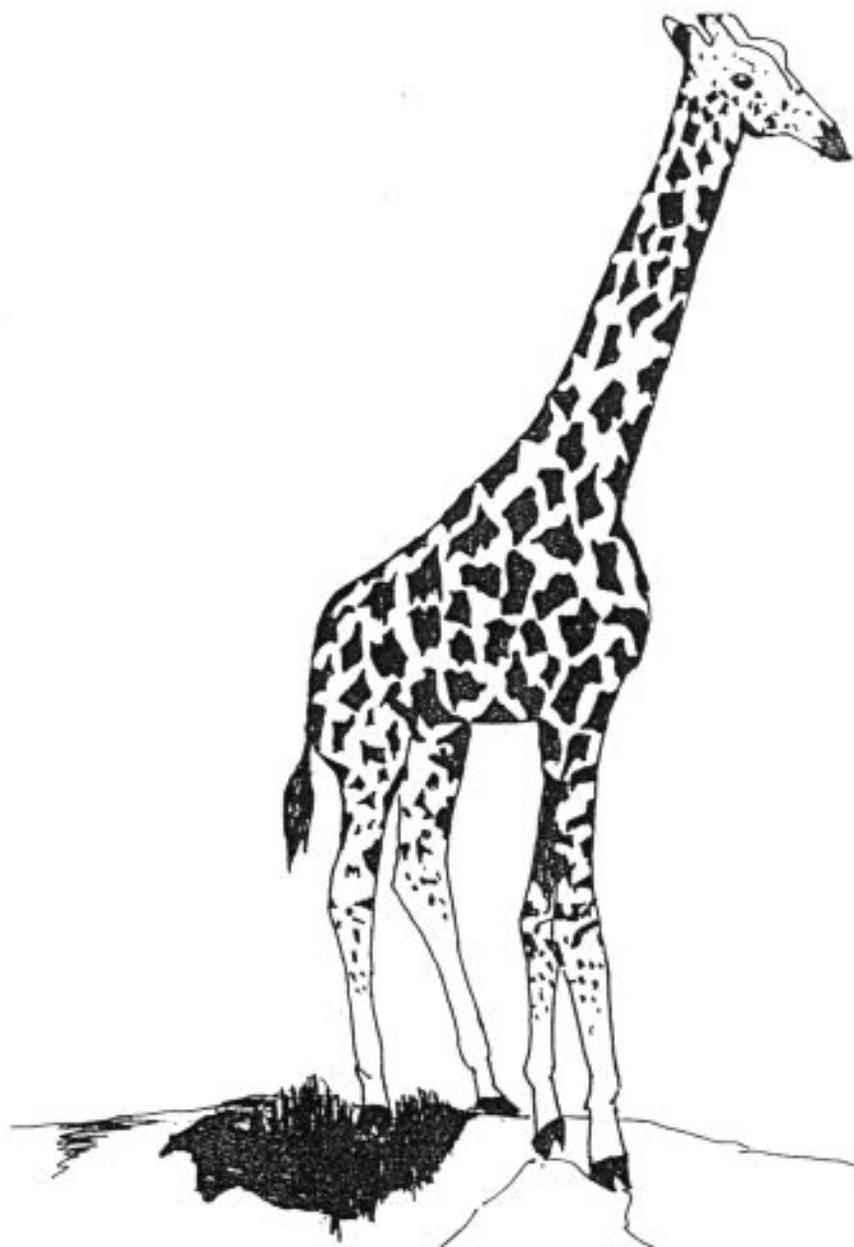


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8th grade

Haltom Middle School, Birdville ISD

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practices of the marketplace. Another commenter objected to the amendment stating that the proposed amendment appears to increase the regulatory requirements on small to middle sized domestic insurers.

Long, Burner, Parks & Sealy commented in support of the amendment on behalf of the Reinsurance Association of America. Parker, Parks & Rosenthal, L.L.P. commented against the amendment on behalf of Insurance Alliance of America.

The amendments are adopted under the authority of the Articles 1.03A and 5.75-1(m) of the Insurance Code and §2.001.021 of the Government Code. Article 1.03A authorizes the commissioner to adopt the rules and regulations regarding the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application. Article 5.75-1(m) authorizes the commissioner to adopt necessary and reasonable rules under Article 5.75-1 to protect the public interest. Section 2001.021 of the Government Code authorizes an interested person to petition a state agency to request the adoption of a rule and authorizes a state agency to prescribe the form for a petition filed under this section and the procedure for its submission, consideration, and disposition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 26, 1996.

