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20.2.60 NMAC [insert new effective date here] 1

DRAFT PROPOSAL

[brackets and strikethrough] = material to be deleted

underline = new material

Red is comments/suggestions/rewrites/additions

Delete

**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 pollution produced by open burning. This part does not preempt any more stringent controls on open burning provided in:

- 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, pigmentstained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

Hazardous fuel --

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.

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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.

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.

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, **wood**, wire, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards.

Smoke sensitive receptors – If the stakeholder from the SMP can agree on a definition insert new definition.

Ventilation Categories – Define categories (Chuck Maxwell predictive services)

Ventilation Index – means an index that describes the potential for smoke or other pollutants to ventilate away from its source.

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 and trees, resulting from maintenance of yards or other private or public lands.

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. **Comment: I would refer the reader to Title 20 Chapter 2 Part 65 Smoke Management rule for all users of prescribed fire that exceeds ten acres in size or 1000 cubic feet of pile volume per day of vegetative material.**

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.

20.2.60.110 OPEN BURNING OF HOUSEHOLD WASTE:

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; 20.2.60 NMAC [insert new effective date here]

(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 not 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. **Comment: I would just state the facts. Rewrite: Effective June 1, 2004, open burning of household waste is prohibited. I would also put this statement at the beginning of this section. You should also add clean lumber under other than yard waste, wood waste, and other vegetative material as specified in 20.2.60.111 NMAC.**

20.2.60 NMAC [insert new effective date here]

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;~~ **Delete: the restriction on distance to dwellings. This is in direct conflict with the Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, National Fire Plan and Healthy Forest Initiative etc.... This proposed restriction could affect many property owners (distance to dwellings) of disposing of hazardous fuel within the WUI area. The responsibility falls on the burner to reduce/mitigate smoke impacts and to fire proof/protect dwellings.**

~~(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); **Rewrite: The burner shall ignite burns only in good to excellent ventilation categories to minimize impact to smoke sensitive receptors. Comment: As long as the smoke dispersion criteria is being met, why restrict the burning to one hour after sunrise, to one hour before sunset.**

~~(4) burning must be attended at all times;~~

(5) the appropriate local fire department or dispatch or firefighting authority must be notified **at least two hours** 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.~~ **Rewrite: burning shall be conducted when ventilation categories are good to excellent and air pollution episode are not in effect.**

B. Auxiliary fuel or incendiary devices may be used to **conduct open** 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.~~ **Rewrite: The minimum amount of auxiliary fuel or incendiary devices shall be used to complete the burn.**

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. **Suggestion: This is a very important point, I would move bullet D. to the top of this section.**

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 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.}

General Comments and Questions

What about the burning of hazardous liquids? In the definition section, hazardous waste and yard waste refer to the disposal of solid waste.

In the open burning of vegetative material (sec. 20.2.60.111) restricts the burner not to exceed 10 acres per day or not to exceed 1,000 cubic feet of pile volume per day. If a land owner/manager has several different properties (not adjacent to each other) is the burner still restricted to the above criteria or is it treated as different burns? If the land owner/manager has large tracts of land (i.e., 5,000 plus acres) does the above restrictions apply to all 5,000 acres or can the land owner/manger get a waiver for burning a couple of areas (i.e., 3-4 miles apart) which meet the criteria above.