



<b>Title: Open Burning</b>
<b>Number: 2018-01-03</b>
<b>Rule Chapter: Nuisance</b>

## SECTION I – GENERAL PROVISIONS

### 1.01 Purpose.

The purpose of this rule is to provide an effective process to protect, preserve, and facilitate the enjoyment and use of the scenic, natural and air quality resources of Mesa County through the reduction, prevention and control of air pollution due to residential, non-agricultural open burning activities. It is hereby recognized and declared that the open burning of residential household trash is an unnecessary, noxious practice and a public nuisance. It is, therefore, the intent of this Rule to establish and provide for the enforcement of a local open burning control program to limit and abate air pollution from the open burning of prohibited materials, and authorize open burning of such allowed materials as herein defined, wherein hazards associated with air pollution emissions are negligible.

### 1.02 Implication to health.

According to the Environmental Protection Agency (EPA), smoke from burning organic matter is made up of a complex mixture of gases and fine particles (also called particle pollution, particulate matter, or PM). The microscopic particles (PM 2.5) can cause burning eyes, runny nose, and illnesses, such as bronchitis. Fine particles can make asthma symptoms worse and trigger asthma attacks. Fine particles can also trigger heart attacks, stroke, irregular heart rhythms, and heart failure, especially in people who are already at risk for these conditions.

Long term exposure to fine particles can be linked to cancer and have harmful development and reproductive effects.

The particles in wood smoke can reduce visibility and create environmental and aesthetic damage in our communities and scenic areas.

## SECTION II – AUTHORITY

*Colorado Air Quality Control Commission Regulation No. 9 (5 CCR 1001-11)*

Authority for MCPH to issue open burn permits is provided through the annual air quality contract between the Colorado Department of Public and Environmental Health and MCPH.

### 2.01 C.R.S. §25-1-506. County or district public health agency.

3(b)(V) To investigate and control the causes of epidemic or communicable diseases and conditions affecting public health;

3(b)(VIII) To investigate and abate nuisances when necessary in order to eliminate sources of epidemic or communicable diseases and conditions affecting public health;



3(b)(XIII) To make necessary sanitation and health investigations and inspections, on its own initiative or in cooperation with the state department, for matters affecting public health that are within the jurisdiction and control of the agency.

**2.02 C.R.S. §25-1-508.** *County or district boards of public health - public health directors.*

(c) (I) To select a public health director to serve at the pleasure of the county or district board.

**2.03 C.R.S. §25-1-5095.** *County and district public health directors.*

(2) In addition to the other powers and duties conferred by Title 25 part 5 or by the agency, a public health director has the following powers and duties:

(a) To administer and enforce: (I) The public health laws of the state and, as authorized by the provisions of title 25 or article 20 of title 30, C.R.S., the public health orders, rules, and standards of the state department or the state board; and (II) The orders and rules of the county or district board;

(b) To exercise all powers and duties conferred and imposed upon agencies not expressly delegated by the provisions of Title 25 part 5 to a county or district board; (c) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of his or her powers and duties.

**2.04 C.R.S. §25-1-518.** *Nuisances.*

(1) Removal of nuisances. The county or district Board of Public Health shall examine all nuisances, sources of filth, and causes of sickness, which, in its opinion, may be injurious to the health of the inhabitants, within its town, city, county, or district, and it shall destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, as the case may require.

(2) Expense for abating nuisance. If any property owner, occupant or other responsible person neglects to remove or abate any nuisance or to perform any requirement made by or in accordance with this rule, and if any expense is incurred by the Mesa County Board of Public Health in removing or abating the nuisance or in causing such duty or requirement to be performed, such expense may be recovered by the board in an action against such person or company. In all cases where the board incurs any expense for draining, filling, cleaning, or purifying any lot, place, or premises, or for removing or abating any nuisance found upon such lot or premises, the board, in addition to all other remedies, may provide for the recovery of such expense, charge the same or such part thereof as it deems proper to the lot or premises upon or on account of which such expense was incurred or from which such nuisance was removed or abated, and cause the same to be assessed upon such lot or premises and collected as a special assessment.