TRD-9612448

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: September 16, 1996

Proposal publication date: June 21, 1996

For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 11. Contracts

30 TAC §11.1

The commission adopts new §11.1, concerning Historically Underutilized Business Program, without changes to the proposed text as published in the May 28, 1996, issue of the *Texas Register* (21 TexReg 4670) and will not be republished.

This new section adopts by reference the rules of the Texas General Services Commission in 1 TAC §§111.11-111.23 (relating to Historically Underutilized Business Certification Program), and establishes guidelines for managing the commission's contracting goals for Historically Underutilized Businesses. This rulemaking is required by the General Appropriations Act (House Bill 1, 74th Legislature, 1995).

The commission prepared a takings impact assessment of this rule and determined that the proposal will not create any burden on private real property rights.

A public hearing was held in Austin on July 1, 1996. The comment period closed July 1, 1996. No written or oral testimony was received on the proposed rule.

The new section is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission. The adoption is also consistent with the authority granted to the commission to enter into contracts under Texas Water Code, §5.229.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 12, 1996.

TRD-9612339

Kevin McCalla

Director, Legal Counsel

Texas Natural Resource Conservation Commission

Effective date: September 13, 1996

Proposal publication date: May 28, 1996

For further information, please call: (512) 239-1966

Chapter 111. Control of Air Pollution from Visible Emissions and Particulate Matter

The commission adopts the repeal of §§111.101, 111.103, 111.105, and 111.107, concerning outdoor burning, and new §§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213, 111.215, 111.219, and 111.221, concerning outdoor burning. The new sections are added under Subchapter B, Outdoor Burning. All existing sections in Chapter 111 become part of Subchapter A, Visible Emissions and Particulate Matter.

Adopted with changes as published in the May 21, 1996, issue of the *Texas Register* (21 TexReg 4395) are §§111.201, 111.203, 111.205, 111.209, 111.211, 111.215, and 111.219.

Adopted without changes are §§111.207, 111.213, and 111.221. These sections will not be republished.

The new sections replace the existing rules in order to remove inconsistencies and ambiguities and interject realistic flexibility. These new sections are structured to more adequately relate to current outdoor burning needs.

Section 111.201, relating to general prohibition, amends the previous prohibition by defining the term "executive director" to include staff representatives, and by excluding the storage of solid fossil fuels from the spontaneous combustion prohibition.

Section 111.203, relating to definitions, is a new addition to the rule which clarifies terms/concepts previously ambiguous

and undefined in the existing rule, and introduces some new concepts.

Section 111.205, relating to exception for fire training, streamlines the notification procedures by eliminating some of the repetitive, nonessential notification requirements which were burdensome to both the fire training managers and to the commission regional office staff.

Section 111.207, relating to exception for fires used for recreation, ceremony, cooking, and warmth, is functionally the same as the existing rule.

Section 111.209, relating to exception for disposal fires, differentiates between fires used solely for the disposal of wastes and other forms of outdoor burning and regulates them in relation to practical alternatives. In regard to domestic waste burning, the rule clarifies allowable burning both in terms of waste collection criteria and types of wastes. In burns for landclearing, maintenance along water canals, and right-of-way maintenance, this section now addresses off-site impacts. New additions specifically address the regulation of crop residue burning and brush burning by counties and municipalities for detrimental public health and safety considerations.

Section 111.211, relating to exception for prescribed burn, recognizes the use of fire as a positive forest, range, and wildland/wildlife management tool under certain circumstances where fire is the most practical alternative. In the case of the burning of coastal salt-marsh, the notification criteria and procedures have been streamlined.

Section 111.213, relating to hydrocarbon burning for pipeline breaks and spills, now contains a sampling and monitoring requirement, upon executive director determination.

Section 111.215, relating to executive director approval of otherwise prohibited outdoor burning, now recognizes that authorization is contingent upon not causing a condition of nuisance or traffic hazard.

