

NAVAJO NATION EPA OPEN BURNING REGULATIONS



Navajo Nation EPA Regulations
Title 4 – Environment
Chapter 11 – Air Pollution Prevention and Control
Subchapter 2 – Air Quality Control Programs
Part __ – Open Burning

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Subpart I - General Provisions

§ 101. Purpose, Scope, Authority, and Effective Date.

- A. **Purpose.** These regulations are intended to protect the health, safety, and general welfare of all residents of the Navajo Nation, as well as the political integrity and environment of the Navajo Nation, by reducing emissions of particulate matter and other pollutants and noxious fumes caused by open burning. These regulations discourage open burning disposal practices where alternative methods are feasible and practicable. They encourage the development of alternative disposal methods and the use of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.
- B. **Scope.** These regulations apply to all persons and all property within the Navajo Nation, as defined in 7 N.N.C. § 254.
- C. **Authority.** These regulations are promulgated under the authority of § 1103 of the Navajo Nation Air Quality Pollution Prevention and Control Act, 4 N.N.C. § 1103.
- D. **Effective date.** These regulations shall become effective on January 1, 2009 or upon approval by the Navajo Nation Resources Committee, whichever is later.

§ 102. Definitions. The terms used in these regulations shall have the following meanings:

- A. **“Agricultural activities”** mean the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.
- B. **“Agricultural burning”** means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control or for crop propagation and/or crop rotation. Agricultural burning does not include the burning of manure.
- C. **“Director”** means the Executive Director of the Navajo Nation Environmental Protection Agency or the Director’s duly authorized representative.
- D. **“Forestry or silvicultural activities”** mean those activities associated with regeneration, growing, and harvesting of trees and timber including, but not limited to, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, fertilization, logging operations, and forest management techniques employed to enhance the growth of stands of trees or timber.

- E.** “**Forestry or silvicultural burning**” means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management. Forestry or silvicultural burning does not include the burning of manure.
- F.** “**Household waste**” means waste generated by the normal activities of households, including but not limited to food wastes, rubbish, ashes, household appliances, furniture, and yard waste.
- G.** “**Navajo Nation**” means the area defined in 7 N.N.C. § 254.
- H.** “**Open burn**” or “**Open burning**” means a burn or burning of material that results in the products of combustion being emitted directly into the atmosphere without controls, such as passing through a stack.
- I.** “**Open Burn Permit**” means a permit issued pursuant to these regulations.
- J.** “**Person**” means any public or private corporation, company, partnership, firm, association or society of persons, the federal or state governments and any of their programs or agencies, the Navajo Nation and any of its agencies, programs, enterprises, companies or political subdivisions, as well as a natural person.
- K.** “**Uniform Rules**” means the Navajo Nation Environmental Protection Agency Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts.

Subpart II - Applicability

§ 201. Prohibition of Open Burning.

- A.** Open burning is hereby prohibited within the Navajo Nation, unless
 - 1. the open burning is an exempt activity pursuant to § 203 of this Subpart, or
 - 2. an open burn permit pursuant to Subpart III of these regulations is obtained before the open burning occurs.
- B.** Penalties for violations of this provision are set forth in Subpart V of these regulations.

§ 202. Materials Prohibited from Open Burning.

- A.** It shall be a violation of these regulations to burn the following material under any condition:

1. household waste, except as provided in subsection (B) of this section;
2. junked motor vehicles or salvaged materials;
3. tires or rubber materials;
4. plastics, plastic products, or Styrofoam;
5. asphalt or composition roofing;
6. tar, tarpaper, petroleum products or paints,
7. paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling units and is burned at the residential site;
8. lumber or timbers treated with preservatives;
9. construction debris or demolition waste;
10. pesticides, herbicides, fertilizers or other chemicals;
11. insulated wire;
12. batteries;
13. light bulbs;
14. material containing mercury;
15. asbestos or asbestos-containing materials;
16. pathogenic wastes;
17. hazardous wastes, as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k, and implementing regulations, but not including petroleum, crude oil, natural gas, natural gas liquids, or synthetic gas used for fuel;
18. manure; and
19. any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

B. A person may engage in open burning of household waste, provided that a permit is obtained pursuant to Subpart III, under the following conditions:

1. The waste is generated on site on a farm, camp, or ranch of at least 40 acres, there is no collection or disposal service within ten miles, and the waste burner to be used has been approved by the Director; or
2. The waste is generated on site at a single-family residence or a residential building with no more than four dwelling units, there is no collection or disposal service within ten miles, and the open burning is at least 300 feet away from places where other people live, work, or congregate.