### **SECTION III – DEFINITIONS**

1. **Agricultural open burning:** Any open burning activity conducted in the course of agricultural or commercial crop production, or cultivation, involving the open burning of cover vegetation for the purpose of preparing the soil, controlling weeds and maintaining irrigation and drainage ditches, water courses and fence lines. The burning of tree trimmings from orchards is considered agricultural open burning.
2. **Allowed Materials:** Dry weeds, garden waste, and tree, shrub or brush trimmings less than one inch (1") in diameter which constitute annual vegetative growth common to residential or commercial property.
3. **Authorized Personnel:** Individuals or agencies granted the power or right to enforce open burning permit regulations, which can include Colorado Department of Public Health and Environment Air Pollution Control, Mesa County Public Health, law enforcement agencies and/or local fire protection officers.
4. **Bonfire:** An outdoor fire utilized for ceremonial purposes which is limited to a solid wood fuel size of 8 feet in diameter and 4 feet high and conducted by nonprofit organizations, religious institutions, school districts, or governments.
5. **Burn supervisor:** A property owner or assigned agent responsible for ensuring a burning event follows permit conditions.
6. **Clean lumber:** Wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure treated by chemical compounds.
7. **Commercial or industrial waste:** Waste from premises used for the purpose of trade or business or waste produced by industrial activities. Landscaping business waste is considered commercial waste.
8. **Farm:** A parcel of land that is used to produce agricultural products that originate from the land's productivity for the primary use of obtaining a monetary profit; i.e., crops that have been raised, harvested, and or sold.
9. **Fire Pit/Fire Ring:** A pit dug into the ground or made from stones, masonry etc. for keeping a fire contained.
10. **Fire official:** The Fire Chief or other designated authority charged with the administration and enforcement of local fire ordinances and/or the most recently adopted version of the International Fire Code (IFC) as a duly authorized designee.

11. Household waste: Any waste material, trash, garbage, rubbish, wastepaper, cardboard, wood, fabric, or other material not specifically listed under *Allowed Materials*, derived from households including single and multiple residences, hotels and motels and other places used for temporary or permanent human habitation.
12. Livestock: Domestic animals that are used for food for human or animal consumption, breeding, draft or profit.
13. Non-attainment area: An area which has been designated under the Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the Federal Environmental Protection Agency (EPA).
14. Open Burning: The burning of any material or substance in the ambient air on any open premises, public street, alley or other land adjacent to such premises, or in a receptacle where emissions are released directly into the air without passing through a chimney or stack. Open burning does not include road flares, detonation of manufactured explosives, smudge pots and similar devices associated with safety or occupational uses typically considered open flames, recreational fires or portable outdoor fireplaces.
15. Permit Conditions: A listing of conditions applicable to good fire safety and air pollution control practices generally included in the open burning permit.
16. Pile Burning: Burning of vegetative material that has been concentrated by manual or mechanical methods.
17. Prohibited Materials: Materials that are illegal to burn due to their composition and potential to release toxic chemicals and particulates into the air including the following: residential household trash, food waste, leaf or grass clippings piles, wood residue, coated or treated wood products, car bodies, aerosol cans, commercial and industrial waste including commercial landscape waste, building construction or demolition waste (includes clean or treated wood), rubber/tires, plastics, waste petroleum, motor oil and asphaltic compounds, asbestos-containing materials, insulation, including insulated wire or other dense or toxic smoke producing substances.
18. Ranch: A parcel of land that is used for grazing livestock for the primary purpose of obtaining a monetary profit.
19. Recreational fire: A wood burning outdoor fire, typically in a homemade enclosure constructed of rocks or bricks or other material which the Fire Official deems safe for the purpose. Recreational fires are for pleasure, religious, ceremonial, cooking, warmth or similar purpose and are not portable. The total fuel area is limited to 3 feet or less in diameter and 2 feet or less in height.

20. Residential (non-agricultural) open burning: Open burning of vegetative material as defined herein for purposes of disposal of such material that originated on the property. These open burn activities are not conducted to support a commercial agricultural operation and are therefore not exempt from air quality and smoke control rules and regulations. Residential open burning is not allowed on a property parcel less than one acre in size.
21. Rubbish: Combustible and noncombustible waste materials, including residue from the burning of coal, wood, coke, or other combustible material, paper, rags, cartons, tin cans, metals, mineral matter, glass crockery, dust and discarded refrigerators, and heating, cooking or incinerator type appliances.
22. Salvage operation: Any operation to salvage or reclaim any material for use or sale, such as reprocessing of used motor oils, metals, wire, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards.
23. Smoke management: The use of techniques to reduce smoke emissions, dilute smoke, identify and reduce the impact of smoke on smoke-sensitive areas, monitor and evaluate smoke impacts from individual and collective burns.
24. Smoke sensitive areas or receptors: Class I areas and other locations of scenic and/or important vistas, especially during periods of significant public use, urban and rural population centers, schools, hospitals, nursing homes, transportation facilities such as roads and airports, recreational areas, and other locations that may be sensitive to smoke impacts for health, safety, and/or aesthetic reasons.
25. Vegetative material/Plant material, including:
  - a. Bushes, shrubs and clippings from bushes and shrubs resulting from the maintenance of yards or other private or public lands. Nothing shall be larger than 1" in diameter;
  - b. Field stubble, grass (not in piles), and weeds in fields, and vegetation along fences, ditches/ditch banks; and
  - c. Wood waste, including chipped tree stumps, tree limbs, bark, and scraps resulting from maintenance or trees. Nothing shall be larger than 1" in diameter and shall not have been treated with any compound(s) containing chromium, copper, arsenic, pentachlorophenol, creosote, tar or paint.
26. Wood residue: Bark, sawdust, slabs, chips, shavings, mill trim, and other wood by-products derived from wood processing operations.
27. Yard waste: Conifer needles, bushes, shrubs, and clippings from bushes and shrubs which result from the maintenance of yards or other private or public lands.



