

# Brush Pile Burning Laws, Rules, and Liabilities

Ray T. Hinnant



It seems like a good day to  
burn a brush pile!

# You own your Brush Pile Fire until it is out.

- You must demonstrate
  - Due diligence – Reasonable steps taken by a person in order to satisfy a legal requirement – Especially a Brush Pile Burn.
  - Standards of Care
    - Understand and follow the Rules
    - Weather, personnel, equipment, preparation, fuels and fuel moisture and others must be accounted for.

# Brush Pile fire must stay on your land

- Texas criminal statutes specify penalties that pertain to escaped fires and deliberately set wildland fires. Persons responsible for escaped fires or arson wildfires may also be faced with civil suits for damages caused by these fires.
- Trespass – Fire or Smoke
- Is your farm and ranch liability insurance up to date?

Standards of Care go a long way if a burn gets away.

- Competent
- Cautious
- Prudent

# Outdoor Burning in Texas

- Regulated by the Texas Commission on Environmental Quality (TCEQ).

# Current Outdoor Burning Laws

## TCEQ, Chapter 111 - 1996

- 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.
- Exceptions include “brush pile burning”.

# *Current Outdoor Burning Laws*

## *Prescribed burning rules*

- HB 2599 passed 9/1999.
  - Gave landowners the right to burn.
  - Purpose:
    - Reduce hazardous fuel loads to reduce wildfires.
    - Uses as a land management tool.



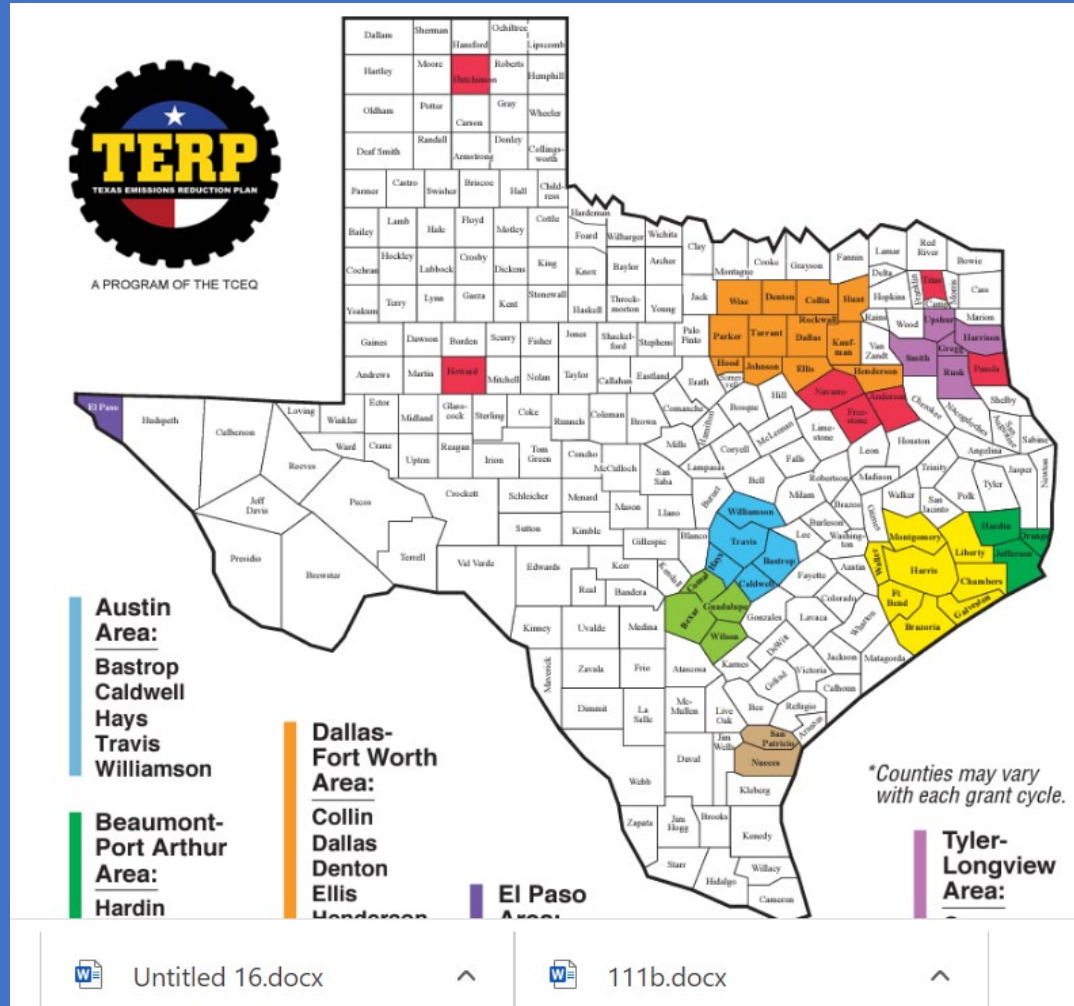
# Outdoor Burning Rules

- TCEQ Rules
- County Government Rules – Vary by county
  - Talk to your Commissioner or County Judge

# TCEQ Rules

- **Exception for Disposal Fires**
  - on-site burning of trees, brush, grass, leaves, branch trimmings, or other plant growth, by the owner of the property or any other person authorized by the owner, and when the material is generated only from that property:
  - Does not include construction materials, tires, appliances, etc.

# Determine Attainment Status - Different rules apply



# Notifications

- County Dispatch
  - Before and after the burning is completed
  - Double check to make sure there is no burn ban
- Neighbors

# TCEQ Outdoor Burning Rules

- Burning must be outside the corporate city limits unless there is an ordinance that allows burning.
- 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 containing sensitive receptors.
- If at any time the burning causes smoke to blow onto or across a road or highway, it is the responsibility of the burner to post flag-persons on affected roads.

# TCEQ Outdoor Burning Rules

- Burning must be conducted downwind of or at least 300 feet from any structure containing sensitive receptors unless prior written approval is obtained from the adjacent receptor.

# TCEQ Outdoor Burning Rules

- Meteorological and timing considerations
  - Start no earlier than one hour after sunrise
  - Burning shall be completed the same day and not later than one hour before sunset.
  - Burning shall be attended by a responsible party at all times during the active phase and residual fires must be extinguished if the smoke has the potential to cause a nuisance or traffic hazard.

# TCEQ Outdoor Burning Rules

- Surface windspeed is predicted to be six mph and less than 23 mph during the burn period.
- Burning shall not be conducted during periods of actual or predicted low level temperature inversions.



# TCEQ Outdoor Burning Rules

- 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.

# Liability

- Just because you follow the TCEQ rules, it does not excuse you from any damages or consequences, damages, or injuries resulting from the burn.
- If you do follow the TCEQ and County Government rules it does show that you attempted to meet the standards of care if you have completed a plan and followed the plan.

# Liability – Steps to Lessen your risk

- Take a burn pile burning class – Maybe even a Prescribed Burn class
- Prepare your piles
- Develop a written burn plan
- Burn at the right time of year
- Watch the weather for a safe time to burn
- Follow all applicable laws and rules
- Prepare a plan in case an ember starts a fire away from the pile
- Have enough equipment and personnel to handle a spot fire
- Start small under the safest conditions

# Insurance

- Have a good farm and ranch policy
- Some companies have special programs that cover fire
- Agents may not know of or understand fire coverage policies
- Be sure the policy covers “Hostile Fire”

# Summary

- Understand and know where to get current rules and regulations on Outdoor Burning. They can change with every legislative session.
- Make a written plan and follow it.
- Be sure you are meeting Standards of Care.
- Be Competent, Cautious, and Prudent