

Fiscal Note

Rule Topic: Revisions to Open Burning Rules to Reflect S.L. 2013-413 (521)

RULE CITATION: 15A NCAC 02D .1901 *Open Burning: Purpose: Scope*
 15A NCAC 02D .1902 *Definitions*
 15A NCAC 02D .1903 *Open Burning Without an Air Quality Permit*

DENR Division: Division of Air Quality

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Impact Summary: State government: No
 Local government: No
 Substantial impact: No
 Federal government: No

Authority: G.S. 143-215.3(a) (1); 143-215.107(a) (5); 62-133.8; S.L. 2013-413.

Necessity: At the conclusion of the 2013 legislative session, the General Assembly enacted Session Law 2013-413, An Act to Improve and Streamline the Regulatory Process in Order to Stimulate Job Creation, to Eliminate Unnecessary Regulation, to Make Various Other Statutory Changes, and to Amend Certain Environmental and Natural Resources Laws (the Act). The Act requires the Commission to adopt rules that pertain to open burning for land clearing or right-of-way maintenance to be substantively identical to the provisions of Section 28(b) of the Act.

The Division of Air Quality (DAQ) is proposing changes to the open burning rules for the adoption by the Environmental Management Commission to fulfill the requirements of Section 28(c) of the Act (see the text of the proposed rule changes in the Appendix). DAQ is also proposing to amend the Rules 15A NCAC 02D .1901 and .1902 to update the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service, and also to update the references to the General Statute.

I. Executive Summary

The purpose of this fiscal note is to conduct an evaluation of the costs and benefits associated with the mandatory revisions to the air quality rules on open burning to reflect the provisions of Section 28(b) of the Act. The Act requires the agency to adopt rules that are substantively identical to the provisions in the Act; therefore, any impact from the change stems from the statute and not the rule.

The current Rule 15A NCAC 02D .1903(b) (2) (F) does not allow someone to carry off-site or transport materials for land clearing or right-of-way maintenance over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted in accordance with the Rule 15A NCAC 02D .1904 to burn the materials in an air curtain burner at a permanent site. The air curtain burner is a stationary or portable combustion device that directs a draft air through a manifold head into a pit to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain. The DAQ database indicates that the state has only seven operated air curtain burners. These air curtain burners are located in rural areas, and in many situations, the distance between a site for land clearing or right-of-way maintenance and an air curtain burner can be quite lengthy and the transportation can be expensive.

The amendments incorporate requirements for compliance with Section 28(b) of S.L. 2013-413 which allows transporting of such materials over public roads for open burning to locations other than facilities permitted by the provisions of the Rule 15A NCAC 02D .1904 if the specific requirements defined in the Section 28.(b) are met. In addition, the amendments revise the related Rules 15A NCAC 02D .1901 and .1902 to update the references to the General Statute and the name of the former Division of Forest Resources to reflect its current name, the North Carolina Forest Service.

These changes require amendments to the following three rules:

- 15A NCAC 02D .1901, Open Burning: Purpose: Scope;
- 15A NCAC 02D .1902, Definitions; and
- 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The amendments are de minimis rules – rules with little impact on state funds, local funds, or private entities.

II. Background

The rules 15A NCAC 02D .1901, .1902, .1903 became effective July 1, 1996. The rule .1901 identifies the purpose and the scope of the Section .1900 – Open Burning.

The rule .1902 lists definitions that apply to the Section .1900.

The rule .1903 specifies types of open burning allowed without a permit. It also establishes requirements such as setbacks for the protection of occupied structures and public roads from the wind-blown smoke. The rule was amended June 1, 2004, to add the conditions that must be met for open burning for land clearing and right-of-way maintenance to ensure that burning would not create a public nuisance. Land clearing operations described in this evaluation mean the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value but does not include routine maintenance or property

clean-up activities. The most recent amendment which occurred in July 3, 2012 changed the setback requirements for the open burning from 1,000 feet to 500 feet in accordance with Session Law 2011-394.

Currently, the DAQ is implementing the provisions of Section 28(b) of the Act which state that open burning for land clearing or right-of-way maintenance is permissible without an air quality permit if materials are not carried off site or transported over public roads for open burning unless the materials are carried or transported to: (1) 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 (2) A location, where the material is burned not more than four times per year, that meets all of the following criteria: 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; there are no more than two piles, each 20 feet in diameter, being burned at one time; and the location is not a permitted solid waste management facility.

The provisions of Section 28(b) of this Act which have been enacted since August 2013 will expire on the date when the amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 28(d) of S.L. 2013-413.

