

1 15A NCAC 02D .1902 is proposed for amendment as follows:

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3 **15A NCAC 02D .1902 DEFINITIONS**

4 For the purpose of this Section, the following definitions apply:

5 (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high
6 velocity forced draft air through a manifold head into a pit or container with vertical walls in such a
7 manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air
8 under the curtain.

9 (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as
10 defined in 40 CFR Part 58, Appendix G.

11 (3) "Air quality forecast area" means for:

12 (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison,
13 Swain, Transylvania, and Yancey Counties;

14 (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln,
15 Mecklenburg, Rowan, and Union Counties;

16 (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;

17 (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;

18 (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;

19 (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford,
20 Randolph, Rockingham, and Stokes Counties; and

21 (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston,
22 Person, Orange, Vance, and Wake Counties.

23 (4) "Dangerous materials" means explosives or containers used in the holding or transporting of
24 explosives.

25 (5) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.

26 (6) "HHCU" means the Health Hazards Control Unit of the Division of Public Health.

27 (7) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for
28 buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or
29 industrial development; mining activities; or the initial clearing of vegetation to enhance property
30 value; but does not include routine maintenance or property clean-up activities.

31 (8) "Log" means any limb or trunk whose diameter exceeds six inches.

32 (9) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.

33 ~~(10) "Nuisance" means causing physical irritation exacerbating a documented medical condition,~~
34 ~~visibility impairment, or evidence of soot or ash on property or structure other than the property on~~
35 ~~which the burning is done.~~

1 ~~(11)~~(10) "Occupied structure" means a building in which people may live or work, or one intended for
2 housing farm or other domestic animals.

3 ~~(12)~~(11) "Off-site" means any area not on the premises of the land-clearing activities.

4 ~~(13)~~(12) "Open burning" means the burning of any matter in such a manner that the products of combustion
5 resulting from the burning are emitted directly into the atmosphere without passing through a stack,
6 chimney, or a permitted air pollution control device.

7 ~~(14)~~(13) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in
8 operational control over the open burning.

9 ~~(15)~~(14) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for
10 more than nine months.

11 ~~(16)~~(15) "Person" as used in 02D .1901(c), means:

12 (a) the person in operational control over the open burning; or

13 (b) the landowner or person in possession or control of the land when he has directly or
14 indirectly allowed the open burning or has benefited from it.

15 ~~(17)~~(16) "Pile" means a quantity of combustible material assembled together in a mass.

16 ~~(18)~~(17) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from
17 a residence by a governmental agency, private company contracted by a governmental agency, or
18 municipal service.

19 ~~(19)~~(18) "Public road" means any road that is part of the State highway system; or any road, street, or right-
20 of-way dedicated or maintained for public use.

21 ~~(20)~~(19) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.

22 ~~(21)~~(20) "Refuse" means any garbage, rubbish, or trade waste.

23 ~~(22)~~(21) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a
24 regional office of the Department of Environment and Natural Resources.

25 ~~(23)~~(22) "Salvageable items" means any product or material that was first discarded or damaged and then all,
26 or part, was saved for future use, and include insulated wire, electric motors, and electric
27 transformers.

28 ~~(24)~~(23) "Smoke management plan" means the plan developed following the North Carolina Forest Service's
29 smoke management program and approved by the North Carolina Forest Service. The purpose of
30 the smoke management plan is to manage smoke from prescribed burns of public and private forests
31 to minimize the impact of smoke on air quality and visibility.

32 ~~(25)~~(24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles
33 or asphaltic roofing materials, construction materials, packaging for construction materials, wire,
34 electrical insulation, and treated or coated wood.

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36 *History Note:* Authority G.S. 143-212; 143-213; 143-215.3(a)(1);

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Eff. July 1, 1996;

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1 15A NCAC 02D .1903 is proposed for amendment as follows:

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3 **15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

4 (a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this
5 Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in
6 an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the
7 Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the
8 time period covered by that forecast.

9 (b) The following types of open burning are permissible without an air quality permit:

10 (1) open burning of leaves, logs, stumps, tree branches or yard trimmings, ~~excluding logs and stumps~~,
11 if the following conditions are met:

12 (A) The material burned originates on the premises of private residences and is burned on those
13 premises;

14 (B) There are no public pickup services available;

15 (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic
16 materials are not burned;

17 (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is
18 added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day; and

19 ~~(E) The burning does not create a nuisance; and~~

20 ~~(F)~~(E) Material is not burned when the North Carolina Forest Service has banned burning for that
21 area.

22 The burning of logs or stumps of any size shall not be considered to create a nuisance for purposes
23 of the application of the open burning air quality permitting exception described in this subsection.

