

Notice of Rulemaking Hearing
Tennessee Department of Environment And Conservation
Division of Air Pollution Control

There will be a public hearing before the Technical Secretary of the Tennessee Air Pollution Control Board to consider the promulgation of amendments to the Tennessee Air Pollution Control Regulations, and State Implementation Plan pursuant to Tennessee Code Annotated, Section 68-201-105. The comments received at this hearing will be presented to the Tennessee Air Pollution Control Board for their consideration in regards to the proposed regulatory amendments. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-201 et. seq. and will take place in the 9th Floor Conference Room of the L & C Annex, located at 401 Church Street, Nashville, Tennessee 37243-1531 at 9:30 a.m. on the 20th day of November, 2006. Anyone desiring to make oral comments at this public hearing is requested to prepare a written copy of their comments to be submitted to the hearing officer at the public hearing.

Written comments not submitted at the public hearing will be included in the hearing record only if received by the close of business on Monday, November 20, 2006, at the office of the Technical Secretary, Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be in person, by writing, telephone, or other means, and should be made no less than ten (10) days prior to November 20, 2006 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation ADA Coordinator, 12th Floor, 401 Church Street, Nashville TN 37243, (615) 532-0207. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

If you have any questions about the origination of this rule change, you may contact Mr. Jeff Cales at (931) 432-7621. Copies of documents concerning this matter are available for review at the office of the Technical Secretary and at certain public depositories. For information about reviewing these documents, please contact Mr. Malcolm Butler, 9th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1531, telephone (615) 532-0600.

Summary of Proposed Changes

The proposed revisions to Rules 1200-3-4-.02 Definitions and 1200-3-4-.04 Exceptions To Prohibition include updated definitions, and clarifications of existing exceptions necessary to effectively regulate open burning statewide. The proposal also deletes non-applicable references and a non-applicable definition. The proposal includes a waiver to the express prohibition on open burning of plastics and rubber, so as to accommodate incidental plastic or rubber containers of controlled substances and drugs seized as contraband. The proposal also includes a waiver to accommodate plastic or rubber materials that are explosives-contaminated, and similar wastes, that are unsafe for other means of disposal.

Substance of Proposed Rules

Chapter 1200-3-4
Open Burning

Amendments

Chapter 1200-3-4 is amended in two (2) respects as follows:

1. Rule 1200-3-4-.02 Definitions is amended by substituting a new rule .02 DEFINITIONS in place of the current rule, so that as revised, the new rule .02 DEFINITIONS shall read as follows:

1200-3-4-.02 Definitions.

- (1) As used in this chapter, all terms not defined herein shall have the meaning given them in chapter 1200-3-2.
 - (a) Repealed
 - (b) "Air Pollution Emergency Episode" is defined as air pollution alerts, warnings, or emergencies declared by the Tennessee Division of Air Pollution Control during adverse air dispersion conditions that may result in harm to public health or welfare.
 - (c) "Natural Disaster" is defined as any event commonly referred to as an "Act of God" and includes but is not limited to the following weather related or naturally occurring categories of events: tornadoes, hail and wind storms, snow or ice storms, flooding, and earthquakes.
 - (d) "Open Burning" is the burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack. Open burning includes, but is not limited to, fires located or burning in a pile on the ground, a barrel, a fire pit, or other semi-enclosure. The use of an air curtain destructor or air curtain incinerator is considered incineration subject to the permitting requirements of Rule 1200-3-9, and is explicitly not considered open burning.
 - (e) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, an agency, authority, commission, or department of the United States government, or of the State of Tennessee government; or any other legal entity, or their legal representative, agent, or assigns.
 - (f) Repealed.
- (g) "Wood Waste" is defined as any product which has not lost its basic character as wood, such as bark, sawdust, chips and chemically untreated lumber whose "disposition" by open burning is to solely get rid of or destroy. Plant life of a herbaceous nature, such as leaves, whether attached, fallen, and/or collected, evergreen needles, and grasses, are not considered "wood waste". Additionally, manufactured lumber products, such as plywood, fiberboard, particleboard, and paneling, are not considered "wood waste". Painted or artificially stained wood is not considered "wood waste".

Authority: T.C.A. §§ 4-5-202, 68-201-101 et seq., and 68-25-105

2. Rule 1200-3-4-.04 Exceptions To Prohibition is amended by substituting a new rule .04 Exceptions To Prohibition in place of the current rule, so that as revised, the new rule

.04 Exceptions To Prohibition shall read as follows:

1200-3-4-.04 Exceptions To Prohibition.