III. Description of Existing Rules 15A NCAC 02D .1903, 15A NCAC 02D .1901, and 15A NCAC 02D .1902.

The current version of the rule .1903 allows two options to land clearing contractors to burn the material from land clearing or right-of-way maintenance: (1) material may be burned on site if all conditions listed in 1903(b)(2)(A) and (B) are met, or (2) the materials may be carried off-site or transported over public roads to air curtain burner facilities permitted according to Rule .1904.

The land clearing contractors have two more options to dispose the material from land clearing or right-of-way maintenance: (1) the materials are mulched on site, or (2) the material are carried off-site or transported over public roads to the land clearing and inert debris landfill (LCID) for the disposal. These two options do not involve the open burning and do not pertain to the current version of the Rule 15A NCAC 02D .1903; however, they are readily available to the land clearing contractors and are alternatives to burning that are encouraged by the DAQ Public Outreach. All these options establish the baseline for these changes.

Based on discussions with the DAQ regional supervisors, the option (1) “material may be burned on site if all conditions listed in 1903(b)(2)(A) and (B) are met” is the most attractive to the land clearing contractors. The current option to carry the material off-site or transport over public roads to air curtain burner facilities has a potential to create fiscal losses for the land clearers if an air curtain burner is located far away from a land clearing operation. The potential fiscal losses would be due to transportation costs which would be a function of distance to the air curtain burner.

Since the current rule .1903 does not require an air quality permit for open burning of land clearing or right-of-way maintenance debris on-site, and the DAQ does not maintain data on these operations, the database of the open burning complaints received and investigated by DAQ are the best source of the current compliance status with the rule .1903.

Table 1 reflects trends in number of investigated complaints of open burning on land clearing and the percentage of those that resulted in a rule violation and enforcement action. The data for this table does

not include the local programs and is presented to characterize the level of efforts by DAQ to investigate the open burning complaints related to the land clearing.

Table 1. Number of open burning complaints investigated by DAQ during FY07-FY14.

	FY	Violation	No Violation	Total Complaints	% Violations
OB - Land Clearing	FY07	141	108	249	57%
OB - Land Clearing	FY08	106	68	174	61%
OB - Land Clearing	FY09	79	40	119	66%
OB - Land Clearing	FY10	59	35	94	63%
OB - Land Clearing	FY11	38	44	82	46%
OB - Land Clearing	FY12	29	42	71	41%
OB - Land Clearing	FY13	30	39	69	43%
OB - Land Clearing	FY14	10	29	39	26%

The DAQ staff investigated 71 complaints related to open burning setback violations for land clearing or right-of-way maintenance in FY2012 which resulted in issuing 29 notices of violations (NOV) with penalties issued for three of them in the range from \$463 to \$1,740. Forsyth County issued only one NOV and The Western North Carolina Regional Air Quality Agency issued 29 NOVs in year 2012. The Director of the Mecklenburg County Air Quality Department delegated the administration and enforcement of the open burning regulation to the County Fire Marshal under the provisions of Mecklenburg County Air Pollution Control Ordinance (MCAPCO) Regulation 1.5101, and the County Fire Marshal is solely responsible for issuing and enforcing the air quality permits for the open burning.

The number of complaints and percent of the resulting violations have been trending downward since FY12. This trend may be explained by a number of factors including: implementation of Session Law 2011-394 which amended the setback distance from 1,000 feet to 500 feet required in the Rule 15A NCAC 02D .1903, recent economic downturn, reductions in land clearing activities and the DAQ outreach efforts. Other techniques, encouraged for dealing with land clearing debris, such as preparing and selling mulch are aimed at reducing the sole reliance on open burning for the disposal. Most of these burning operations are conducted in compliance with the provisions of the rule .1903(2). However, approximately 0.5% or 53 out of 12,000 land clearing burning was in violation of the existing rule in 2013.

The state offices of Erosion and Sedimentation Control issued 12,000 permits for land clearing or right-of-way maintenance operations in 2012. According to their observations during the site inspections, the debris from land clearing or right-of-way maintenance was mostly burned at the sites. This observation also is confirmed by very low activities of the land clearing or right-of-way maintenance materials burning in air curtain burners. In most cases, the provisions of the rule .1903(2) allows landowners to burn materials on the site legally without violations of air quality rules if the conditions in the rule are met.

As another alternative to open burning, the land clearing materials can be taken to the land clearing and inert debris landfill (LCID) for disposal. North Carolina has 63 such facilities located statewide¹. They accept the land clearing materials for an average fee of \$35 per ton which is not always economically beneficial for the contractors.

The language of two other rules .1901 and .1902 contains the former name of the North Carolina Forest Service and outdated references to the General Statute.

