

## **A. Definitions**

For the purpose of this rule, the following definitions apply:

1. "Best available control technology (BACT)" means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the Agency determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment and the economy and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by the Agency or other public agency to minimize smoke impacts, limiting the amount of burning to be performed during any one time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air-to-fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. For essential agricultural open burning or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the Agency. Call (406) 256-6841 for the specified time periods. For prescribed wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the Agency. Call (406) 256-6841 for the specified time periods.

2. "Christmas tree waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

3. "Essential agricultural open burning" means any open burning conducted on a farm or ranch for the purpose of:

a. Eliminating excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available.

b. Eliminating excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available.

c. Improving range conditions when no reasonable alternative method is available.

d. Improving wildlife habitat when no reasonable alternative method is available.

4. "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this regulation, except hydrocarbons.

5. "Minor open burning source" means any person, agency, institution, business, or industry conducting any open burning that is not a major open burning source.

6. "Open burning" means combustion of any material directly in the open air without a receptacle or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

7. "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland for the purpose of:

a. Improving wildlife habitat;

b. Improving range conditions;

c. Promoting forest regeneration;

d. Reducing fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

e. Controlling forest pests and diseases; or

f. Promoting any other accepted silvicultural practices.

8. "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except

the silvicultural practice commonly referred to as a salvage cut.

9. "Trade wastes" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning or Christmas tree waste, as defined in this regulation.

10. "Wood waste burner" means a device commonly called a teepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry to dispose of wood.

#### **B. Incorporation by Reference**

The Control Board hereby adopts and incorporates by reference 40 CFR Part 261, identifying and defining hazardous wastes.

#### **C. Prohibited Open Burning--When Permit Required**

1. The following material may not be disposed of by open burning:

a. Any waste which is moved from the premises where it was generated, including waste moved to a solid waste disposal site, except as provided in subsection H or subsection I;

b. Food wastes;

c. Styrofoam and other plastics;

d. Wastes generating noxious odors;

e. Wood and wood by-products other than trade wastes that have been coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under subsection J;

f. Poultry litter;

g. Animal droppings;

- h. Dead animals or dead animal parts;
- i. Tires, except as provided in subsection G;
- j. Rubber materials;
- k. Asphalt shingles, except as provided in subsection G or subsection J;
- l. Tar paper, except as provided in subsection G or subsection J;
- m. Automobile or aircraft bodies and interiors except as provided in subsection G or subsection J;
- n. Insulated wire, except as provided in section G or subsection J;
- o. Oil or petroleum products, except as provided in subsection G or subsection J;
- p. Treated lumber and timbers;
- q. Pathogenic wastes;
- r. Hazardous wastes as defined by 40 CFR Part 261, incorporated by reference in subsection B;
- s. Trade wastes, except as provided in subsection H or subsection I;
- t. Any materials resulting from a salvage operation;
- u. Chemicals except as provided in subsection G or subsection J;
- v. Christmas tree waste as defined in subsection A;
- w. asbestos or asbestos-containing materials; and
- x. standing or demolished structures except as provided in subsections G, H & J.

2. Except as provided in subsection D, no person, agency, institution, business, or industry may open burn any non-prohibited material without first obtaining an open burning permit from the Agency.

#### **D. Minor Open Burning Source Restrictions**

1. Prior to open burning, a minor open burning source must submit to the Agency an application for an air quality open burning permit. The application must contain the following information:

- a. address or legal description of open burning; and
- b. materials to be burned.

2. A minor open burning source must:

- a. conform with BACT;
- b. comply with all rules of this program with the exception of subsection E; and
- c. comply with any requirements or regulations relating to open burning established by any public agency responsible for protecting public health and welfare.

3. During September, October or November, to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source must adhere to the time periods set for burning by the Montana Department of Environmental Quality that are available by calling 800-225-6779;

4. During December, January, or February, burning is allowed when ventilation conditions are good or excellent. Forecasts of ventilation conditions may be obtained by calling the Agency at (406) 256-6841.

5. During March through August, subject to subsection D.2, a minor open burning source may conduct open burning not prohibited under subsection D.

#### **E. Major Open Burning Source Restrictions**

1. Prior to open burning, a major open burning source must submit to the Agency an application for an air quality open burning permit. The application must contain the following information:

- a. A legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

- b. The elevation of each planned site of open burning;
- c. The method of burning to be utilized at each planned site of open burning; and
- d. The average fuel loading or total fuel loading at each site to be burned.

2. Proof of publication of public notice, consistent with this regulation, must be submitted to the Agency before an application will be considered complete. An applicant for an air quality open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

3. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this rule. The Agency's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

4. A major open burning source must:

- a. conform to BACT; and
- b. comply with the conditions in any air quality open burning permit issued to it by the Agency, which will be in effect for

one year from its date of issuance or another time frame as specified in the permit by the Agency; and

c. To open burn in a manner other than that described in the application for an air quality open burning permit the source must submit to the Agency, in writing or by telephone, a request for a change in the permit, including the information required by subsection E.1, and must receive approval from the Agency.

#### **F. Special Burning Periods**

1. The following categories of open burning may be conducted during the entire year:

a. prescribed wildland open burning;

b. open burning to train firefighters under subsection G;

c. open burning authorized under the emergency open burning permit provisions in subsection I; and

d. essential agricultural open burning.

2. Open burning other than those categories listed in (1.) of this rule may be conducted only during the months of March through November.

