

APPENDIX 15 OPEN BURNING

PERMIT REQUIREMENTS

Open Burning Allowed Without an Air Quality Permit

Rule 15A NCAC 2D .1903, Permissible Open Burning Without a Permit, lists several categories of open burning allowed without a permit. If a category is not listed, then such open burning is prohibited. A permit may not be issued for a prohibited category of open burning. (Air curtain burners at permanent sites or that accept waste generated off-site require an air permit.)

The following types of open burning are allowed under 15A NCAC 2D .1903:

1. leaves, tree branches, and yard trimmings if the conditions set out in the Rule are met;
2. land clearing or right-of-way maintenance if the conditions set out in the Rule are met;
3. camp fires and fires used solely for outdoor cooking and other recreational purposes, for ceremonial occasions, or for human warmth and comfort if the conditions set out in the Rule are met;
4. forest management practices acceptable to the Division of Forest Resources;
5. disease and pest control on agricultural lands or other agricultural or apicultural practices acceptable to the Department of Agriculture;
6. wildlife management practices acceptable to the Wildlife Management Commission;
7. disposal of dangerous materials, i.e., explosives or containers used in holding or transporting of explosives, when it is the safest and most practical method of disposal;

8. testing or developing fire extinguishing materials or equipment;
9. instruction and training of firefighting personnel;
10. temporary air curtain burners (an air curtain burner at a site less than nine months) that burns only waste generated on-site.

Open Burning Requiring Permission But Not a Permit

The following types of open burning require permission:

1. land clearing or right-of-way maintenance when burning is to occur within less than 1000 feet of a dwelling, commercial or institutional establishment, or other occupied structure not located on the property where the burning is to be conducted;
2. disposal of material generated from a natural disaster;
3. instruction and training of firefighting personnel when the training is not conducted under the supervision of or with the cooperation of the Division of Forest Resources, Department of Insurance, North Carolina technical institutes, or North Carolina community colleges.

Open Burning Requiring an Air Permit: Air Curtain Burners

An air curtain burner located permanently at a site or at a site where materials are transported in from another site, needs an air permit. An air curtain burner is considered located permanently at a site if it is at that location at least nine months.

An air curtain burner that are located temporarily at a site, i.e., at the site less than nine months, and that burns only waste generated on-site does not need an air permit. However, if the air curtain burner burns waste generated offsite, it needs an air permit even if it is at that site for less than nine months.

All air curtain burners have to comply with the requirements of Rule **15A NCAC 2D .1904**, Air Curtain Burners.

DEFINITIONS

Occupied Structure

Rule **15A NCAC 2D .1902(7)** defines “occupied structure” as “a building in which people may live or work or one intended for housing farm or other domestic animals.” If the primary purpose of a structure is

to house domestic animals, it is considered an occupied structure. If the primary purpose of a structure is storage in which a domestic animal happens to sleep, then it would not be considered an occupied structure. Thus, if housing livestock or other domestic animals is an incidental use of the structure, it is not considered an occupied structure.*

FIRE TRAINING

15A NCAC 2D .1903(b)(10)

Rule 15A NCAC 2D .1903(b)(10) allows open burning for instruction and training of firefighting personnel when the burning is conducted under the supervision or with the cooperation of the Division of Forest Resources, Department of Insurance, North Carolina technical institutes, or North Carolina community colleges. Generally, this training takes place at “permanent facilities.” The burning is repetitious in nature. This Subparagraph allows burning without the necessity of notifying the Division of Air Quality or the Health Hazardous Control Branch (formerly the Asbestos Hazard Management Branch) before the burning.†

15A NCAC 2D .1903(b)(11)

Rule 15A NCAC 2D .1903(b)(11) allows open burning for instructing and training of firefighting personnel that does not qualify for coverage under 15A NCAC 2D .1903(b)(10). It is a “catchall” for other types of burning for firefighting training, e.g., burning of structures under the supervision of a certified instructor of the insurance commission for training of volunteer firemen.‡

Burning is permissible only as a fire training exercise with the fire department present during the burning. Other criteria that the regional office supervisor shall use in granting permission are the type, amount, and nature of combustible material.

*Air Quality Committee discussion on revising definition of “occupied structure,” n.d. Thomas Allen to Lee Daniel, “Open burning rules RE: ‘chicken houses’ etc.,” 14 Aug 1996 (memorandum).

†Thomas Allen to Regional Air Quality Supervisors, *et al.*, “Open Burning Rule Clarifications,” 23 July 1996 (memorandum).

‡Thomas Allen to Regional Air Quality Supervisors, *et al.*, “Open Burning Rule Clarifications,” 23 July 1996 (memorandum).