Section 111.219, relating to general requirements for allowable outdoor burning, now clarifies points which have previously been unclear or ill-defined. Section 111.219(2) is modified to recognize local government burning ordinance authority stipulated in the Texas Clean Air Act (TCAA). Section 111.219(3) has been changed to have a more realistic emphasis on avoidance of potential off-site impacts to sensitive receptor(s). Section 111.219(5) adds flexibility to the previously inflexible 300-foot prohibition by setting wind direction and distance from sensitive receptor(s) as the regulatory criteria for extent of the burn. Section 111.219(6) has as its principal change the extension of the allowable burn hours to one hour after sunrise to one hour before sunset. This allows more flexibility while at the same time insuring adherence to the appropriate meteorological conditions for proper dispersion. Section 111.219(7) is modified to provide more specificity to prohibited burn fuels.

Section 111.221, relating to responsibility for consequences of outdoor burning, has not been changed from the existing rule.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The revision to the existing Outdoor Burning Rules in

§§111.101-111.107 of Chapter 111 is undertaken to clarify intent/procedure and remove ambiguity, while interjecting realistic flexibility. In addition to the protection of air quality for public health purposes, the rules also function to protect the public from nuisance and traffic hazard conditions. The regulatory requirements contained within the rules are sufficient to minimize the risk of harm to individuals and property from smoke/odor, or threat of traffic accidents, without imposing a burden upon the property owner or inhibiting land use.

A public hearing was held June 18, 1996, at the Texas Natural Resource Conservation Commission complex in Austin. The comment period closed on June 21, 1996.

Comments were received from the Amoco Corporation (Amoco), City of Dallas, City of Kerrville, Dallas/Fort Worth (DFW) International Airport, Exxon Company, U.S.A., Harris County Pollution Control Department, Houston Lighting and Power Company (HL&P), Houston Sierra Club's Forestry Subcommittee, King Ranch, Properties of the Southwest, Rio Grande Valley Sugar Growers, Inc, Texas Eastman, Texas Utilities Services, Inc., United States Department of Agriculture's Natural Resources Conservation Service, the United States Environmental Protection Agency (EPA), and Rob & Bessie Welder Wildlife Foundation.

GENERAL PROHIBITION. The Rio Grande Valley Sugar Growers, Inc. questioned whether the prohibition on burning "except as provided by this subchapter" limits their authority to burn as prescribed in commission Order No. 94-35.

This rule is not intended to change authority previously granted by orders of the commission. However, to provide additional clarity, this section is amended to read: "...as provided by this subchapter or by orders or permits of the commission."

Texas Utilities Services, Inc. commented that the intent of the proposed rule should be clarified to parallel statements made in the preamble to the 1989 revisions which excluded the storage of coal from this prohibition. Their suggested wording is the addition of the sentence, "This prohibition does not apply to the storage of solid fossil fuels."

For consistency with the intent historically expressed in the previous versions of these rules, this section is amended to read: "...igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed...." §DEFINITIONS. City of Dallas suggested that the definition of "extinguished" be changed to: "...flames, glowing coals, or smoke."

The commission has considered the suggested wording change for the term "extinguished," and finds it to have merit as glowing coals, while not producing smoke themselves, may contribute to further combustion of adjacent materials under certain circumstances. Accordingly, the definition has been amended.

City of Dallas suggested that "landclearing operation" be defined as "The uprooting, cutting, or cleaning...."

The commission concurs with the City of Dallas' recommended addition of the term "cutting" to the definition of "landclearing operation". However, commission believes retention of the term "clearing" is preferential to use of the term "cleaning," in that "cleaning of vegetation" can have multiple interpretations

which may lead to lack of clarity. The definition is amended accordingly.

Harris County Pollution Control Department suggested that the definition of "practical alternative" either contain examples, or that the commission publish a policy document listing practical alternatives.

The commission considered the inclusion of examples in the definition of "practical alternative," but found that because there are a myriad of potential alternatives, such a listing could not be all inclusive. The "practical alternative" analysis will always require an evaluation of the case-specific circumstances, utilizing input from commission field staff and the party responsible for the burn request. Accordingly, the commission has not made the suggested change.

Houston Sierra Club's Forestry Subcommittee suggested that the definition of "structure containing sensitive receptor(s)" define the term "sensitive live vegetation," contained therein.

In response to the commenter, the definition of "sensitive live vegetation" is amended to incorporate the critical consideration of the vegetation's potential to be damaged by smoke and heat. The term is meant to include such things as nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants. This explanation is not meant to be a definitive list, and contains flexibility to address case-specific situations.