IV. Motivation for the Proposed Changes

S.L. 2013-413 mandates that the Commission adopt rules that pertain to open burning for land clearing or right-of-way maintenance that are substantively identical to the provisions of Section 28(b) of that Act. The proposed change adds an option of open burning at an offsite location that meets the requirements listed in the Section 28(b) of the Act. These requirements, in addition to establishing the same 500 feet setback as the current rule .1903, also limit the number of piles being burned at one time to no more than two, each 20 feet in diameter and burning at an offsite location is limited to 4 times per year. These additional requirements may make this option generally less attractive than other available alternatives and inherently limit its use. All these requirements are designed to minimize the potential for impacts to the public.

Amendments to the Rule 15A NCAC 02D .1903 shall be governed by the Section 28.(c) of the Act which indicates that: “the Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 28.(b) of this act. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 28.(b) of this act. Rules adopted pursuant to this section are not subject to G.S. 150B-21.8 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).”

V. Identification of the Affected Parties

Given that the agency has no leeway in the implementation of the provisions laid out in S.L. 2013-413, any impact from the proposed change is a direct result of the statute.

Regulated parties affected by the statute are the land clearing and right-of-way maintenance contractors and air curtain burner owners or operators. According to the NC Erosion and Sedimentation Program, approximately 12,000 land clearing operations were performed in year 2013 and most of the materials from these operations was burned or mulched on the sites.

The implementing agency is the DAQ which is responsible for bringing the open burning rules into compliance with Section 28(b) of the Act.

Based on the DAQ IBEAM database, the DAQ issued air quality permits to 10 air curtain burner owners or operators to burn between 10 and 20 ton/hr in each air curtain burner. However, three of them have not been operating for a long time and the remaining seven burners are operating infrequently, in the range between 2-4 weeks to 1-2 month per year, as noted by Division of Air Quality (DAQ) inspection reports

¹ <http://portal.ncdenr.org/web/wm/sw/facilitylist>

Under certain circumstances, this rule change will be beneficial for the businesses involved in land clearing operations because it provides an option to minimize expenses. In some situations land clearing occurs within city limits and the open burning is prohibited by the city ordinance or the setback requirements for onsite burning cannot be met. The amendments to the other two rules .1901 and .1902 are of technical nature and are not the subject of further evaluation.

The proposed amendments will create an alternative to the land clearing contractors to burn the materials at the alternative site if they find it fiscally attractive. The benefits of these amendments occur on case by case basis and therefore cannot be calculated. However, the number of the total complaints in Table 1 and the fact that burning material on site is the most popular option indicate that the number of such cases will be small. Field observations from the regional supervisors also confirm that, since the enactment of the session law. Little interest has been shown in using this option, and they don't think it will be used much in the future. Based on these assumptions, it is unlikely that there will be any significant change from the baseline or that any impacts will occur due to these proposed amendments.

VII. Conclusions.

The available open burning complaints data and interviews with DENR personnel responsible for land clearing and air curtain burners permit and inspection programs indicates that the overwhelming majority of the materials from land clearing or right-of-way maintenance operations is burned at the sites. Most of these burning operations are conducted in compliance with the provisions of the rule .1903(2). However, approximately 0.5% or 53 out of 12,000 land clearing burning was in violation of the existing rule in 2013. Three penalties in the range between \$463 and up to \$1,750 were issued for these violations. These numbers indicate that the new amendments will have insignificant impact on the contractors involved in land clearing operations, air curtain burner owners or operators, and the state and local budgets.

Currently, the DAQ is implementing the provisions of Section 28(b) of the Act until the date when the amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 28(d) of the Act. The DAQ staff has not noticed any changes in the numbers of complaints since these provisions were implemented. However, the statute and the resulting amendments to the agency's rule will bring benefits for the land clearing contractors by adding flexibility to land clearing operations when burning the materials on the site where the open burning is otherwise prohibited by law.

The number of notices of violations and low activity of air curtain burners in the baseline indicate that these benefits of the rule changes will be insignificant. However, due to the fact that the open burning of the materials from the land clearing operations does not require permits and specific data characterizing such operations is not tracked, the exact amount of these benefits cannot be calculated. The amendments will allow burning the materials in offsite areas only if the provisions of the amended rule .1903(2) will be met.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedures Act in N.C.G.S. 150B-21.4, meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The amendments are de minimis rules – rules with little impact on state funds, local funds, or private entities.

1 **APPENDIX**

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3 15A NCAC 02D .1901 is proposed for amendment as follows:

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SECTION .1900 - OPEN BURNING

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7 **15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE**

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(a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section.

