

Regulatory Impact Analysis

Rule Topic: Revisions to Open Burning Rules to Reflect S.L. 2014-120 (529)

RULE CITATION: 15A NCAC 02D .1903 *OPEN BURNING WITHOUT AN AIR QUALITY PERMIT*, 02D .1902 *DEFINITIONS*

DENR Division: Division of Air Quality

Agency Contact: Joelle Burleson, Rule Development Branch Supervisor
Division of Air Quality (DAQ)
(919) 707-8720
Joelle.Burleson@ncdenr.gov

Analyst: Glenn Sappie, Rule Development Branch Economist
Division of Air Quality (DAQ)
(919) 707-8705
Glenn.Sappie@ncdenr.gov

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: The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014 to require the Environmental Management Commission (EMC) to adopt a rule that pertains to residential open burning without an air quality permit. The amended rule must be substantively identical to the provisions of Section 24.(c) of S.L. 2014-120, to allow for burning of logs or stumps of any size which shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in this rule.

The Division of Air Quality (DAQ) is proposing changes to the open burning rule for adoption by the Environmental Management Commission to fulfill the implementation requirements of Section 24.(c) of S.L. 2014-120 (see the text of the proposed rule changes in the Appendix).

I. Executive Summary

The purpose of this regulatory impact analysis is to evaluate the costs and benefits associated with the mandatory revisions to the air quality rules on open burning to reflect the provisions of Section 24.(b) of S.L. 2014-120, “An act to provide further regulatory relief to the Citizens of North Carolina by providing for various administrative reforms, by eliminating certain unnecessary or outdated statutes and regulations, and by modernizing or simplifying cumbersome and outdated regulations, and by making other statutory changes.” S.L. 2014-120 specifically requires the EMC to adopt a rule that are

substantively identical to the provisions in the session law; therefore, any impact from these changes stems from the session law and not actual conforming amendments to the rule. Excluding consideration of stumps and logs from nuisance determinations introduced an unintended compliance mechanism that must be corrected to address this inconsistency. This problem stems from an air quality compliance inspector being unable to isolate whether a nuisance was caused solely due to residential open burning of either stumps or logs. To avoid this problem, the provision of not causing a nuisance is being removed completely from the revised residential open burning rule.

In S.L. 2014-120, Section 24.(b) requires these amendments to 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit, to be implemented upon enactment of the statute. The DAQ is implementing the changes as directed, and this action will bring the North Carolina Administrative Code into alignment with these legislative mandates. Since the DAQ began implementing the proposed rule change, there have been several residential open burning complaints involving stumps or logs. Upon investigation, no enforcement action was taken because that type of open burning is now allowable. Generally, completely removing the nuisance determination from list of compliance requirements is burden reduction because investigating complaints that site nuisance are more complex and that adds several steps to fully investigate that claim. This regulatory impact analysis determined the rule change has little to no impact on state or local governments and no substantial economic impact; therefore, a fiscal note is not required. These estimated impacts estimates impacts of the proposed rule change were compared to a baseline condition defined by the current rule.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure 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 do not cause impacts on state funds, local funds, or private entities.

II. Background

Initially the rules 15A NCAC 02D in Section .1900 – Open Burning, became effective July 1, 1996.

DAQ began implementing the provisions of Section 24.(c) of the S.L. 2014-120 when it became effective on September 18, 2014. That revision to rule 15A NCAC 02D .1903, Open Burning Without An Air Quality Permit, allows stumps and logs of any size to be included in residential open burning without an air quality permit. Logs greater than 6 inches in diameter were banned previously.

The provisions of Section 24.(c) of S.L. 2014-120 which have been enacted since September 18, 2014 will expire on the date when the proposed amendments to the Rule 15A NCAC 02D .1903 become effective as specified by Section 24.(d) of S.L. 2014-120.

