

DRAFT PROPOSAL

~~[brackets and strikethrough]~~ = material to be deleted
underline = new material

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 60 OPEN BURNING

20.2.60.1 ISSUING AGENCY: Environmental Improvement Board.

20.2.60.2 SCOPE: All geographic areas within the jurisdiction of the Environmental Improvement Board.

20.2.60.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A) (4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

20.2.60.4 DURATION: Permanent.

20.2.60.5 EFFECTIVE DATE: November 30, 1995, except where a later date is cited at the end of a section.

[The latest effective date of any section in this Part is xx/xx/03.]

20.2.60.6 OBJECTIVE: The objective of this part is to establish controls on ~~[the use of]~~ pollution produced by open burning. This part ~~[is not intended to]~~ does not preempt any more stringent controls on open burning provided in ~~[the Board's Solid Waste Management Regulations (20.9.1 NMAC)]:~~

A. any other regulation in the New Mexico Administrative Code or in any local ordinance or regulation, or

B. any lawfully issued restriction on open burning, such as may be issued for prevention of wildfires.

20.2.60.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part:

A. "air pollution episode" means an air pollution alert, warning, or emergency issued by the Department pursuant to the air pollution episode contingency plan for New Mexico and section 74-2-10 NMSA 1978.

B. "clean lumber" means wood or wood products that have been cut or shaped and include air-dried and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

C. "hazardous waste" means any solid waste or combination of solid wastes that because of quantity, concentration or physical, chemical or infectious characteristics may:

(1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. "Hazardous waste" does not include any of the following, until the board determines that they are subject to Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.: drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy; fly ash waste; bottom ash waste; slag waste; flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels; solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore; or cement kiln dust waste.

D. "household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

E. "nonattainment area" means, for any air contaminant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national or New Mexico ambient air quality standard for such contaminant. Such term includes any areas identified under Sub-paragraphs (A) through (C) of Section 107 (d)(1) of the Federal Act.

~~[A.]~~**F. "open burning"** means any manner of burning not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air.

~~[B.]~~**G. "part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

H. "pile volume" means the gross volume of a pile, including the air space between solid constituents, as calculated from the overall dimensions and shape of the pile;

I. "salvage operation" means any operation to salvage or reclaim any material for use or sale, such as reprocessing of used motor oils, metals, wire, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards.

J. "wood waste" means wood and wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings, which have not been painted, pigment-stained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

K. "yard waste" means grass, grass clippings, leaves, conifer needles, bushes, shrubs, and clippings from bushes and shrubs, resulting from maintenance of yards or other private or public lands.

~~[20.2.60.8] AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:~~ This part amends and supersedes Air Quality Control Regulation ("AQCR") 301—Regulation to Control Open Burning last filed July 24, 1984.

~~A. All references to AQCR 301 in any other rule shall be construed as a reference to this part.~~

~~B. The amendment and supersession of AQCR 301 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 301.]~~

~~[20.2.60.9]~~ **20.2.60.8 to 20.2.60.107** [RESERVED]

20.2.60.108 RESTRICTIONS ON OPEN BURNING: Except as otherwise provided in this part, no person shall permit, cause, suffer or allow open burning.

20.2.60.109 UNRESTRICTED OPEN BURNING:

A. Open burning is permitted for recreational and ceremonial purposes, for barbecuing, for heating purposes in fireplaces, for the noncommercial cooking of food for human consumption and for warming by small wood fires at construction sites. This subsection does not apply to open burning for the purpose of waste disposal.

B. Open burning of natural gas is permitted at gasoline plant and compressor stations and when used or produced in drilling, completion and workover operations on oil and gas wells, when necessary to avoid serious hazard to safety.

~~[C. Open burning of explosive materials is permitted where the transportation of such materials to other facilities could be dangerous.]~~

20.2.60.110 ~~[RESTRICTED OPEN BURNING OF REFUSE]~~ **OPEN BURNING OF HOUSEHOLD WASTE:**

~~[A. Subject to the conditions contained in 20.2.60.112 NMAC, open burning of refuse is permitted in communities having:~~

~~(1) a population of less than 3000; and~~

~~(2) no public refuse collection service or the economic means of obtaining or establishing one.]~~

~~[B.]~~**A.** This section (20.2.60.110 NMAC) does not apply to:

(1) any kind of salvage operation ~~[or to any person to whom a collection service is available];~~

(2) open burning of household waste consisting solely of yard waste, wood waste, and other vegetative material as specified in 20.2.60.111 NMAC.