## **SECTION IV – OPEN BURNING REQUIREMENTS**

1. All open burning shall be conducted in accordance with the Mesa County Public Health Open Burning Guide provided on the Mesa County Public Health website.
2. The property owner or their agent shall obtain a valid open burn permit for the time period in which the open burning is to occur.
3. All open burning activity must conform to the conditions of locally applicable fire prevention codes and requirements.
4. All permit conditions generally included in the permit shall be applicable to the property owner or their agent(s) responsible for engaging in open burning activity and may be used for enforcement purposes.
5. Agricultural open burning may be conducted throughout the calendar year.
6. Agricultural open burn permits are no-fee.
7. Residential open burning is restricted to two burn seasons: Spring season (March 1-May 31) and Fall season (September 1- October 30). Annual residential open burn permits are valid for both burn seasons in the calendar year they are issued.
8. The fee for annual residential open burn permits is established by local fire districts and may be periodically reviewed and revised. Fee-issued permits are non-refundable.
9. Open burn permits are not valid during periods of publically announced air pollution emergencies, weather or fire safety alerts in the proposed burn area.
10. Open burning shall be conducted at least 50 feet from any structure (including combustible fences), occupied dwelling(s), workplace(s) or any other place(s) where people congregate, which is on property owned by or under possessory control of another person.
11. Open burning shall begin no earlier than one hour after sunrise and shall be extinguished no later than one hour before sunset, and shall at all times be attended by a competent person (burn supervisor) until fully extinguished. The burn supervisor shall be in immediate possession of a valid open burn permit and shall have an adequate extinguishing source available for immediate use sufficient for the type and size of the fire as determined in the sole discretion of the Fire Official or his designee.
12. No person shall burn upon the land of another without permission of the owner thereof.
13. The vegetative material to be burned shall be as dry as practicable.



**14. Prohibited open burning:**

- i. Open burning as part of any salvage operation is prohibited.
- ii. The burning of household waste or rubbish is prohibited including, but not limited to:
  - a. Leaf or grass clipping piles;
  - b. Natural or synthetic rubber products, including tires;
  - c. Waste oil and/or used oil filters and any waste automotive, machine fluid or lubricant, pesticide, herbicide and/or any other chemical, process fluid or the constituents thereof;
  - d. Insulated wire;
  - e. Plastic, including polyvinyl chloride ("PVC") pipe, tubing, and connectors;
  - f. Tar, asphalt, asphalt shingles, or tar paper;
  - g. Railroad ties;
  - h. Wood, wood residue, or lumber which has been painted, stained or which has been treated with preservatives containing arsenic, chromium, pentachlorophenol, or creosote;
  - i. Batteries;
  - j. Motor vehicle bodies;
  - k. Pathogenic wastes;
  - l. Asbestos or asbestos containing materials; or
  - m. Similar dense or toxic smoke producing substances.

**15. Unrestricted burning: (Unrestricted burning may be limited during air quality bans or weather related bans)**

An open burn permit is *not* required for the following:

- a. The burning for maintenance of canals, irrigation and drainage ditches owned and operated by a Drainage District or Canal and/or Irrigation Company or District;
- b. Cooking Fires:
  - (i) Open-flame cooking devices in the form of LP-gas or charcoal burner grills that are subject to regulatory and safety provisions stated in the most recently adopted International Fire Code.
  - (ii) Solid-wood fueled cooking fires utilized in outdoor kitchens (permanent masonry fireplaces/pizza ovens), barbecue (also BBQ) smoke houses, BBQ smokers and in-ground cooking pits or devices.
- c. Propane, natural gas and wood burning permanent and portable fireplaces and fire pits;
- d. Other liquid-fueled or gas-fueled open-flame devices in the form of heaters and decorative devices such as tiki-torches, lanterns, candles or similar items;
- e. Recreational fires located in developed municipal, county or state-approved picnic or campground areas contained in portable or non-portable fire pits or fire grates furnished at the picnic or campground area;
- f. Burning (flaring) of natural gas at the sewer treatment plant and when performed in conjunction with drilling, completion and workover operations of oil and gas wells



and when the flaring operation of the wells is reasonably necessary in the opinion of the well operator to avoid serious hazard to safety, and;

