

Section 7-1 Definitions

(1) Best available control technology (BACT): 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 Department 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 and available from the Department to minimize smoke impacts; limiting the amount of burning to be performed during any one period of 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 Department of Environmental Quality, which may be determined by calling 1-800-225-6779. For prescribed wildland open burning during December, January, or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling (406)454-6950.

(2) Essential agricultural open burning: Any open burning conducted on a farm or ranch to:

(a) Eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available;

(b) Eliminate excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available;

(c) Improve range conditions when no reasonable alternative method is available; or

(d) Improve wildlife habitat when no reasonable alternative method is available.

(3) Major open burning source: 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 ARM Title 17, Chapter 8, except hydrocarbons.

(4) Minor open burning source: Any person, agency, institution, business, or industry conducting any open burning which is not a major burning source.

(5) Open burning: Combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chamber incinerator, or wood waste burner, with the exception of small recreation 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.

(6) Prescribed wildland open burning: Any planned open burning, either deliberately or naturally ignited, which is conducted on forest land or relatively undeveloped range land to:

(a) improve wildlife habitat;

(b) improve range conditions;

(c) promote forest regeneration;

(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is located in close proximity to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(7) 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.

(8) Trade wastes: Solid, liquid, or gaseous material resulting from construction or the 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.

(9) Wood waste burner: A device commonly called a teepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry for the disposal of wood.

Section 7-2 Prohibited Open Burning - When Permit Required

(1) The board hereby adopts and incorporates by reference 40 (CFR) Part 261, identifying and defining hazardous wastes. A copy of 40 CFR Part 261 may be obtained from the Department of Environmental Quality, 1520 E Sixth Ave., PO Box 200901, Helena, Montana 59620-0901, or from the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

(2) 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 for in Section 7-7 or Section 7-8;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood byproducts other than trade wastes that have been treated, coated, painted, stained, or contaminated by a foreign material, such as papers or cardboard or painted or stained wood, unless a public or private garbage hauler or rural container system, is unavailable, or unless allowed under Section 7-9;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(i) tires, except as provided in 7-6;

- (j) rubber materials;
 - (k) asphalt shingles, except as provided in Section 7-6 or Section 7-9;
 - (l) tarpaper, except as provided in Section 7-6 or Section 7-9;
 - (m) automobile or aircraft bodies and interiors, except as provided in Section 7-6 or Section 7-9;
 - (n) insulated wire, except as provided in Section 7-6 or Section 7-9;
 - (o) oil or petroleum products, except as provided in Section 7-6 or Section 7-9;
 - (p) treated lumber and timbers;
 - (q) pathogenic wastes;
 - (r) hazardous wastes as defined by 40 CFR Part 261;
 - (s) trade wastes, except as provided in Section 7-7 or Section 7-8;
 - (t) any materials resulting from a salvage operation;
 - (u) chemicals, except as provided in Section 7-6 or Section 7-9;
 - (v) asbestos or asbestos-containing materials;
 - (w) standing or demolished structures except as provided in Section 7-6 or Section 7-9
- (3) Except as provided in Section 7-3, no person may open burn any non-prohibited material without first obtaining an air quality open burning permit from the department.

Section 7-3 Minor Open Burning Source Requirements

- (1) Unless required to obtain an open burning permit under another provision of this chapter, a minor open burning source need not obtain an air quality open burning permit.
- (2) A minor open burning source must:
 - (a) conform with BACT;

(b) comply with any requirements or regulations relating to open burning established by any municipal or county agency responsible for protecting public health and welfare;

(c) notify the fire control authority for the area of the burn of the intent to burn, giving location, time, and material to be burned, and comply with proper fire safety directions given by the fire control authority, including obtaining a burning permit from appropriate city or county fire control authority if required.

