendon looked up the property address on the Ellis County Appraisal District and found that the owner of the property is Mr. John Gavlick. She found a phone number for Mr. Gavlick and tried contacting him. She was unsuccessful with the number that was found for Mr. Gavlick.

The complainant sent pictures of the burning in progress and the area where the burning was occurring in their pictures matched the burned area that Ms. McClendon observed during the investigation. The area was in the same location, behind the barn next to two trees near a back fence line. The burn area that Ms. McClendon saw during her investigation is the leftover remnants of the hay bales that were burned in the complainant's pictures. It was determined that Mr. Gavlick was in violation of 30 Texas Administrative Code (TAC) §111.201.

#### Exit Interview

Ms. McClendon tried multiple times to contact Mr. Gavlick but was unsuccessful using the number that was found for him. No exit interview was performed.

### GENERAL FACILITY AND PROCESS INFORMATION

#### Process Description

The John Gavlick Residence is a private residence.

#### BACKGROUND

##### Current Enforcement Action

The unauthorized outdoor burning that occurred at the John Gavlick Residence is a violation of 30 TAC §111.201 and 5C Texas Health and Safety Code (THSC) §382.085(b). The burning could not meet an exception (30 TAC §111.205-215) to the general prohibition on outdoor burning (30 TAC §111.201). The burning of processed material, or hay bales, is not covered under an exception and should be immediately ceased. A written description of the corrective actions taken to achieve compliance should be submitted within 30 days of the date of the Notice of Violation (NOV).

##### Agreed Orders, Court Orders and Other Compliance Agreements

There have been no orders issued for this property in the past five years.

##### Complaints

This is the only complaint for this property in the past five years.

##### Prior Enforcement Issues

There have been no prior enforcement issues for this property in the past five years.

### ADDITIONAL INFORMATION

#### Conclusions and Recommendations

The burning that occurred at the John Gavlick Residence could not meet an exception to the general prohibition on outdoor burning. An NOV will be sent to Mr. Gavlick and a letter explaining the results of the investigation will be sent to the complainant. The complaint was confirmed and it is recommended that it be closed.

#### Additional Issues

None at this time.

### ATTACHMENTS

1. Property Location Map
2. Photographs

OUTSTANDING ALLEGED VIOLATION(S)

Track No: 353358

Compliance Due Date: To Be Determined

30 TAC Chapter 111.201

5C THSC Chapter 382.085(b)

**Alleged Violation:**

Investigation: 722813

Comment Date: 01/06/2009

Failure to meet an exception to the general prohibition on outdoor burning. The unauthorized outdoor burning that occurred at the John Gavlick Residence could not meet an exception (30 TAC §111.205-111.215) to the general prohibition on outdoor burning (30 TAC §111.201). It was determined that old hay bales were being burned by Mr. Gavlick on his property.

**Recommended Corrective Action:** Immediately cease all unauthorized outdoor burning. Please submit within 30 days of the date of this letter a written description of corrective action taken to achieve compliance.

Signed *Tracy McLeod*  
Environmental Investigator

Date 1/27/09

Signed *Elizabeth Smith*  
Supervisor

Date 2/2/09

**Attachments: (in order of final report submittal)**

Enforcement Action Request (EAR)

Letter to Facility (specify type) : NOR

Investigation Report

Sample Analysis Results

Manifests

NOR

1 Maps, Plans, Sketches

2 Photographs

Correspondence from the facility

Other (specify) :