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(b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

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(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under ~~G.S. 14-136 through G.S. 14-140.1~~, G.S. 14-136, G.S. 14-137, G.S. 14-138.1 and G.S. 14-140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to woodlands as provided in ~~G.S. 113-60.21~~ G.S. 106-940 through G.S. 113-60.31, G.S. 106-950. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the ~~Division of North Carolina Forest Resources Service~~ or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

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History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

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Eff. July 1, 1996;

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Amended Eff. July 1, 2007; June 1, ~~2004~~, 2004;

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Amended Eff. January 1, 2015

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

15A NCAC 02D .1902 DEFINITIONS

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

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina ~~Division of Forest Resources' Service's~~ smoke management program and approved by the North Carolina ~~Division of Forest Resources' Service~~. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (9) "Log" means any limb or trunk whose diameter exceeds six inches.

- 1 (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- 2 (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility
3 impairment, or evidence of soot or ash on property or structure other than the property on which the
4 burning is done.
- 5 (12) "Occupied structure" means a building in which people may live or work or one intended for housing
6 farm or other domestic animals.
- 7 (13) "Off-site" means any area not on the premises of the land-clearing activities.
- 8 (14) "Open burning" means the burning of any matter in such a manner that the products of combustion
9 resulting from the burning are emitted directly into the atmosphere without passing through a stack,
10 chimney, or a permitted air pollution control device.
- 11 (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational
12 control over the open burning.
- 13 (16) "Person" as used in 02D .1901(c), means:
- 14 (a) the person in operational control over the open burning; or
- 15 (b) the landowner or person in possession or control of the land when he has directly or indirectly
16 allowed the open burning or has benefited from it.
- 17 (17) "Pile" means a quantity of combustible material assembled together in a mass.
- 18 (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a
19 residence by a governmental agency, private company contracted by a governmental agency or municipal
20 service.
- 21 (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way
22 dedicated or maintained for public use.
- 23 (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- 24 (21) "Refuse" means any garbage, rubbish, or trade waste.
- 25 (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a
26 regional office of the Department of Environment and Natural Resources.
- 27 (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or
28 part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- 29 (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or
30 asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical
31 insulation, and treated or coated wood.
- 32 (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more
33 than nine months.

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35 *History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);*
36 *Eff. July 1, 1996;*
37 *Amended Eff. July 1, 2007; December 1, 2005; June 1, 2004; July 1, ~~1998-1998~~;*

Amended Eff. January 1, 2015

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

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

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

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

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;
 - (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
 - (D) The burning is initiated no earlier than 8:00 a.m. and no additional 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) The burning does not create a nuisance; and
 - (F) Material is not burned when the North Carolina Forest Service has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
 - (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is 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. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted 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 off site or transported over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; 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 is
2 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 or
5 agricultural 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 the
7 Wildlife Resource Commission;
- 8 (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- 9 (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or
10 other persons, for the purpose of testing or developing these materials or equipment in accordance with a
11 standard qualification program;
- 12 (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting
13 training facilities;
- 14 (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the
15 supervision of or with the cooperation of one or more of the following agencies:
- 16 (A) the North Carolina Forest Service;
- 17 (B) the North Carolina Insurance Department;
- 18 (C) North Carolina technical institutes; or
- 19 (D) North Carolina community colleges, including:
- 20 (i) the North Carolina Fire College; or
- 21 (ii) the North Carolina Rescue College;
- 22 (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and
23 training of fire-fighting personnel, provided that:
- 24 (A) The regional office supervisor of the appropriate regional office and the HHCB have been
25 notified according to the procedures and deadlines contained in the appropriate regional
26 notification form. This form may be obtained by writing the appropriate regional office at the
27 address in Rule .1905 of this Section and requesting it, and
- 28 (B) The regional office supervisor has granted permission for the burning. Factors that the regional
29 office supervisor shall consider in granting permission for the burning include type, amount, and
30 nature of combustible substances. The regional office supervisor shall not grant permission for
31 the burning of salvageable items, such as insulated wire and electric motors or if the primary
32 purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of
33 the appropriate regional office shall not consider previously demolished structures as having
34 training value. However, the regional office supervisor of the appropriate regional office may
35 allow an exercise involving the burning of motor vehicles burned over a period of time by a
36 training unit or by several related training units. Any deviations from the dates and times of

1 exercises, including additions, postponements, and deletions, submitted in the schedule in the
2 approved plan shall be communicated verbally to the regional office supervisor of the
3 appropriate regional office at least one hour before the burn is scheduled; and

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

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

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

19 *Eff. July 1, 1996;*

20 *Amended Eff. July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July 1, ~~1998-1998~~;*

21 *Amended Eff. Pending Legislative Review*