C. This section applies to all open burning, including exempt activities and open burning conducted pursuant to an Open Burn Permit.

§ 203. Exemptions.

A. The following activities or categories of open burning are exempt from all of these regulations except for the prohibitions in § 202(A) and, where indicated, a ban on open burning under § 401 or 409:

1. residential fires for heating and cooking;
 2. outdoor fires set for cultural or traditional purposes;
 3. fires set for cultural or traditional purposes within structures such as hogans and sweat houses;
 4. agricultural burning, unless subject to a ban on open burning pursuant to § 409;
 5. forestry or silvicultural burning, unless subject to a ban on open burning pursuant to § 409;
 6. except during a burn ban under § 401, outdoor fires set for recreational purposes provided that no prohibited materials are burned;
 7. except during a burn ban under § 401, fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to lighting any structure, the fire protection service must ensure that the structure does not contain any materials prohibited under § 202, and it must have obtained prior permission for the open burn from the Director;
 8. except during a burn ban under § 401, open burning for the disposal of deceased animals or other material by order of a public health official;
 9. except during a burn ban under § 401, flaring of natural gas at oil and gas wells when necessary to avoid a safety hazard, as determined by the Navajo Nation Minerals Department and the U.S. Bureau of Land Management.
- B.** Nothing in this section exempts or excuses any person from complying with applicable laws and ordinances of local fire departments or other applicable requirements of the Navajo Nation.

Subpart III - Open Burn Permitting

§ 301. Open Burn Permit Program.

- A.** There is hereby promulgated an Open Burn Permit Program to be administered by the Director.
- B.** Any person wishing to conduct an open burn that is not an exempt activity under § 203 must have an Open Burn Permit authorized by these regulations.
- C.** The Director shall develop and make available to the public an Open Burn Permit application or applications to be used by persons wishing to conduct an open burn.
- D.** All Open Burn Permits issued by the Director shall contain the following conditions:

1. all material must be kept as dry as possible through use of a cover or storage;
 2. before initiating an open burn, non-combustibles must be separated from the materials to be openly burned to the greatest extent practical;
 3. material described in § 202(A) of these regulations shall not be burned;
 4. natural or artificially induced draft must be present, including use of blowers or air curtain incinerators where practicable;
 5. materials to be openly burned must be separated from the grass or peat layer; and
 6. a fire must not be allowed to smolder.
- E.** The Director may require other conditions in an Open Burn Permit that are reasonable and necessary for the protection of the environment, public health, and welfare.

§ 302. Open Burn Permit Requirement.

- A.** Any person wishing to conduct an open burn must apply for and obtain an Open Burn Permit according to these regulations. The regulations in this subpart supersede the regulations in Subpart 2 of the Uniform Rules (see Uniform Rules § 101(a)).
- B.** The Open Burn Permit must be available on-site during the open burn.
- C.** The open burn must be conducted in accordance with the terms and conditions of the Open Burn Permit.

§ 303. Permit Application.

- A.** Any person desiring an Open Burn Permit must submit an Open Burn Permit application for each proposed open burn. The cost of each Open Burn Permit shall be \$5.
- B.** Notwithstanding the foregoing, an Open Burn Permit for household waste issued pursuant to § 202(B) shall cost \$10 for a three-year term, and may be used repeatedly during that three-year period. An Open Burn Permit for household waste shall be valid only for the person and at the location described in the permit, is non-transferrable, and shall become void if the person who was issued the permit moves to another location. At the end of any three-year period, the Open Burn Permit may be renewed for another three years upon submittal and approval of a new application and payment of the \$10 application fee. All other permit conditions and requirements in these regulations for Open Burn Permits shall apply to an Open Burn Permit for household waste unless stated otherwise in these regulations.
- C.** The Open Burn Permit application must contain the following:

1. the street address of the property where the proposed open burn is to occur,
2. the name and contact information of the responsible person(s),
3. a general description and plan showing the location of the proposed open burn in relation to property lines and distances to residential and commercial properties,
4. the type and quantity of materials proposed to be burned,
5. a description of measures to be taken to prevent escaped burns, including but not limited to the availability of water,
6. the requested date and duration of the proposed open burn, and
7. any other information specifically requested by the Director.

D. An application must be submitted to the Director in writing at least five business days, and no earlier than twenty business days, prior to the requested date that the open burn is to be conducted. If a person is already engaging in the open burning of household waste before the effective date of these regulations, an application for an Open Burn Permit must be submitted within 30 days of the effective date of these regulations.