#### **G. Fire Fighter Training**

1. The Agency may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products and automobile or aircraft bodies and interiors, for training fire fighters, if

a. the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

b. the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

c. all asbestos-containing material has been removed;

d. asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples

have been analyzed by a certified laboratory and shown to be asbestos-free;

e. all prohibited material that can be removed safely and reasonably has been removed;

f. the open burning accomplishes a legitimate training need;

g. clear educational objectives have been identified for the training;

h. burning is limited to that necessary to accomplish the educational objectives;

i. the training operations and procedures are consistent with nationally accepted standards of good practice; and

j. emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

2. The Agency may place any reasonable requirements in an air quality fire fighter training open burning permit that the Agency determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

3. The applicant may be required, prior to each burn, to notify the Agency of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The Agency may be notified by phone, fax or in writing.

4. An application for an air quality firefighter training open burning permit must be made on a form provided by the Agency. The applicant must provide adequate information to enable the Agency to determine whether the application satisfies the requirements of this rule for a permit.

5. Proof of publication of public notice, consistent with this rule, must be submitted to the Agency before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the



notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

6. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this regulation. The Agency's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

#### **H. Conditional Air Quality Open Burning Permits**

1. The Agency may issue a conditional air quality open burning permit if the Agency determines that:

a. alternative methods of disposal would result in extreme economic hardship to the applicant; and

b. Emissions from open burning will not endanger public health and welfare or cause or contribute to a violation of any Montana or federal ambient air quality standards.

2. The Agency must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

3. Conditional open burning must conform with BACT.

4. The Agency may issue a conditional air quality open burning permit for the disposal of:

a. wood and wood by-product trade wastes by any business, trade, industry, or demolition project;

b. Untreated wood waste at licensed landfill site, if the Agency determines that:

(i) the proposed open burning would occur at an approved burn site, as designated in the solid waste management system license issued by the Department of Environmental Quality pursuant to Title 17, chapter 50, subchapter 5, ARM; and

(ii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the Agency or its designated representative and no prohibited materials listed in subsection C.1, other than wood waste, are present.

5. A permit issued under this rule is valid for the following periods:

a. Wood and wood by-products trade waste - one year; applicants may reapply for a permit annually; and

b. Untreated wood waste at licensed landfill sites - single burn. A new permit must be obtained for each burn.

6. The Agency may place any reasonable requirements in a conditional air quality open burning permit that the Agency determines will reduce emissions of air pollutants or will minimize the impact of the emissions, and the recipient of a permit must adhere to those conditions. In the case of a permit granted pursuant to subsection H.4.a, BACT for the year covered by the permit will be set out within the terms of the permit, with the provision that the source may be required, prior to each burn, to receive approval from the Agency of the date of the proposed burn to ensure that good ventilation exists and to assign priorities if other sources in the area request to burn on the same day. Approval may be obtained by calling the Agency.

7. An application for a conditional air quality open burning permit must be made on a form provided by the Agency. The applicant shall provide adequate information to enable the Agency to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in subsection H.8, shall be submitted to the Agency before an application will be considered complete.

8. An applicant for a conditional air quality open burning permit shall notify the public of the application for a permit by means of legal publication, at least once, in a newspaper of

general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of the notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

9. A conditional air quality open burning permit granted pursuant to subsection H.4.a is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

10. The Agency's decision to approve or deny an application for a conditional air quality open burning permit may be reviewed by the Control Board in accordance with the following provisions:

a. When the Agency approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within fifteen (15) days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this rule. The Agency's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under subsection H.10.

b. The filing of a request for a hearing postpones the effective date of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

#### **I. Emergency Open Burning Permits**

1. The Agency may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this regulation if the applicant demonstrates that the substance sought to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

2. Oral authorization to conduct emergency open burning may be granted by the Agency by telephone (406) 256-6841, upon receiving the following information:

a. facts establishing that alternative methods of disposing of the substance are not reasonably available;

b. facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

c. the legal description or address of the site where the burn will occur;

d. the amount of material to be burned;

e. the date and time of the proposed burn; and

f. The date and time that the spill or incident giving rise to the emergency was first noticed.

3. Within 10 days of receiving oral authorization to conduct emergency open burning under subsection I.2, the applicant must submit to the Agency a written application for an emergency open burning permit containing the information required under subsection I.2.

#### **J. COMMERCIAL FILM PRODUCTION OPEN BURNING PERMIT**

1. The Agency may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial or educational film or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

2. The Agency may issue an air quality commercial film production open burning permit under this regulation if the Agency determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

3. A permit issued under this regulation is valid for a single production.

4. Open burning under this regulation must conform with BACT.

5. The Agency may place any reasonable requirements in an air quality commercial film production open burning permit issued under this regulation that the Agency determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

6. An application for an air quality commercial film production open burning permit must be made on a form provided by the Agency. The applicant shall provide adequate information to enable the Agency to determine whether the application satisfies the requirements of this regulation for a permit. Proof of publication of public notice, as required by subsection J.7, must be submitted to the Agency before an application will be considered complete.

7. An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application. Form of the notice must be provided by the Agency and must include a statement that public comments may be submitted to the Agency concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

8. When the Agency approves or denies the application for a permit under this regulation, a person who is jointly or severally adversely affected by the Agency's decision may request a hearing before the Control Board. The request for hearing must be filed within 15 days after the Agency renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the Control Board under this regulation. The Agency's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this subsection. The filing of a request for a hearing postpones the effective date

of the Agency's decision until the conclusion of the hearing and issuance of a final decision by the Control Board.

**K. FEES**

The Agency may charge an appropriate permit fee for a major open burning permit, fire fighting training permit, conditional air quality open burning permit, emergency open burning permit, or commercial film production open burning permit.