HL&P stated that because of the lack of definition for the term "outdoor burning" and/or additional clarification regarding the definition of "practical alternative," it is unclear how 30 TAC Chapter 111 authorizes trench burning. HL&P suggested "outdoor burning" be defined to specifically exclude trench burners.

The use of trench burners is a practical alternative under certain circumstances. Such use is not covered in this rule, but instead is addressed within Standard Exemption Number 97, found in 30 TAC Chapter 116. Accordingly, the commission has not made any changes. As to the definition for "outdoor burning," this rule incorporates the definition already contained in §101.1 of the commission's General Rules.

EXCEPTION FOR FIRE TRAINING. Amoco suggested the retention of the existing language previously found in §111.103(b)(1) with a return to the 10-day notification for §111.205(a). They suggest §111.205(c) be changed to have telephone notification 24 hours in advance of the training session as opposed to one week.

In reference to §111.205(c), DFW International Airport suggested that no more than one telephone notice be required for multiple training sessions within any one-week period, provided the initial notice includes all such sessions.

Exxon Company, U.S.A. commented that increasing the advance notice from 10 days to 15 days in §111.205(a) does not seem to fulfill the intent of streamlining the rule, and suggested the notification time be reduced to a minimum time sufficient for commission needs. Also recommended for §111.205(c) was annual written notification of intent for dedicated training facilities, but no notice of individual training events occurring less frequently than once per week. However, if it is felt notification for

individual events is necessary, Exxon recommends telephone notification within one week after the training occurs.

Texas Eastman suggested that the notification one week in advance of training events should be allowed to be either in writing or by telephone.

The purpose of the notification procedure in §111.205(a) is to allow the local air pollution control agency or the commission regional office staff adequate time to evaluate a proposed burn site when necessary, and to be aware of the timing of the burn should they receive inquiries from the public which could result in costly and often needless investigations. Regional staff had requested a change to fifteen working days in order to have time for site investigations. The regulated community feels this time extension is adverse to the espoused goal of streamlining. In an effort to accommodate both interests, the rule is revised to read, "...not received within 10 working days after...."

In the interest of streamlining the notification procedure, staff concurs that a 24-hour advanced telephone/facsimile notice is adequate, and also sees the utility of allowing multiple training sessions to be reported in an initial notification if the sessions are to occur within the same seven-day period. The rule is amended to read, "...with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any one-week period, provided the initial telephone/facsimile notice includes all such sessions. Both...."

Texas Eastman recommended that in order to streamline the notification process, the frequency cutoff should be increased to monthly for both §111.205(b) and §111.205(c).

Texas Utilities Services, Inc. suggested that there be only two categories for fire-fighting training: (1) facilities that have dedicated training facilities that conduct training at least once a week; and (2) other facilities. The "other facility" category would require annual written notice of intent and provision for a telephone or facsimile notice one week prior to training.

City of Dallas requested that the frequency in §111.205(b) be changed from week to month.

Exxon suggested that the frequency factor in §111.205(b) and §111.205(c) be clarified in intent to be training which averages once per week during the period of time indicated in the annual written notification.

The purpose in differentiating §111.205(b) and §111.205(c) was to relieve the high-frequency facilities from having to make what amounts to, in many cases, daily calls to the regional offices, while retaining a notification procedure for the less than routine training situations in order to avert needless investigations. Changing the frequency criteria from weekly to monthly would undermine the function of the notification process. However, staff realizes that the weekly frequency could lead one to interpret that if a weekly training session is missed the facility could not qualify under §111.205(b). Therefore, that section is amended to read: "...fire-fighting training, at which training routinely will be conducted...." The intent is to allow flexibility for periods where training would not be conducted such as during holiday observances.

The utilization of facsimile machines for notification in lieu of telephone notification is felt to be an improvement to the process, and §111.205(c) is amended to read: "...with a telephone or electronic facsimile notice...."

Houston Sierra Club's Forestry Subcommittee suggested that there be a requirement under §111.205(a) for local air pollution control agencies to keep notification records.

The commission does not wish to create any additional unfunded mandates on local governments.

EPA recommended that all burn requests in §111.205(a) for training be submitted either via certified mail or personal delivery and that all deadlines be initiated from that submittal.

The commission found this comment to have the potential to be unduly burdensome to those who live in more remote or rural areas where access to a post office or regional office could be difficult.