24 (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:

25 (A) The wind direction at the time that the burning is initiated and the wind direction as
26 forecasted by the National Weather Service at the time that the burning is initiated are away
27 from any area, including public roads within 250 feet of the burning as measured from the
28 edge of the pavement or other roadway surface, which may be affected by smoke, ash, or
29 other air pollutants from the burning;

30 (B) The location of the burning is at least 500 feet from any dwelling, group of dwellings, or
31 commercial or institutional establishment, or other occupied structure not located on the
32 property on which the burning is conducted. The regional office supervisor may grant
33 exceptions to the setback requirements if:

34 (i) a signed, written statement waiving objections to the open burning associated with
35 the land clearing operation is obtained and submitted to, and the exception granted
36 by, the regional office supervisor before the burning begins from a resident or an

owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or

- (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site.

Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 500 feet from the proposed burn site when such institution is occupied.

- (C) Only land-cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;

- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

- (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest Service has banned burning for that area; and

- (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried or transported to:

- (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or

- (ii) A location, where the material is burned not more than four times per year, that meets all of the following criteria:

- (I) 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.

- (II) There are no more than two piles, each 20 feet in diameter, being burned at one time.

- (III) The location is not a permitted solid waste management facility.

- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort ~~and which do not create a nuisance~~ and do not use synthetic materials or refuse or salvageable materials for fuel;

- 1 (4) fires purposely set to public or private forest land for forest management practices for which burning
2 is acceptable to the North Carolina Forest Service and which follow the smoke management plan as
3 outlined in the North Carolina Forest Service's smoke management program;
- 4 (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural
5 or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- 6 (6) fires purposely set for wildlife management practices for which burning is currently acceptable to
7 the Wildlife Resource Commission;
- 8 (7) fires for the disposal of dangerous materials when it is the safest and most practical method of
9 disposal;
- 10 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing
11 laboratories, or other persons, for the purpose of testing or developing these materials or equipment
12 in accordance with a standard qualification program;
- 13 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-
14 fighting training facilities;
- 15 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under
16 the supervision of or with the cooperation of one or more of the following agencies:
- 17 (A) the North Carolina Forest Service;
- 18 (B) the North Carolina Insurance Department;
- 19 (C) North Carolina technical institutes; or
- 20 (D) North Carolina community colleges, including:
- 21 (i) the North Carolina Fire College; or
- 22 (ii) the North Carolina Rescue College;
- 23 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction
24 and training of fire-fighting personnel, provided that:
- 25 (A) The regional office supervisor of the appropriate regional office and the HHCB have been
26 notified according to the procedures and deadlines contained in the appropriate regional
27 notification form. This form may be obtained by writing the appropriate regional office at
28 the address in Rule .1905 of this Section and requesting it, and
- 29 (B) The regional office supervisor has granted permission for the burning. Factors that the
30 regional office supervisor shall consider in granting permission for the burning include
31 type, amount, and nature of combustible substances. The regional office supervisor shall
32 not grant permission for the burning of salvageable items, such as insulated wire and
33 electric motors or if the primary purpose of the fire is to dispose of synthetic materials or
34 refuse. The regional office supervisor of the appropriate regional office shall not consider
35 previously demolished structures as having training value. However, the regional office
36 supervisor of the appropriate regional office may allow an exercise involving the burning
37 of motor vehicles burned over a period of time by a training unit or by several related

1 training units. Any deviations from the dates and times of exercises, including additions,
2 postponements, and deletions, submitted in the schedule in the approved plan shall be
3 communicated verbally to the regional office supervisor of the appropriate regional office
4 at least one hour before the burn is scheduled; and

- 5 (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane,
6 or flood, if the regional office supervisor grants permission for the burning. The person desiring to
7 do the burning shall document and provide written notification to the regional office supervisor of
8 the appropriate regional office that there is no other practical method of disposal of the waste.
9 Factors that the regional office supervisor shall consider in granting permission for the burning
10 include type, amount, location of the burning, and nature of combustible substances. The regional
11 office supervisor shall not grant permission for the burning if the primary purpose of the fire is to
12 dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under
13 this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.

14 (c) The authority to conduct open burning under this Section does not exempt or excuse any person from the
15 consequences, damages or injuries that may result from this conduct. It does not excuse or exempt any person from
16 complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction
17 even though the open burning is conducted in compliance with this Section.

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19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;*

20 *Eff. July 1, 1996;*

21 *Amended Eff. March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July*
22 *1, ~~1998~~, 1998;*

23 *Amended Eff. Pending Legislative Review.*

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