III. Description of Existing Rules 15A NCAC 02D .1903

The current version of Rule 15A NCAC 02D .1903 prohibited residential open burning of stumps and logs that are greater than six inches in diameter while leaves, tree branches, and yard trimmings may be burned on site if all provisions listed in .1903(a)(1) are met. Rule 02D .1902, Definitions, contains the definition of “Nuisance”. One provision required that such open burning would not cause a nuisance as defined in Rule 15A NCAC 02D .1903. According to the open burning rule section definition, "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.

Previously, residential open burning excluded “stumps and logs” from the list of allowable materials and therefore options to dispose of stumps and logs were practically limited to being carried off-site or transported over public roads 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. Details of such alternatives do not directly involve the open burning and do not pertain to the current version of the Rule 15A NCAC 02D .1903; however, these disposal options are readily available to the residential property owners and are encouraged by the DAQ Public Outreach. All these options would normally establish the baseline to compare to any proposed rule changes. However, S.L. 2014-120 mandates immediate implementation provisions upon the effective date of September 18, 2014 and that modifies the baseline such that it becomes substantially identical to the proposed rule changes.

The current rule .1903 does not require an air quality permit for residential open burning and the DAQ does not maintain data on these operations, therefore the database of the open burning complaints received and investigated by DAQ are the best source of the compliance status with the existing rule .1903.

Table 1 reflects trends in number of open burning residential complaints and the percentage of those that resulted in a rule violation and enforcement action. As a percentage, open burning complaints that were categorized as residential account for 73% to 77% of about 1,000 total complaints investigated on average each year. The data for this table does not include the three local air quality programs and is presented to characterize the level of efforts by DAQ to investigate the open burning complaints related to residential open burning. The exact number of complaints or violations that involved logs and stumps is unknown or difficult to obtain. Since fiscal year 2007 (FY07), the DAQ has investigated over 4,600 residential open burning complaints. However, a nuisance was described in fewer than two percent of the incidences, and only 6 of those complaints resulted in an open burning violation.

Table 1. Number of Residential Open burning complaints investigated by DAQ during FY07-FY13.

Fiscal Year	Total Complaints	Resulted in a Violation	Not a Violation	% Violations
FY07	740	247	493	33%
FY08	682	312	370	46%
FY09	512	243	269	47%
FY10	620	268	352	43%
FY11	776	325	451	42%
FY12	753	285	468	38%
FY13	728	255	473	35%
FY14	538	144	394	27%

IV. Motivation for the Proposed Changes

S.L. 2014-120 mandates that the Commission adopt rules that pertain to open burning without an air quality permit that are substantively identical to the provisions of Section 24.(b). The proposed change will allow logs of any size and stumps in residential open burning if it meets the provisions listed in the

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

Section 24.(b) and it removes the restriction related to not causing a nuisance. Session Law 2014-120 deems residential open burning of logs or stumps as not causing a nuisance for the purpose of enforcement of these residential open burning rules. This rule amendment may reduce complaint options that a residential neighbor may make if the open burning of logs or stumps without a permit would have previously been the violation due to that action causing a nuisance. Removing these limitations may reduce regulatory burden making the option to burn stumps and log generally more attractive than available alternatives. Eliminating the restriction of not causing a nuisance may result in the potential additional adverse impacts to the public, to which generally available public nuisance laws could be the only legal remedy.

Amendments to the Rule 15A NCAC 02D .1903 shall be governed by the Section 24.(d) of S.L. 2014-120 which dictates that: “The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section ~~3.11(e)~~ 24.(c) of this section. 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 24.(c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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).”

An erroneous reference to Section 3.11(c) within Section 24 appears to be an inadvertent error left over from an earlier draft version of the legislation. However, based on obvious legislative intent, this mistake has been corrected and interpreted accordingly. The following is the open burning text from North Carolina Session Law 2014-120:

OPEN BURNING

SECTION 24.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

SECTION 24.(b) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 24(c) Implementation. –

Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

- (1) The material burned originates on the premises of private residences and is burned on those premises.
- (2) There are no public pickup services available.
- (3) Nonvegetative materials, such as household garbage, lumber, or any other synthetic materials, are not burned.
- (4) 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.
- (5) The burning does not create a nuisance.
- (6) Material is not burned when the North Carolina Forest Service has banned burning for that area.