DFW International Airport requested that the nonapplicability of the requirements of §111.219 be more explicit in relation to §111.205. They suggested that the first paragraph of §111.219 conclude as follows: "...when specified in any section of this subchapter."

The commission concurs, and for clarity §111.219 is so amended.

Amoco asserts that the language in §111.205(b) and §111.205(c) is ambiguous and can be interpreted to disqualify dedicated company firefighter training areas located in the boundaries of a plant that has another core business.

The commission considered the concern expressed about the use of the term "facilities" in the phrase "Facilities dedicated solely for fire-fighting training..." possibly being construed to preclude qualification for §§111.205(b) or (c) if such facility is within the boundaries of a plant where the core business of the plant was other than fire-fighter training. For the purposes of this rule, the facility of reference is only the actual emission area of the fire-fighter training. The intent is not to prevent training inside a plant with a core business other than fire-fighting training.

Amoco prefers to notify local air pollution control or health agencies as opposed to having to notify the commission regional offices.

As both the local air pollution control agencies and the commission regional offices could receive inquiries/complaints from the public, the notification procedure should apply to both.

EXCEPTION FOR DISPOSAL FIRES. Harris County Pollution Control Department recommended that §111.209(1) be revised to read: "...when collection of domestic waste is not provided or authorized by the local governmental entity or local community association having jurisdiction, or when waste collection is not readily available through a private collection service in counties having a population greater than 1,000,000...." It also was suggested that the definition of domestic waste change so that the seasonal burning of leaves be prohibited by this exception. Should this prohibition not be incorporated, it was further recommended that a rule be drafted permitting commissioners courts of counties having a population greater than 1,000,000

to adopt regulations controlling the burning of domestic waste within unincorporated areas of that county.

The suggestion that domestic waste burning should not be allowed when collection is authorized by a local community association, or provided by a private collection service (absent governmental authorization) poses a problem with accountability. Unlike a governmental entity, a community association has no legal authority to police/enforce such collection, and it would be difficult for the commission to define or determine the meaning of "readily available" regarding private collection. Private collection without governmental authorization has led, in some situations, to pricing abuses without any recourse available to the public. As to county commissioners courts adopting regulations for such collection, §363.113 of the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act already requires "Each county with a population of more than 30,000...shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person." This rule is meant to address the needs of the entire state, but in no way restricts the right of governmental entities to exercise local control. Accordingly, the commission has not changed this rule.

In regard to §111.209(2), Harris County Pollution Control Department suggested that the rule is not restrictive enough in that it appears to allow the unrestricted burning of animal carcasses by veterinary clinics, and therefore, Harris County recommended retention of the existing wording in §111.103(b)(4).

The commission agrees and the section is amended to read, "Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease."

Properties of the Southwest submitted that daily notification of individual burns under §111.209(3) would be burdensome, and recommend that only one notice be required for a project entailing multiple days of burning.

The commission concurs that one notice can suffice for a project entailing multiple days of burning, as opposed to daily notification, if the initial notice is sufficiently detailed to delineate the scope of the burn, and if the scope does not constitute circumvention of the rule for a continual burning situation. Accordingly, §111.209(3) has been amended.

Texas Utilities Services, Inc. suggested that §111.209(3) be amended to read: "On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing, and controlled burning along water discharge canals when no practical alternative...."

The commission agrees that §111.209(3) should be amended to take into consideration maintenance of water discharge canals where no practical alternative exists. However, as similar conditions also exist along canals other than discharge canals, for example irrigation canals, the wording is made more generic to read: "On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative...."

HL&P pointed out that in order to determine if burning is allowed under §111.209(3), one must determine whether or not a practical alternative to outdoor burning exists.

The commission's intent in §111.209(3) is to foster an analysis of practical alternatives prior to burning.

City of Dallas commented that they felt the concept of "rural area" in the existing §111.103(b)(5) be retained, and requested clarification of the concept of: "negatively affected by."

Texas Eastman commented that the term "negatively affected" in §111.209(3) and §111.209(4) is vague and can be misinterpreted to allow sensitive receptors far more protection than "avoidance of potential off-site environmental impacts." It suggested the term "negatively affected" be defined in terms of nuisance, traffic hazard, or violation of any air quality standard.

The intent of using the term "negatively affected" in §111.209(3) and §111.209(4) is to connote nuisance, traffic hazard, or violation of an air quality standard.