Permission shall not be given for the burning of salvageable items, such as insulated wire and electric motors, or if the primary purpose of the fire is to dispose of synthetic materials or refuse. Permission shall not be given to burn previously demolished structures. A "bulldozed" pile of rubble is not a legitimate source of fire training, and permission shall not be granted to burn such material. If a structure cannot be entered and the fire set, extinguished, and reset multiple times, then the fire training value is questionable.

The burden of demonstrating that any proposed exercise is legitimate training, and is therefore permissible, lies with the fire department. If the regional office believes that training is not the primary goal of the exercise, it may deny permission to burn.

Blanket permission allowing the open burning of small structures shall not be given.

Asbestos

Before a structure is burned, the asbestos requirements of 40 CFR 61.145 and any other applicable asbestos requirements in 40 CFR Part 61, Subpart M need to be met. The Health Hazards Control Branch (formerly the Asbestos Hazard Management Branch) should be contacted for these requirements. The Division of Air Quality and the Health Hazards Control Branch should be notified using notification forms obtained from the regional office of the Division of Air Quality. Either the owner of the structure or the fire department has to obtain and file the notification form and to document properly that the structure to be burned is asbestos free or is not covered under the asbestos rules.

Under 40 CFR 61.145(c)(10), if a facility is demolished by intentional burning, all regulated asbestos-containing materials (RACM), including Category I and Category II nonfriable asbestos-containing material must be removed according to the NESHAP regulations before burning. Furthermore, since the intentional burning of a facility constitutes a demolition, the proper notification must be completed and submitted to the Health Hazards Control Branch before removal of any RACM or Category I and II nonfriable materials that may become friable (40 CFR 61.145 (a), (b), (c)). This responsibility belongs to the owner or operator of the facility.*

*John J. Curran to Lee Daniel, "Burning of Buildings and/or Residences for Fire Training Purposes," 23 Sept. 1991 (memorandum).

PERMISSIBLE OPEN BURNING: 15A NCAC 2D .1903

Public Pickup: 15A NCAC 2D .1903(b)(1)

“Public Pickup” means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service. When an individual has the option of contracting pickup service for himself, such pickup service is not considered public pickup. Such an individual is allowed to burn under **15A NCAC 2D .1903(b)(1)** if he chooses not to use a contracted service. However, an individual who has no option about who offers pickup service in his area, i.e., the county or city provides the service to its citizens by either contracting or providing it, is not allowed to burn under **15A NCAC 2D .1903(b)(1)**.*

Public pickup is not available if the local government makes an affirmative statement that it does not or will not provide pickup services to certain locations or persons.[†]

Setback from Roadway: 15A NCAC 2D .1903(b)(2)

15A NCAC 2D .1903(b)(2) requires burning of land clearing or right-of-way maintenance debris to be at least 250 feet away from all public roads downwind of the prevailing winds at the time of the burn. This requirement allows burning less than 250 feet from a public road if the prevailing winds are away from that road at the time of the burn. Burning can occur next to a public road if the prevailing winds are away from the road at the time of the burn.[‡]

Right-of-way: 15A NCAC 2D .1903(b)(2)

Under **15A NCAC 2D .1903(b)(2)**, right-of-way means “a legal right of passage over another person’s ground;” “land over which a public road,

*Environmental Management Commission, *Report of Proceedings of Public Hearing on Proposed Repeal of 15A NCAC 2D .0520 and on the Proposed Adoption of 15A NCAC 2D .1901 through .1906* (Raleigh, 19 Dec. 1995), p. I-2.

[†]Discussed at the Environmental Management Commission meeting, 11 Dec. 1997.

[‡]Environmental Management Commission, *Report of Proceedings of Public Hearing on Proposed Repeal of 15A NCAC 2D .0520 and on the Proposed Adoption of 15A NCAC 2D .1901 through .1906* (Raleigh, 19 Dec. 1995), pp. I-3, I-4.

an electric power line, etc. passes;” “the land used by a public utility (as for transmission lines);” “a route that it is lawful to use.” Right-of-way is “the area over which a right-of-way exists.” Right-of-way is associated with easement.*

Burning off a Grass Lawn

A person may not burn off a grass lawn unless the Department of Agriculture recommends it. If a person wants to burn his grass, he needs to mow it and capture it or rake it into a pile and burn the pile provided all the other conditions in the **15A NCAC 2D .0903** are met. If the burning occurs in a municipality and if the municipality has an ordinance prohibiting open burning, that ordinance overrides **15A NCAC 2D .0903**.[†]

AIR CURTAIN BURNERS

If the burner can comply with **15A NCAC 2D .1903(b)(2)**, the burner may dispose of the material by open burning. Therefore, if the burner uses an air curtain burner, he should not be penalized for using a better, i.e., generally cleaner, technology. Waivers or exceptions allowed for open burning are allowed for air curtain burners if the material burned could otherwise be disposed of by open burning.[‡]

Visible Emissions

15A NCAC 2D .1904(b)(6) requires operators of the air curtain burner to be certified to read visible emissions and the facility to be tested for visible emissions within 90 days after initial operations and within 90 days before the permit expires. This requirement applies to both temporary and permanent air curtain burners. This test is site specific. Each time that an air curtain burner is moved to a site for longer than 90 days, a visible emissions test is required. If an air curtain burner is at a temporary site longer than 90 days, a visible emissions test is required.