B. Prior to June 1, 2004, open burning of household waste is permitted where all of the following conditions are met:

(1) household waste shall not be burned on property other than that property where it was generated;

(2) household waste shall not be burned on property which is served by any on-premises or curbside refuse collection service operated or contracted by a regional waste authority, county, or incorporated city, town, or village;

(3) household waste shall not be burned on any property less than ten miles by road from a convenience center, transfer station, or other receptacle made available for public use by a regional waste authority, county, or incorporated city, town, or village for the deposition and collection of refuse;

(4) household waste shall not be burned at any location nearer than three hundred feet from any occupied dwelling, workplace, or place where people congregate, on property owned or leased by another person;

(5) burning of the following materials is prohibited:

(a) natural or synthetic rubber products, including tires;

(b) waste oil or used oil filters;

(c) insulated wire;

(d) plastic, including polyvinyl chloride ("PVC") pipe, tubing, and connectors;

(e) tar, asphalt, asphalt shingles, or tar paper;

(f) railroad ties;

(g) wood, wood waste, or lumber which has been painted or which has been treated with preservatives containing arsenic, chromium, pentachlorophenol, or creosote;

(h) batteries;

(i) motor vehicle bodies or interiors;

(j) pathogenic wastes; and

(k) asbestos or asbestos containing materials;

C. Auxiliary fuel or incendiary devices may be used to start the burning permitted by this section, provided that:

(1) no oil heavier than No. 2 diesel shall be used; and

(2) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

D. Effective June 1, 2004, open burning of household waste, other than yard waste, wood waste and other vegetative material as specified in 20.2.60.111 NMAC, is prohibited.

~~[20.2.60.111 — OTHER RESTRICTED OPEN BURNING: Subject to the conditions contained in 20.2.60.112 NMAC, open burning is permitted for the following purposes:~~

~~A. disposal of fully dried tumbleweeds; and~~

~~B. agricultural management, excluding timber, directly related to the growing or harvesting of crops.]~~

~~[20.2.60.112 — CONDITIONS FOR RESTRICTED OPEN BURNING: Any open burning permitted under 20.2.60.110 NMAC and 20.2.60.111 NMAC must be maintained under the following conditions:~~

~~A. the emission of smoke shall not be allowed to pass onto or across a public road or landing strip such that a hazard is created by impairment of visibility;~~

~~B. no natural or synthetic rubber or petroleum products may be burned. For the purpose of frost control in agricultural operations, natural petroleum products may be burned;~~

~~C. care must be taken to minimize the amount of dirt on the material being burned;~~

~~D. all burning, except agricultural burning, must take place between the hours of 10:00 a.m. and 4:00 p.m.;~~

~~E. the material to be burned must be as dry as possible; and~~

~~F. the wind direction at the site of agricultural burning must be such that the smoke will generally be carried away from areas of human habitation.]~~

~~[20.2.60.113 — OPEN BURNING FOR WHICH PERMITS MUST BE OBTAINED: Subject to whatever conditions the Department may impose, open burning is permitted for the following purposes when a permit is obtained from the Department: weed abatement; prevention of fire hazards; disposal of dangerous materials; instruction and training of bona fide fire fighting and fire rescue personnel; civil defense; conservation; game management; disease and pest control; land clearance for highway construction; forestry management; control of vegetation in irrigation ditches and canals; clearance and maintenance of watercourses and flood control channels to eliminate flood hazards; disposal of hydrocarbons spilled or lost from pipeline breaks or other transport failure; and other special circumstances.]~~

~~[20.2.60.114 — **REQUEST FOR PERMIT:** Any person seeking a permit to open burn shall do so by submitting a request to the Department. The Department may require the requestor to submit his request in writing and any or all of the following information:~~

- ~~— A. the requestor's name, address and telephone number;~~
- ~~— B. the location where the burning is to be conducted;~~
- ~~— C. the type and quantity of material to be burned;~~
- ~~— D. the date when the burning is to be conducted;~~
- ~~— E. the methods that will be followed to ignite, maintain and control the burning;~~
- ~~— F. reasons why the requestor believes the burning is necessary; and~~
- ~~— G. the alternatives to burning and the reasons why the requestor believes them not to be feasible.]~~

~~[20.2.60.115 — **PERMIT DENIAL:** A permit to burn shall not be issued if the Department determines that:~~