The idea of retaining the concept of "rural area" in §111.209(3) was contemplated in detail by the commission. It is almost impossible to consistently define "rural" in a manner that is applicable throughout the state, in that there are situations within corporate limits which have rural characteristics and situations outside municipalities with urban characteristics. There is no bright line distinction. Instead, it was found to be more appropriate to address potential impacts of outdoor burning as opposed to any arbitrary, and also often mobile, boundaries. Therefore, the concept of sensitive receptor impacts was instituted.

Houston Sierra Club's Forestry Subcommittee recommended that in §111.209(3) and §111.209(4) the wording: "...when possible. Commission approval is not required." be removed. In its place, it is suggested "regional approval is required" be added.

As to the suggestion that notification and approval be required in §111.209(3) and §111.209(4), the commission decided that because of the number and transitory nature of such burns a mandatory requirement for notification and commission approval would be onerous in relation to the level of emissions and the nuisance/safety potential. This section has been amended to clarify this intent.

EPA stated that in §§111.209(3), (4), and (5) when notification prior to burning is required, there is no requirement as to how many days prior to the burning the notification is due.

It must be noted that the number and transitory nature of such burns often make it impractical to strictly require prior notification.

Harris County did not see the need for the exception §111.209(5) in that they felt it should be administered under §111.215.

The rationale for inclusion of §111.209(5), even though such activity could be accomplished under §111.215, was that it streamlined the process for a limited scope burn by not requiring local governments to go through the more extensive process of §111.215 for each individual situation.

EXCEPTION FOR PRESCRIBED BURN. Houston Sierra Club's Forestry Subcommittee recommended that the wording

"...,when possible. Commission approval is not required." be deleted. In its place, it is suggested, "regional approval is required." be added, along with a requirement for recordkeeping by the commission regional office.

As to the suggestion that notification and approval in §111.211(1) be mandatory, the commission decided that because of the number and transitory nature of such burns, mandatory commission notification and approval would be onerous. With the additional definitions, the commission believes sufficient parameters are established whereby additional requirements would not enhance the rule.

EPA stated that in §111.211(1) and §111.211(2), when notification prior to burning is required, there is no requirement as to how many days prior to the burning the notification is due.

The comment that §111.211(1) should have a notification timeframe is not relevant in that no mandatory notification is required. As to notification timing in §111.211(2), the rule requires notification information be received fifteen days prior to the burn.

Additionally, the commission amended the first sentence of §111.211(1) to read: "...management purposes, with the exception of coastal salt-marsh management burning," for clarity.

King Ranch recommended that salt-marsh management not be addressed separately, but instead be considered in §111.211(1) as they find it difficult to separate salt-marsh and general range in certain areas. If separation of the salt-marsh management is continued, it is suggested that Kleberg County be deleted from §111.211(2) as: (a) the majority of all salt-marsh grass in the county is several miles removed from populated areas, and (b) 90% of the salt-marsh burning for Kleberg County is done by King Ranch, therefore, there is not a problem with several property owners burning on the same day.

Because of the extent of the smoke involved in salt-marsh burning and the potential for sea breeze transport to populated areas long distances away from the combustion area, §111.211(2) should continue to apply all listed counties.

EXCEPTION FOR HYDROCARBON BURNING. Houston Sierra Club's Forestry Subcommittee recommended the rewording of the last sentence to read: "Sampling and monitoring will be required to determine and evaluate environmental impacts. The executive director will develop sampling and monitoring requirements and guidelines."

As this section is almost always utilized in emergency situations, a mandatory requirement for any form of extensive sampling and monitoring could cause unnecessary delays resulting in increased environmental damages, especially in situations where, without burning, the hydrocarbons would reach a waterway. The commission believes the language is adequate to be protective of air quality standards, and that such sampling and monitoring should be left discretionary to allow flexibility for each specific situation.

EXECUTIVE DIRECTOR APPROVAL OF OTHERWISE PROHIBITED OUTDOOR BURNING. EPA recommended the rule be modified to read: "...and if the burning will not cause or contribute to...a violation of any federal or state primary or secondary ambient air standard."

The commission agrees with this recommendation and the rule is amended accordingly.

GENERAL REQUIREMENTS FOR ALLOWABLE OUTDOOR BURNING. DFW International Airport commented that the first paragraph of this section conclude as, "...when specified in any section of this subchapter."

