

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

20.2.60.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.60.1 NMAC - Rp 20.2.60.1 NMAC, 12/31/03]

20.2.60.2 SCOPE: All geographic areas within the jurisdiction of the environmental improvement board.
[20.2.60.2 NMAC - Rp 20.2.60.2 NMAC, 12/31/03]

20.2.60.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, 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 to -22, including specifically Subsections 74-2-5(A), (B) and (C).
[20.2.60.3 NMAC - Rp 20.2.60.3 NMAC, 12/31/03]

20.2.60.4 DURATION: Permanent.
[20.2.60.4 NMAC - Rp 20.2.60.4 NMAC, 12/31/03]

20.2.60.5 EFFECTIVE DATE: December 31, 2003, except where a later date is cited at the end of a section.
[20.2.60.5 NMAC - Rp 20.2.60.5 NMAC, 12/31/03]
[The latest effective date of any section in this part is December 31, 2003.]

20.2.60.6 OBJECTIVE: The objective of this part is to protect public health and welfare by establishing controls on pollution produced by open burning. This part does not preempt any more stringent controls on open burning provided in:

- 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.

[20.2.60.6 NMAC - Rp 20.2.60.6 NMAC, 12/31/03]

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;
- 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;
- 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; and
- H.** "**vegetative material**" means plant material, including:
 - (1) 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

(2) 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.

[20.2.60.7 NMAC - Rp 20.2.60.7 NMAC, 12/31/03]

20.2.60.8 to 20.2.60.107 [RESERVED]

20.2.60.108 RESTRICTIONS ON OPEN BURNING: Any open burning not expressly allowed, not expressly prohibited, or not 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 requirements contained in 20.2.72 NMAC. Open burning as allowed or prohibited in this part is not considered a stationary source as defined in other parts of Title 20, Chapter 2, NMAC.

[20.2.60.108 NMAC - Rp 20.2.60.108 NMAC, 12/31/03]

20.2.60.109 UNRESTRICTED OPEN BURNING:

A. Open burning is 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 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.

[20.2.60.109 NMAC - Rp 20.2.60.109 NMAC, 12/31/03]

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 number two diesel shall be used; and
- (2) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

[20.2.60.110 NMAC - Rp 20.2.60.110 NMAC, 12/31/03]

20.2.60.111 OPEN BURNING OF VEGETATIVE MATERIAL:

A. Applicability:

(1) This section (20.2.60.111 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 ten acres per day, or burning of piled vegetative material, including material gathered in a pit or open container, does not exceed one thousand cubic feet of pile volume per day. In determining daily burn area and daily burn pile volume, areas or piles that are within three hundred 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 three hundred feet from any occupied dwelling, workplace, or place where people congregate, which is on property 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 one hundred 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 number two 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;

(10) the burner shall consider alternatives to burning prior to igniting a burn; and

(11) material to be burned shall be as dry as practicable.

[20.2.60.111 NMAC - Rp 20.2.60.111 NMAC, 12/31/03]

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.
[20.2.60.112 NMAC - Rp 20.2.60.112 NMAC, 12/31/03]

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.
[20.2.60.113 NMAC - Rp 20.2.60.113 NMAC 12/31/03]

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.

[20.2.60.114 NMAC - Rp 20.2.60.114 NMAC, 12/31/03]

HISTORY OF 20.2.60 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records-state records center and archives:

HSSD 70-1, Ambient Air Quality Standards And Air Quality Control Regulations, 01/27/70;

AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, 02/07/83;

EIB/AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, 07/24/84.

History of Repealed Material: 20.2.60 NMAC, Open Burning, filed 10/16/02, repealed 12/31/03.

Other History:

EIB/AQCR 301, Air Quality Control Regulation 301 - Regulation To Control Open Burning, filed 07/24/84 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.60, Open Burning, filed 10/30/95.

20 NMAC 2.60, Open Burning, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.60 NMAC, Open Burning, effective 10/31/02.

20.2.60 NMAC, Open Burning, filed 10/16/02 was **replaced** by 20.2.60 NMAC, Open Burning, effective 12/31/03.