*Thomas Allen to Steve Vozzo, “Right-of-Way under the Open Burning Rule,” 15 Jan. 1997 (memorandum).

†Thom Allen to Rob Fisher, Sally McKinney, and Kimberly Davis, “Open Burning you yard,” 6 July 2001 (e-mail).

‡Thomas Allen to Regional Supervisors, *et al.*, “Setback Requirements for Temporary Air Curtain Burners—15A NCAC 2D .1903 and .1904,” 12 Sept. 1997 (memorandum).

However, if it is at a temporary site less than 90 days, a visible emissions test is not required. The test records should be kept on-site. The owner or operator of the air curtain burner does not have to submit the test results unless required to do so by a permit condition.*

Certified Visible Emissions Reader and Operator

Rule **15A NCAC 2D .1904(b)(6)** requires the operators of air curtain burners to be certified to read visible emissions. The operator is the person who is in charge of the day-to-day operation (loading, firing, unloading, etc.).[†] The operator does not have to be the actual physical operator of the air curtain burner. The operator is one who has authority over the physical operation of the air curtain burner and who can cause, order, or require changes in the method of operation, e.g., loading material into the pit. An operator who is a certified visible emissions reader should be on-site at all times burning is occurring to ensure that corrective action is taken if visible emissions are exceeded.[‡]

Setback Requirements for Temporary Air Curtain Burners: 15A NCAC 2D .1903 and .1904

A temporary air curtain burner may be operated within less than 1000 feet of an occupied structure if these conditions are met:

1. The burner obtains a signed waiver from the residents or owners of all the occupied structures within 1000 feet of the air curtain burner.
2. The material burned is generated on-site; material is not brought from off-site to burn.
3. All the conditions of **15A NCAC 2D .1903(b)(2)**, Permissible Open Burning without a Permit, are met.
4. The regional supervisor grants permission.

A temporary air curtain burner is one that is operated for less than nine months (**15A NCAC 2D .1904(a)**).

*Thom Allen to Regional Air Quality Supervisor, *et al.*, "Air Curtain Burner Interpretation," 22 Jan. 1997 (memorandum). Brock Nicholson to Regional Supervisors, *et al.*, "Temporary Air Curtain Burners," 11 July 1997 (memorandum).

[†]Thom Allen to Regional Air Quality Supervisor, *et al.*, "Air Curtain Burner Interpretation," 22 Jan. 1997 (memorandum).

[‡]Brock Nicholson to Regional Supervisors, *et al.*, "Temporary Air Curtain Burners," 11 July 1997 (memorandum).

The air curtain burner rule **15A NCAC 2D .1904(b)(12)** requires that a temporary air curtain burner be located at least 500 feet from “any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.” Distances of 1000 or more do not need regional approval. If the burning is to last less than nine months and no materials to be burned are transported from another site, then a permit is not required (**15A NCAC 2D .1904(a)**). **15A NCAC 2D .1903(b)(2)(B)** requires that the burning be at least 1000 feet from any occupied structure, etc. This requirement may be waived if the burner obtains a signed waiver from the residents or owners of all occupied structures, etc. within 1000 feet of the burn site and the regional supervisor approves the burning. Thus, a temporary air curtain burner should be allowed to operate within 1000 feet of an occupied structure, etc. if the burner obtains a signed waiver from the residents or owners of all occupied structures, etc. within 1000 feet of the burn site and the regional supervisor approves the burning.*

Recordkeeping Requirements

Rule **15A NCAC 2D .1904(c)** requires the owner or operator of an air curtain burner at a permanent site to keep a daily log of specific material burned and the amount of material burned in pounds per hour and tons per year. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. These logs should be kept on-site.

*Thomas Allen to Regional Supervisors, *et al.*, “Setback Requirements for Temporary Air Curtain Burners—15A NCAC 2D .1903 and .1904,” 12 Sept. 1997 (memorandum). Thomas Allen to Regional Supervisor, *et al.*, “Setback Requirements for Temporary Air Curtain Burners—15A NCAC 2D .1903 and .1904—Correction,” 31 Oct. 1997 (memorandum).