The commission concurs and the section is amended accordingly.

Houston Sierra Club's Forestry Subcommittee commented that they are concerned that this section might be too restrictive in that it could prevent prescribed burning of such places as Armand Bayou Nature Center or the Houston Coastal Center for ecological purposes just because they are in the corporate limits of a city or town as mentioned in §111.219(2).

The comment was considered by the commission and found unwarranted in that such a burn may be accommodated under §111.215, with the requisite case-by-case analysis involved with special situations.

City of Dallas recommended that §111.219(3) keep the existing prohibition of §111.105(3) concerning predicted wind shifts.

The suggestion was evaluated by the commission and found to add an inexactness to the enforcement process, in that it is very difficult to verify the existence/accuracy of a prediction. It is felt the language in §111.219(3) is not uncertain. The commission believes referenced meteorological conditions in this section adequately address the concern.

City of Dallas suggested that the distance to at least residential and commercial properties rather than structures be retained as in existing §111.105(4).

The recommendation was considered by the commission; however, no changes were made because it becomes unnecessarily restrictive when a residence or commercial activity is on a large tract of land where the structure may be a great distance from the platted boundary. This change is in no way intended to eliminate concerns involving nuisance or safety.

Harris County Pollution Control Department suggested that §111.219(5) be revised to require written approval from persons actually occupying adjacent property.

The comment was discussed by commenters over the course of rule development and thoroughly considered by the commission. It was found by the commission that limiting such consent to either landowner or tenant could be overly restrictive in that it might not adequately recognize lease arrangements. Therefore, §111.219(5) is amended to read: "...unless prior written approval is obtained from the adjacent occupant with possessory control."

City of Dallas commented that §111.219(6)(A) be changed to read "...fires, smoldering objects and/or glowing coals...."

The commission considered the recommendation, but because such coals do not smoke as all volatiles have been consumed, such recommendation was not followed. If coals cause combustion of adjacent flammable materials which emit smoke, the extinguishment requirement would address coals within the definition of "extinguished" in §111.203.

Harris County Pollution Control Department commented that §111.219(6)(A) should be modified to state that fire be attended at all times.

The suggestion was considered by the commission and found to have merit. This subject never arose during the many discussions over the past year, as common sense would lead one to presume attendance to monitor a fire. However, §111.219(6)(A) has been amended to read "...one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases...." It is not intended that a person must be in attendance after the active burn phase when there is no flame or smoke potential.

Properties of the Southwest recommends that §111.219(6)(B) be revised to read: "...less than six miles per hour (mph)(five knots) or greater than 23 mph (20 knots) while the burning is to be conducted." It was felt this amendment would clarify that while surface wind speed is predicted to be less than six mph in the early morning hours, but within allowable speeds later in the day, a burn could commence once the wind increases to allowable speeds.

The language "during the burn period" in §111.219(6)(B) already adequately addresses the point that the designated wind speeds only apply during combustion.

Harris County recommended that §111.219(6)(B) be changed to have the maximum allowable wind speed be 17 mph.

City of Kerrville commented that §111.219(6)(B) be changed to have a top wind speed of 10 mph to inhibit blowing embers.

The wind speeds referenced in the rule are designed to promote appropriate smoke dispersion while at the same time having an upper constraint for safety purposes. To lower the upper limit would, in many parts of the state, amount to a virtual burning prohibition most of the time. This is especially true on the High Plains and in coastal regions. Should local governments choose to have a lower wind speed for burning within their corporate limits, it can be done under §111.219(2).

Houston Sierra Club's Forestry Subcommittee stated that §111.219(7) be changed so that the last line read "must" as opposed to the existing "may".

The suggestion that "may" be changed to "must" in §111.219(7) is accepted by the commission and the rule is amended accordingly. §§111.101, 111.103, 111.105, 111.107 The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

Outdoor Burning

30 TAC §§111.101, 111.103, 111.105, 111.107

The repeals are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Kevin McCalla

Director Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



Subchapter B. Outdoor Burning

30 TAC §§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213, 111.215, 111.219, 111.221,

The new sections are adopted under the Texas Health and Safety Code (Vernon 1992), the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§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. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term "executive director," as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

§111.203. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Extinguished- The absence of any visible flames, glowing coals, or smoke.

Landclearing operation - The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

Practical alternative - An economically, technologically, ecologically and logistically viable option.