- g. Fires used for instructional or training purposes.
- h. Bonfires conducted by nonprofit organizations, religious institutions, school districts, or governments. A fire safety permit from the local fire jurisdiction is required.

## **SECTION V – AGRICULTURAL OPEN BURNING**

1. Agricultural burning is exempt from state smoke control regulations and permitting; however, a fire safety permit, known as an Agricultural Open Burn Permit, issued by Mesa County Public Health in partnership with local fire districts is required. This allows residents to receive consistent fire safety education printed on each permit and notifies the local fire jurisdiction of the plan to conduct open burning.
2. The land use of commercial farms and ranch properties is typically designated as agricultural by the Mesa County Assessor. Property owners conducting agricultural open burning as defined herein on property that does not have agriculture as the designated land use per the Mesa County Assessor must apply for a variance from Mesa County Public Health and meet the variance criteria prior to receiving an agricultural open burn permit. The variance form is available on the Mesa County Public Health website. If the property owner cannot meet the variance criteria, they may apply for a residential open burn permit.
3. Open burning of animal parts or carcasses is not agricultural burning (unless the State Agriculture Commissions declares a public health emergency that requires the burning of diseased animal carcasses).
4. Agricultural open burning includes the following activities:
  - a. Irrigation ditch burns for the purpose of maintaining water conveyance structures;
  - b. Burning of vegetative detritus that accumulates in a reservoir;
  - c. Prescribed fires on public land used exclusively as a commercial farm;
  - d. Burning stubble from a commercial annual row;
  - e. Broadcast burns or pile burns to dispose of tree materials and brush that are to improve forage for livestock on operating ranches;
  - f. Burning of fruit tree, vine prunings, and cull trees in and from an active commercial orchard or nursery; and
  - g. Burning for the management, control or eradication of pestilence, plague and/or other disease, insects, vermin or other agricultural emergency.
  - h. Other open burn activities related to commercial agricultural practices as determined by MCPH.
5. Open burning of yard debris on agricultural land is not agriculture burning and is not exempt from state smoke control regulations.





6. Pile burning is generally presumed *not* to be agricultural open burning because pile burning is seldom integral to the raising of cultivated crops or livestock.

## **SECTION VI – RESIDENTIAL (NON-AGRICULTURAL) OPEN BURNING**

1. When burning vegetative material as defined herein, a permit is required and activities shall maintain strict adherence to the permit issued.
2. Residential open burning is not allowed on a property parcel less than one acre in size. Alternatives to open burning for properties less than one acre in size can include but are not limited to disposal at a composting facility, back yard composting, and/or chipping and mulching.
3. Residential open burning by the property owner or agent shall not exceed ten acres per day, or burning of piled vegetative material does not exceed 250 cubic feet of pile volume per day. In determining acreage, daily burn area and daily burn pile volume, property, areas or piles that are within three hundred feet of each other shall be considered to constitute a single burn if the burning occurs on the same day and on property under ownership or possessory control of the same person. Burning in excess of these daily limits shall be presumed to constitute a nuisance and be subject to enforcement actions including fines.
4. If the property is less than one acre in size, open burning may only be conducted to maintain irrigation ditches and laterals. A no-fee, limited focus burn permit must be obtained from the local authority prior to burning.
5. The burning of vegetative material in excess of 1-inch in diameter is prohibited.
6. The burning of tree stumps, and leaf or grass clippings piles is prohibited.

## **SECTION VII – INVESTIGATION & COMPLIANCE**

Code Compliance Services may initiate investigation following a citizen complaint, staff observation, or other information revealing a possible public health violation. Investigation and compliance actions will be according to Standard Operating Procedures adopted by Code Compliance Services or Mesa County Public Health.

## **SECTION VIII – ENFORCEMENT**

The Board of Public Health may pursue any and all legal actions available to the Board under Colorado law for the enforcement of any violations related to nuisances, sources of filth, or causes of sickness. Actions can include but are not limited to, criminal and civil actions and penalties, injunctions, and abatement.