- (1) Open burning, as listed below, may be conducted subject to specified limitations. This grant of exception shall in no way relieve the person responsible for such burning from the consequences, damages, injuries, or claims resulting from such burning.
- (a) Repealed.
 - (b) Fires used for cooking of food or for ceremonial, recreational or comfort-heating purposes, including barbecues, campfires, and outdoor fireplaces.
 - (c) Fires set by or at the direction of responsible fire control persons solely for training purposes: such as for fire source training at fire academies or for local fire department training. However, routine demolition of structures via supervised open burning by responsible fire control persons is not considered fire training. Additionally, the person responsible for such burning, unless conducted at a recognized fire training academy, must certify compliance with the following requirements by written statement. The certification must be delivered to the Division of Air Pollution Control at the appropriate regional Environmental Field Office at least ten (10) working days prior to commencing the burn:
 - 1. The open burning is being conducted solely for fire training purposes.
 - 2. All vinyl siding, carpet, vinyl flooring, asphalt roofing materials, and any other materials expressly prohibited in rule 1200-3-4-.03, have been removed. However, the provisions of 1200-3-4-.03(4) as it pertains solely to "other rubber products" and "other plastics" are waived for incidental plastic or rubber materials which are an integral part of a structure used for fire training, such as plastic plumbing, fixtures, and conduit; electrical wiring insulation, connections, switches, and fixtures; interior trim; glues and resins in manufactured wood products; and vinyl window and door frames. Sheathing, decking, roofing, exterior siding and trim, and structural load-bearing members whose composition is primarily rubber or plastics are not considered incidental.
 - 3. All regulated asbestos containing materials have been removed in accordance with rule 1200-3-11-.02.
 - 4. A traffic hazard will not be caused by the air contaminants generated by the fire training.
 - (d) Fires consisting solely of vegetation grown on the property of the burn site. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils, or other ignition devices approved by the Technical Secretary.
 - (e) Fires disposing of "wood waste" solely for the disposition of such wood waste as provided in T.C.A. §68-201-115(c). Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.
 - (f) Fires solely for the burning of bodies of dead animals, including poultry, where no other safe and/or practical disposal method exists. Priming materials used to

facilitate such burning shall be limited to #1 or #2 grade fuel oils, vegetation grown on the property of the burn site, and wood waste.

- (g) Smokeless flares or safety flares for the combustion of waste gases, provided other remaining applicable conditions of these regulations are met.
- (h) Such other open burning as may be approved by the Tennessee Air Pollution Control Board where there is no other practical, safe, and/or lawful method of disposal. Documentation demonstrating why the general open burning regulations cannot be met must be submitted.
- (i) Fires set at the direction of law enforcement agencies or courts solely for the purpose of destruction of controlled substances and legend drugs seized as contraband. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils. The provisions of 1200-3-4-.03(4) as it pertains solely to "other rubber products" and "other plastics" are waived for incidental plastic or rubber containers of said contraband.
- (j) Fires consisting solely of vegetation; manufactured lumber products not chemically treated to prevent insect or rot damage, such as plywood, fiberboard, and paneling; and uncoated paper and uncoated cardboard; subject to the following conditions:
 - 1. The site of such burning is not nearer than one-half mile to an airport, hospital, nursing home, school, Federal or State highway, national reservation, national or state park, wildlife area, national or state forest, and/or occupied structures except such structures as may be located on the same property as the burning site.
 - 2. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.
 - 3. The person responsible for such burning must certify compliance with the distance requirements by written statement. The certification must include the types and amounts of materials projected to be burned, and must be delivered to the Division of Air Pollution Control at the appropriate regional Environmental Field Office at least ten (10) working days prior to commencing the burn.
- (k) Fires consisting solely of non-radioactive, explosive, shock sensitive, chemically unstable, or highly reactive wastes, packaging, or contaminated or potentially contaminated combustible materials. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils. The provisions of 1200-3-4-.03(4) as it pertains solely to "other rubber products" and "other plastics" are waived for this exception. Open burning conducted under this exception is only allowed where no other safe means of disposal exists.
- (l) Fires consisting solely of materials resulting from a natural disaster, and when conducted in conformity with the following conditions:
 - 1. Fires disposing of structural and household materials and vegetation are allowed only when those structures or materials are destroyed or severely damaged by natural disaster. Input from Emergency Management personnel may be requested in determining qualification with this criterion. The provisions of 1200-3-4-.03(4) pertaining to structural and household materials may be waived if the persons seeking to open burn under this

provision make a reasonable effort to remove all expressly prohibited material from the structural remains before ignition. The Technical Secretary reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.

2. If a governmental collective burn site for disposing of structural and household materials and vegetation damaged by a natural disaster is planned, the person responsible for such burning must notify the Division of Air Pollution Control of the proposed location. The notification must be delivered to the Division of Air Pollution Control at the appropriate regional Environmental Field Office at least three (3) days prior to commencing the burn. The Division may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.
 3. A traffic hazard will not be caused by the air contaminants generated by the fire.
 4. No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn.
 5. Open burning conducted under this exception is only allowed where no other safe and/or practical means of disposal is available.
- (2) The Technical Secretary reserves the right to require a person to cease or limit open burning if emissions from the fires are deemed by the Technical Secretary or his designee to jeopardize public health or welfare, create a public nuisance or safety hazard, create a potential safety hazard, or interfere with the attainment or maintenance of the air quality standards.
 - (3) Any exception to the open burning prohibition granted by this Chapter does not relieve any person of the responsibility to obtain a permit required by any other agency, or of complying with other applicable requirements, ordinances, or restrictions.
 - (4) Failure to adhere to any applicable provision or condition of an exception to the open burning prohibition shall be construed as a violation of this Chapter and is subject to applicable provisions of the rules and statutes of the Tennessee Department of Environment and Conservation, Division of Air Pollution Control and such corrective/punitive measures that may be deemed appropriate by the Technical Secretary of the Tennessee Air Pollution Control Board.

Authority: T.C.A. §§4-5-202, 68-201-101 et seq., and 68-25-105.

This notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of September, 2006. (09-12-06)