- ~~— A. a practical alternative to burning exists;~~
- ~~— B. the health or welfare of any other person may be detrimentally affected; or~~
- ~~— C. ambient air quality of other property may be detrimentally affected.]~~

20.2.60.111 OPEN BURNING OF VEGETATIVE MATERIAL:

A. Open burning of vegetative material consisting of yard waste, wood waste, and clean lumber, including slash, weeds, grass, brush, timber, orchard trimmings, and crops or crop stubble is permitted, provided the following conditions are met:

(1) burning of areas with non-piled vegetative material shall not exceed 10 acres per day; burning of piled vegetative material, including material gathered in a pit or open container, shall not exceed 1,000 cubic feet of pile volume per day. Burning in excess of these daily limits is subject to 20.2.65 NMAC (Smoke Management);

(2) burning shall be conducted at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned or leased by another person;

(3) burning shall begin no earlier than one hour after sunrise, and shall be extinguished no later than one hour before sunset. Burning outside of this time limitation is subject to 20.2.65 NMAC (Smoke Management);

(4) burning must be attended at all times;

(5) the appropriate local fire department or dispatch or firefighting authority must be notified prior to burning;

(6) burning shall be in compliance with 20.9.1 NMAC (Solid Waste Management); and

(7) burning shall not be conducted when an air pollution episode is in effect.

B. Auxiliary fuel or incendiary devices may be used to start the burning permitted by this section, provided that:

(1) no oil heavier than No. 2 diesel shall be used; and

(2) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

C. Polyethylene sheeting may be burned with the vegetative materials, provided that:

(1) the sheeting has been covering piled vegetative material for at least one month prior to burning;

(2) the amount of sheeting burned is no more than the minimum necessary to cover the pile;

(3) removal of the sheeting before burning is impractical; and

(4) the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic.

D. This section does not apply to burning in nonattainment areas.

E. If, pursuant to actual or process knowledge, a facility subject to authority of the federal Resource Conservation and Recovery Act or the New Mexico Hazardous Waste Act (NMSA 1978, sections 74-4-1 through 74-4-14, as amended) knows or should know that the vegetative material it intends to burn contains hazardous, toxic, or radioactive substances, the facility shall assess the nature and extent of the substances and analyze the anticipated effects to human health and the environment of the burning. It shall provide such assessment and analysis to the Department at least thirty (30) days prior to the burn date. If the secretary determines that the burning presents an imminent and substantial endangerment to the public health or welfare or the environment, he or she may bring suit for injunctive relief or issue a temporary order as specified in section 74-2-10 NMSA 1978.

20.2.60.112 BURNING OF STRUCTURES FOR FIREFIGHTER TRAINING: Burning of structures, buildings or facilities for purposes of instruction and training of bona fide firefighting and fire-rescue personnel is permitted, provided that:

A. all regulated asbestos-containing material is removed prior to burning, in accordance with 40 CFR 61, Subpart M (National Emission Standard for Asbestos); and

B. the Department is notified, prior to burning, using the form provided by the Department.

20.2.60.113 OPEN BURNING OF HAZARDOUS WASTE: Open burning of hazardous waste is permitted only when conducted in compliance with interim status regulations, or a permit issued, pursuant to the New Mexico Hazardous Waste Act (NMSA 1978, sections 74-4-1 through 74-4-14) and any other permits issued by the Department.

20.2.60.114 EMERGENCY BURNING: Open burning is permitted for purposes of eliminating an imminent danger to public health, safety, or the environment, provided that:

A. no other practical and lawful method of abatement or disposal is available;

B. an emergency response specialist has determined that the situation requires immediate and expeditious action;

C. the burning is in compliance with all other applicable state laws and regulations; and

D. notice is provided to the Department as soon as practical, but at least within two weeks after the burn.

20.2.60.115 to 20.2.60.199 [Reserved]

20.2.60.200 FIELD CITATION PROGRAM:

{NMED is still considering whether to propose regulations establishing a field citation program for enforcement of 20.2.60 NMAC, and whether such regulations should be within this regulation or a separate regulation. The Air Quality Control Act (74-2-12 NMSA 1978) allows the Environmental Improvement Board to implement such a program through regulations establishing appropriate minor violations for which civil penalties not to exceed \$1,000 per day may be assessed. The Act further specifies due process procedures and requires that the penalties collected be deposited in the state general fund.}