(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 1-800-225-6779;

(4) During December, January, or February to conduct essential agricultural open burning or prescribed wildland open burning, a minor open burning source need only notify the department by telephone of any burning and obtain a burning permit from the Cascade County Sheriffs Department, City of Great Falls Fire Department, or any other municipality within Cascade County depending on burn location, prior to ignition. Burning is allowed when ventilation conditions are good or excellent. Forecasts of ventilation conditions may be obtained by calling the department at (406) 454-6950.

(5) During March through August, subject to (2) above, a minor open burning source may conduct open burning not prohibited under Section 7.2.

Section 7-4 Major Open Burning Source Restrictions

The major open burning source permitting program administered under the Cascade County Air Pollution Control Program has been repealed. A major open burning source, as defined in section 7.1(3) of this rule or section 17.8.601(5) of the Administrative Rules of Montana, that desires to conduct open burning in Cascade County is subject to state open burning permit requirements, and should contact the Montana Department of Environmental Quality at (406) 444-3490.

Section 7-5 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 Section 7-6;

(c) open burning authorized under the emergency open burning permit provisions in section 7-8; and

(d) essential agricultural open burning.

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

Section 7-6 Firefighting Training

(1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tarpaper, or insulated wire which is a part of a building, oil or petroleum products, and automobile or aircraft bodies and interiors for training firefighters if:

(a) the fire is 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;

(e) 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 the 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 department may place any reasonable requirements in an air quality firefighter training open burning permit that the department 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 department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department 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 department. The applicant shall provide adequate information to enable the department 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 department as part of any application. 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 department and must include a statement that public comments may be submitted to the department 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 if the public notice lists all covered applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a

hearing before the board. The request for hearing must be filed within 15 days after the department 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 board under this section. The department'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 the section. The filing of the request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of a final decision by the board.

Section 7-7 Conditional Air Quality Open Burning Permits

(1) The department may issue a conditional air quality open burning permit if the department determines:

(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 or welfare or cause or contribute to a violation of any Montana or Federal ambient air quality standard.

(2) The department 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 department may issue a conditional air quality open burning permit to dispose of:

(a) wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department 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 Montana Department of Environmental Quality pursuant to ARM Title 17, chapter 50 subchapter 5; and

(ii) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the

department or its designated representative and no prohibited materials listed in Section 7-2, other than wood waste, are present.

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

(a) Wood and wood byproduct trade wastes - one year, annually renewable; and

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

(6) A permit granted under (4)(a) above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(7) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of such a permit must adhere to those conditions. For a permit granted pursuant to subsection (4) (a) above, BACT for the year covered by the permit will be specified in the permit; however the source may be required, prior to each burn, to receive approval from the department 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 City-County Health Department at (406)454-6950.

(8) An application for a conditional air quality open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department 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 (9) of this rule, must be submitted to the department as part of any application.

(9) An applicant for a conditional air quality open burning permit shall notify the public of the 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 an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the

department and must include a statement that public comments may be submitted to the department 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 if the public notice lists all covered applicants.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department 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 board under this section. The department'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 the section. The filing of the request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and the issuance of a final decision by the board.

Section 7-8 Emergency Open Burning Permits

(1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this rule if the applicant demonstrates that the substance 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 requested from the department by telephone at (406)454-6950. The applicant must provide 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 (2) above, the applicant must submit to the department a written application for an emergency open burning permit containing the information required above under (2)(a-f)

Section 7-9 Commercial Film Production Open Burning Permits

- (1) The department may issue an air quality 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.
- (2) The department may issue an air quality open burning permit under this rule if the department 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) An open burning permit issued under this rule is valid for a single production.
- (4) Open burning under this rule must conform with BACT.
- (5) The department may place any reasonable requirements in an air quality permit issued under this rule that the department 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 permit under this rule must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required in subsection (7) of this rule, must be submitted to the department 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 an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department 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 if the public notice lists all covered applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department 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 board under this rule. The department'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 department's decision until conclusion of the hearing and issuance of a final decision by the board.

Section 7-10 Fees

The department may charge an appropriate permit fee for a firefighting training permit, conditional air quality open burning permit, emergency open burning permit, or commercial film production open burning permit.