§ 304. Permit Issuance.

- A.** The Director will review an Open Burn Permit application for completeness within one business day of receipt of the application unless the Director determines, in his or her discretion, that the application is of such a nature that further review is required, in which case the Director may extend the review time to no more than three business days. Because of the need to issue Open Burn Permits expeditiously and because of the minor nature of most open burns, issuance of a permit shall be internet-based as follows: the Director will post an application for an Open Burn Permit on the Navajo Nation Air Quality Control Program's website within one business day of determining that the application is complete. At the same time the Director will post a proposal to grant or deny the application, including the conditions (other than the standard conditions in the permit) that the Director proposes to incorporate in the permit, if any. The Director also will post the application and proposed permit action and conditions at the Navajo Nation Air Quality Control Program's office in Fort Defiance.
- B.** Members of the public may comment on the Director's proposed permit action no later than two business days after its posting on the Navajo Nation Air Quality Control Program's website and at the program's office, by emailing comments to nilchi@navajo.org or by submitting them in writing at the Fort Defiance office. The Director will consider the comments and take final action on the permit application on the fifth business day after the completeness determination. The final action and a brief response to any significant comments will be posted on the same day on the program website and at the program office.

- C. There will be no public hearing on Open Burn Permit applications, notwithstanding Uniform Rules §§ 208-209. A fact sheet will not be required, notwithstanding Uniform Rule § 206.
- D. An approved application, together with all attachments and any additional conditions, shall constitute the final Open Burn Permit. The permit shall become effective immediately upon its posting pursuant to subsection (B).
- E. Any person challenging the issuance or denial of an Open Burn Permit may do so in Navajo Nation District Court in Window Rock no later than 30 days after issuance of the permit, provided that the person commented on the proposed permit pursuant to the procedures in this section. Judicial review shall be based on the administrative record.

§ 305. Criteria for Issuance of Permit.

- A. The Director will consider the following factors when deciding whether to issue an Open Burn Permit:
 - 1. the size, duration and location of the proposed open burn,
 - 2. the current and projected air quality conditions,
 - 3. the forecasted meteorological conditions,
 - 4. the availability or lack of other means of disposal, and
 - 5. other scheduled burning activities in the surrounding area.
- B. If the Director determines that the proposed open burn can be conducted without causing a significant adverse impact on air quality, the environment, or the public health or welfare, and that other means of disposal are not readily available, a permit will be issued.
- C. The Director may impose conditions on the proposed open burn to ensure that it may be conducted without causing a significant adverse impact on air quality, the environment, or the public health or welfare. If there are no conditions that can sufficiently alleviate these concerns, or if other means of disposal are readily available, the Director may deny the permit.

Subpart IV - Temporary Bans on Open Burning

§ 401. Burn Ban.

- A. The Director has the authority under Section 1105(B) of the Navajo Nation Air Quality Pollution Prevention and Control Act to declare a ban on open burning on all or parts of the Navajo Nation whenever the Director determines that the accumulation of air pollutants in a particular area threatens the public health, welfare, or the environment.

- B. The Director may declare a ban on open burning when the Director determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particulate matter, and those levels are projected to continue or reoccur over at least the next twenty-four hours.
- C. The Director also may declare a ban on open burning in conjunction with issuing an air stagnation advisory, an air pollution alert, an air pollution warning, or an air pollution emergency, as defined in this subpart.

§ 402. Air Stagnation Advisory.

The Director may declare an air stagnation advisory whenever meteorological conditions over a large area are conducive to the buildup of air pollutants.

§ 403. Air Pollution Alert.

- A. The Director may declare an air pollution alert when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours:
 - 1. Particulate matter (PM10): 350 micrograms per cubic meter, 24-hour average;
 - 2. Carbon monoxide (CO): 17 milligrams per cubic meter (15ppm), 8-hour average;
 - 3. Sulfur dioxide (SO₂): 800 micrograms per cubic meter (0.3 ppm), 24-hour average;
 - 4. Ozone (O₃): 400 micrograms per cubic meter (0.2 ppm), 1-hour average;
 - 5. Nitrogen dioxide (NO₂): 1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

§ 404. Air Pollution Warning.