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

SECTION 24.(d) Additional Rule-Making Authority. –

The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. 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 24(c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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).

SECTION 24.(e) Sunset. –

Section 24(c) of this section expires on the date that rules adopted pursuant to Section 24(d) of this section become effective.

The amendments to Rule 02D .1902 remove the definition of the term "Nuisance" from the list of definitions that apply to the rules in Section .1900 -Open Burning for consistency with the amendments to implement S.L. 2014-120.

V. Identification of the Affected Parties

Regulated parties affected by the statute are the residential property owners or in certain instances their neighbors. The implementing agency is the DAQ which is responsible for bringing the open burning rule into compliance with Section 24.(b) of the Act. Given that the agency has little leeway in the implementation of the provisions laid out in S.L. 2014-120, any impact from the proposed change is a direct result of the session law. The impacts of the proposed rule change were estimated compared to a baseline condition defined by the current rule.

Under certain circumstances by not excluding larger logs and stumps, this rule change may be beneficial for property owners involved in residential open burning operations because it provides an option to minimize expenses. There are no changes proposed to restrictions where residential open burning within city limits is prohibited by any city ordinance.

The proposed amendments will allow stumps and logs of any size to be burned under certain circumstances removing the uncertainty that such residential open burning will trigger a nuisance. It may be beneficial due to reduced costs to burn the stumps and logs at the residential location rather than hauling it to an alternative disposal site if they find it fiscally attractive. Any benefits of these amendments occur on a case by case basis and therefore cannot be quantified. It is difficult to draw any conclusion from the number of the total complaints in Table 1 given that residential open burning is allowed so long as restrictive conditions are met. It is equally difficult to estimate how often logs and stumps may be added to the already allowable leaves, tree branches and yard trimmings. Based on these assumptions and limitations, it is unlikely that there will be any significant change from the baseline or that any impacts will occur due to these proposed amendments.

DAQ might see small saving in terms of the value of time its staff would dedicate to investigating complaints due to this deregulatory proposal. However, it is difficult to determine what the saving would be, if any. The number of complaints that would be affected by the rule change are likely to be small and DAQ may still continue to receive complaints regarding open burning that is no longer considered a nuisance under the proposed rule.

The proposed rule change is not expected to interfere with the attainment or maintenance of any current national air quality standard nor would it result in a substantial economic impact.

VII. Conclusions

DAQ began implementing the provisions of Section 24.(c) of the S.L. 2014-120 when it became effective on September 18, 2014. That revision to rule 15A NCAC 02D .1903, *Open Burning Without An Air Quality Permit*, allows the burning of stumps and logs of any size to be included in residential open burning and removed a provision that residential open burning not cause a nuisance.

The provisions of Section 24.(c) of S.L. 2014-120 which have been enacted since September 18, 2014 will expire on the date when the proposed amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 24.(d) of S.L. 2014-120. Currently, the DAQ is implementing the provisions of Section 24.(b) of the Act until the date when the amendments to the Rule 15A NCAC 02D .1903 become effective as required by Section 24.(d) of S.L. 2014-120.

These rule amendments do not cause substantial economic impacts, as defined in the Administrative Procedure Act in N.C.G.S. 150B-21.4(b1), meaning that the estimated impacts exceed \$1,000,000 in a 12-month period. The rule change has little to no impact on state or local governments and no substantial economic impact; therefore, a fiscal note is not required.

1 **APPENDIX**

2 Note: Text in italics in the body of the rule was adopted by the EMC to reflect S.L. 2013-413 and is awaiting legislative
3 review per that session law. Proposed amendments that are not in italics are in response to S.L. 2014-120.