Prescribed burn - The controlled application of fire to naturally-occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

Structure containing sensitive receptor(s) - A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

Sunrise/Sunset - Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

Wildland - Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

§111.205. Exception for Fire Training.

(a) Outdoor burning shall be authorized for training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 10 working days after the date of postmark or the date of personal delivery of the request.

(b) Facilities dedicated solely for fire-fighting training, at which training routinely will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.

(c) Facilities dedicated solely for fire-fighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any one-week period, provided the initial telephone/facsimile notice includes all such sessions. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.

(d) Authorization to conduct outdoor burning under this provision may be revoked by the executive director if the authorization is used to circumvent other prohibitions of this subchapter.

§111.209. Exception for Disposal Fires.

Outdoor burning shall be authorized for:

(1) Domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in §101.1 of this title, (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic

waste which can not be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire and appliances.

(2) Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.

(3) On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burning situation. Commission notification or approval is not required.

(4) Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title, and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order.

(5) Brush, trees, and other plant growth causing a detrimental public health and safety condition may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns can not be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

§111.211. Exception for Prescribed Burn.

Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams,

and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.

(C) Such burning shall be subject to the requirements of §111.219 of this title.

§111.215. Executive Director Approval of Otherwise Prohibited Outdoor Burning.

If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal or state primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

§111.219. General Requirements for Allowable Outdoor Burning.

Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this subchapter.

(1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

(5) Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering

objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(7) 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 must not be burned.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 26, 1996.

TRD-9612431

Kevin McCalla

Director Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1970



Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Taking and Possessing Raptors for Falconry Purposes

31 TAC §§57.301-57.315

The Texas Parks and Wildlife Commission adopts the repeal of §§57.301-57.315, concerning Falconry Permits, without changes to the proposed text as published in the June 7, 1996, issue of the *Texas Register* (TexReg 5154).

The repeals are necessary in order for the department to move falconry regulations from 31 TAC Chapter 57, concerning Fisheries, to 31 TAC Chapter 65, concerning Wildlife.

The repeals will function by eliminating regulations that exist elsewhere.

The department received no comments concerning adoption of the repeals.

The repeals are adopted under Parks and Wildlife Code, Chapter 49, which provides the commission with the authority to prescribe rules for taking and possessing raptors in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 23, 1996.

TRD-9612426

Bill Harvey, Ph.D.

Regulatory Coordinator

Texas Parks and Wildlife Department

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Proposal publication date: June 7, 1996

For further information, please call: (512) 389-4642



Chapter 65. Wildlife

The Texas Parks and Wildlife Commission adopts the repeal of §§65.251-65.255 and new §§65.251-65.256, concerning Transporting, Shipping, and Exporting Bobcat Pelts. Section 65.255 and §65.256 are adopted with changes to the proposed text as published in the June 7, 1996, issue of the *Texas Register* (21 TexReg 5153). Sections 65.251-65.254 are adopted without changes and will not be republished. The change to §65.255 clarifies that any person may acquire a Bobcat Dealer Permit. The change to §65.256 corrects an inaccurate reference to statutory penalties.

The repeals and new sections are necessary in order to simplify a confusing and difficult regulatory program.

The repeals and new sections will function to eliminate burdensome paperwork and reorganize regulatory provisions in the interest of promoting user-friendliness and implement the department's statutory duty to regulate the take, possession, sale, purchase, importation, and exportation of bobcats in this state.

The department received seven comments concerning adoption of the rules. Three commenters were opposed to the length of the open season and the bag limit. The department responds that tagging data does not indicate a need to reduce season length or bag limit. No changes were made as a result of the comments. One commenter requested a closed season during the time of the year when bobcats are reproducing. The department responds that current estimates of take do not indicate an impact on the reproductive rates of the resource. No changes were made as a result of the comment. One commenter opposed the rules on the basis of indiscriminate take of endangered species. The department responds that no evidence exists to substantiate a correlation between the take of bobcats and the take of endangered species. No change was made as a result of the comment. Voice for Animals opposed adoption of the rules. The Texas Furtrappers Association commented in favor of adoption of the rules.

Subchapter J. Bobcat Proclamation

31 TAC §§65.251-65.255

The repeals are adopted under Parks and Wildlife Code, Chapter 67, which provides the Commission with authority to regulate nongame wildlife resources.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on August 23, 1996.

TRD-9612427