- A. The Director may declare an air pollution warning when any one of following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours:
 - 1. Particulate matter (PM10): 420 micrograms per cubic meter, 24-hour average;
 - 2. Carbon monoxide (CO): 34 milligrams per cubic meter (30 ppm), 8-hour average;
 - 3. Sulfur dioxide (SO₂): 1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;
 - 4. Ozone (O₃): 800 micrograms per cubic meter (0.4 ppm), 1-hour average;

5. Nitrogen dioxide (NO₂): 2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

§ 405. Air Pollution Emergency.

- A.** The Director may declare an air pollution emergency when any one of following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours:
1. Particulate matter (PM10): 500 micrograms per cubic meter, 24-hour average;
 2. Carbon monoxide (CO): 46 milligrams per cubic meter (40 ppm), 8-hour average;
 3. Sulfur dioxide (SO₂): 2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;
 4. Ozone (O₃): 1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;
 5. Nitrogen dioxide (NO₂): 3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.3 ppm), 24-hour average.

§ 406. Effect of Ban on Open Burning.

- A.** When the Director issues a ban on open burning, all open burning is prohibited except for the following:
1. residential fires for heating and cooking;
 2. outdoor fires set for cultural or traditional purposes;
 3. fires set for cultural or traditional purposes within structures such as hogans and sweat houses;
 4. agricultural burning, unless a burn ban is imposed pursuant to § 409;
 5. forestry or silvicultural burning, unless a burn ban is imposed pursuant to § 409.
- B.** When a burn ban is in effect, any person conducting open burning when such a declaration is made must either immediately extinguish the fire or immediately withhold additional material such that the fire burns out, even if the person has an Open Burn Permit allowing open burning on the day or days when such a declaration is made.
- C.** Persons with a valid Open Burn Permit for the period or part of the period during which the ban is in effect will be allowed to carry out the open burn under an Open Burn Permit on the first day after such declaration has been terminated pursuant to § 407.

§ 407. Termination.

Once issued, a ban on open burning will remain in effect until the Director makes a new determination and terminates the ban.

§ 408. Announcements.

The Director will request that an announcement of a ban on open burning be made, with or without an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency, by being broadcast on local radio and television stations in the affected area and posted on the Navajo Nation EPA website. The announcement will indicate that air pollution levels exist that could potentially be harmful to human health, welfare, or the environment and, in addition to announcing the burn ban, may recommend actions that people may take to reduce exposure and reduce emissions from air pollutants. In addition to refraining from open burning pursuant to § 406 people should, among other actions, refrain from using wood stoves and fireplaces unless they are their only source of heat. People also should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel, if possible.

§ 409. Coordination.

The Director will coordinate issuance of a burn ban, air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency with adjacent jurisdictions when appropriate. The Director also will coordinate with and obtain the concurrence of the Navajo Nation Land Department, Navajo Nation Parks Department, National Park Service, National Forest Service, or Bureau of Land Management, as the case may be, if it appears necessary to ban agricultural burning or forestry and silvicultural burning.

Subpart V - Penalties

§ 501. Failure to Obtain a Permit.

Failure to obtain an Open Burn Permit pursuant to Subpart III of these regulations will result in an administrative penalty of \$100 for each open burn conducted without a permit.

§ 502. Failure to Abide by Permit Conditions.

Failure to abide by the Open Burn Permit conditions established pursuant to Subpart III of these regulations will result in an administrative penalty of \$50 for each violation.

§ 503. Field Citations

The Director may issue a field citation specifying violations of an Open Burn Permit, assessing penalties pursuant to § 502, and providing a schedule for compliance, pursuant to the Navajo Nation Clean Air Act, 4 N.N.C. § 1155(C), and Uniform Rules §§ 328-331.

§ 504. Administrative Hearing and Judicial Review.

A person may either pay the penalty imposed under this subpart within 30 days of its issuance or request a hearing pursuant to the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. § 1155(C), and Uniform Rules § 330. If a person fails either to pay the penalty or request a hearing within 30 days, the Director may seek enforcement of the penalty pursuant to the Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §1155(E), and Uniform Rules §§ 331-332. If a person requests a hearing pursuant to Uniform Rules § 330, the provisions of Subpart 3 of the Uniform Rules shall apply, and the final decision of the Hearing Officer shall be subject to judicial review pursuant to 4 N.N.C. § 1155(D).

§505. Other Penalties

- A. The imposition of penalties pursuant to this section does not relieve a person from being charged for violating other provisions of Navajo Nation law for the same conduct.
- B. Additional penalties, including revocation or termination of an Open Burn Permit, may be imposed for the following reasons:
 - 1. Repeated offenses of these regulations;
 - 2. Conduct that results in property damage;
 - 3. Conduct that results in damage to the environment.