

The Department proposes that the Board repeal the current 20.2.60 NMAC and replace it. Shown here are the proposed changes in amendment format (for information purposes only), where:

~~[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]~~ sections 74-1-1 to -15, including specifically subsections 74-1-8(A) (4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 [et seq., including specifically, section] to -22, including specifically subsections 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.

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 ~~[in the Board's Solid Waste Management Regulations (20.9.1 NMAC) or in any local ordinance or regulation];~~

A. any other New Mexico statute or regulation, or any local law, ordinance or regulation; or
B. any lawfully issued restriction on open burning, including those that 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, as included in New Mexico's State Implementation Plan as adopted by the Environmental Improvement Board, and section 74-2-10 NMSA 1978.

B. "household waste" means any 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.

C. "nonattainment area" means an area which has been designated under section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the federal environmental protection agency.

~~[A]D. "open burning" means any manner of burning, whether caused, suffered or allowed, not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air. Open burning does not include detonation of manufactured explosives.~~

~~[B]E. "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.~~

F. "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;

G. "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.

H. "vegetative material" means plant material, including:

(a) grass, grass clippings, leaves, conifer needles, bushes, shrubs, trees, and clippings from bushes, shrubs and trees, resulting from maintenance of yards or other private or public lands; and

(b) wood waste, clean lumber, 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.

~~[20.2.60.8 — AMENDMENT AND SUPERSESSION 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.]~~ Any open burning not expressly allowed, expressly prohibited, or otherwise specifically addressed under this part or 20.2.65 NMAC (Smoke Management) shall be conducted only pursuant to 20.2.72 NMAC, upon issuance of a construction permit under 20.2.72 NMAC, regardless of the applicability thresholds contained in 20.2.72 NMAC. Open burning that is expressly allowed, expressly prohibited, or otherwise specifically addressed under this part is not a "stationary source" or "source" as defined in any other part of Title 20, Chapter 2, of the New Mexico administrative code.

20.2.60.109 UNRESTRICTED OPEN BURNING:

A. Open burning is ~~[permitted]~~ allowed 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]~~ allowed 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:~~

~~— 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. — 20.2.60.110 NMAC does not apply to any kind of salvage operation or to any person to whom a collection service is available.]~~

~~[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.]~~

20.2.60.110 OPEN BURNING OF HOUSEHOLD WASTE:

- ~~_____ A. _____ Applicability:~~
- ~~_____ (1) _____ This section (20.2.60.110 NMAC) applies to open burning of household waste, except for household waste that consists solely of vegetative material as defined in 20.2.60.7 NMAC.~~
- ~~_____ (2) _____ This section (20.2.60.110 NMAC) does not apply to any kind of salvage operation. Open burning as part of a salvage operation is prohibited.~~
- ~~_____ B. _____ Effective June 1, 2004, open burning of household waste, other than vegetative material as defined in 20.2.60.7 NMAC, is prohibited.~~
- ~~_____ C. _____ Prior to June 1, 2004, open burning of household waste is allowed 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 by, or under possessory control of, 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;

D. Auxiliary fuel or incendiary devices may be used to start the burning allowed 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.

20.2.60.111 OPEN BURNING OF VEGETATIVE MATERIAL:

A. Applicability:

(1) This section (20.2.61.111 NMAC) applies to open burning of vegetative material as defined in 20.2.60.7 NMAC, for purposes of disposal of such material, provided that burning of areas with non-piled vegetative material does not exceed 10 acres per day, and burning of piled vegetative material, including material gathered in a pit or open container, does not exceed 1,000 cubic feet of pile volume per day. In determining daily burn area and daily burn pile volume, areas or piles that are within 300 feet of each other shall be considered to constitute a single burn if the burning occurs on the same day and on property under ownership or possessory control of the same person. Burning in excess of these daily limits is subject to 20.2.65 NMAC (Smoke Management);

(2) This section does not apply to any open burning of vegetative material which is subject to 20.2.65 NMAC;

- (3) Open burning of vegetative material is prohibited in nonattainment areas.

B. Open burning of vegetative material under this section shall meet the following requirements:

(1) burning shall be conducted at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property under owned by, or under possessory control of, another person. Burning that does not meet this requirement is subject to 20.2.65 NMAC (Smoke Management);

(2) 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);

- (3) burning shall be attended at all times;

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

(5) for burns exceeding one acre per day or 100 cubic feet of pile volume per day, the burner shall provide prior notice of the date and location of the burn to all households within one quarter of a mile of the burn;

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

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

(8) Auxiliary fuel or incendiary devices may be used to ignite the burning allowed by this section, provided that:

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

(b) no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used.

- (9) Polyethylene sheeting may be burned with the vegetative materials, provided that:

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

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

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

(d) 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.

C. 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 to -14) knows or should know that the vegetative material it intends to burn contains hazardous, toxic or radioactive substances, as defined by relevant state and federal laws and regulations, at concentrations above background levels, the facility may burn such vegetative material only pursuant to a permit issued under 20.2.72 NMAC, regardless of the permitting thresholds in that part.

20.2.60.112 BURNING OF MATERIALS AND STRUCTURES FOR FIREFIGHTER TRAINING:

Burning of structures, buildings, facilities or materials for purposes of instruction and training of bona fide firefighting and fire-rescue personnel is allowed, 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, as defined in the New Mexico Hazardous Waste Act, NMSA 1978, sections 74-4-1 to -14, is allowed only when conducted in compliance with interim status regulations, or a permit issued, pursuant to the New Mexico Hazardous Waste Act and any other permits issued by the Department.

20.2.60.114 EMERGENCY BURNING: Open burning is allowed 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.