4
5 15A NCAC 02D .1903 is proposed for amendment as follows:

6
7 **15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) a signed, written statement waiving objections to the open burning associated with the
 2 land clearing operation is obtained and submitted to, and the exception granted by, the
 3 regional office supervisor before the burning begins from a resident or an owner of each
 4 dwelling, commercial or institutional establishment, or other occupied structure within
 5 500 feet of the open burning site. In the case of a lease or rental agreement, the lessee or
 6 renter shall be the person from whom permission shall be gained prior to any burning;
 7 or
 8 (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the
 9 open burning site.

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

- 16 (C) Only land-cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and
 17 other roofing materials, items containing natural or synthetic rubber, or any materials other than
 18 plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to
 19 start the fire;
- 20 (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible
 21 material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- 22 (E) No fires are initiated or vegetation added to existing fires when the North Carolina Forest
 23 Service has banned burning for that area; and
- 24 (F) Materials are not carried off-site or transported over public roads for open burning unless the
 25 materials are carried ~~off site~~ or transported ~~over public roads to facilities permitted according to~~
 26 ~~Rule .1904 of this Section for the operation of an air curtain burner at a permanent site; to:~~
 27 (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners)
 28 for the operation of an air curtain burner at a permanent site; or
 29 (ii) A location, where the material is burned not more than four times per year, that meets
 30 all of the following criteria:
 31 (I) At least 500 feet from any dwelling, group of dwellings, or commercial or
 32 institutional establishment, or other occupied structure not located on the
 33 property on which the burning is conducted.
 34 (II) There are no more than two piles, each 20 feet in diameter, being burned at
 35 one time.
 36 (III) The location is not a permitted solid waste management facility.

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

1 training value. However, the regional office supervisor of the appropriate regional office may
2 allow an exercise involving the burning of motor vehicles burned over a period of time by a
3 training unit or by several related training units. Any deviations from the dates and times of
4 exercises, including additions, postponements, and deletions, submitted in the schedule in the
5 approved plan shall be communicated verbally to the regional office supervisor of the
6 appropriate regional office at least one hour before the burn is scheduled; and

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

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

20
21 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;*

22 *Eff. July 1, 1996;*

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

24 *Amended Eff. Pending Legislative Review*

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

2

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) "HHCUC" 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.

35
36 *History Note:* Authority G.S. 143-212; 143-213; 143-215.3(a)(1); S.L. 2013-413;

1
2
3
4

Eff. July 1, 1996;
Amended Eff. _____ ; January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004;
July 1, 1998.

- (3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous.

If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.

(c) ~~A When the applicant seeks administrative review of a decision concerning a permit under subsection (a) of this section, the permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a the contested case, as appropriate, case, and no action may be taken during that time that would be unlawful in the absence of a permit.~~

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48."

OPEN BURNING

SECTION 24.(a) The definitions set out in G.S. 143-212, G.S. 143-213, and 15A NCAC 02D .1902 (Definitions) apply to this section.

SECTION 24.(b) 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit). – Until the effective date of the revised permanent rule that the Commission is required to adopt pursuant to Section 3.11(d) of this section, the Commission and the Department shall implement 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) as provided in Section 3.11(c) of this section.

SECTION 24.(c) Implementation. – Notwithstanding Paragraph (b) of 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit), no air quality permit is required for the open burning of leaves, logs, stumps, tree branches, or yard trimmings if the following conditions are met:

- (1) The material burned originates on the premises of private residences and is burned on those premises.
- (2) There are no public pickup services available.
- (3) Nonvegetative materials, such as household garbage, lumber, or any other synthetic materials, are not burned.
- (4) 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.
- (5) The burning does not create a nuisance.
- (6) Material is not burned when the North Carolina Forest Service has banned burning for that area.

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

SECTION 24.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 3.11(c) of this section. 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 24(c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. 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).

SECTION 24.(e) Sunset. – Section 24(c) of this section expires on the date that rules adopted pursuant to Section 24(d) of this section become effective.

SECTION 24.(f) Local Government Air Pollution Control Program Limitation. – G.S. 143-215.112(c) is amended by adding a new subdivision to read: