

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF AIR QUALITY

REPORT OF PROCEEDINGS OF PUBLIC HEARING
ON AMENDMENTS TO THE RULE 15A NCAC 02D .1903 OPEN BURNING
WITHOUT AN AIR QUALITY PERMIT TO INCORPORATE
REQUIREMENTS OF SECTION 24.(d) of S.L. 2014-
120 AND TO THE RULE 15A NCAC 02D .1902.

July 21, 2015
RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

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CONTENTS

CHAPTER I	Summaries and Recommendations	I-1
	Background and Summary	I-1
	Comments and Responses Thereto	I-2
	Summary Of Comments and Responses	I-7
	Conclusion	I-8
	Hearing Officer’s Recommendation	I-9
CHAPTER II	Rules Proposed for Amendments	II-1
CHAPTER III	Report of Proceedings	III-1
	Introduction	III-1
	Designation of Hearing Officer	III-2
	Public Notice	III-3
	Transcript	III-5
CHAPTER IV	Exhibits	IV- 1
	Proposed Rules as Presented at the Hearing	IV-2
	Hearing Officer Comments at Hearing	IV-8
CHAPTER V	Written Comments During Comment Period	V-1
CHAPTER VI	Attachments	VI-1
	Regulatory Impact Analysis	VI-2
	Session Law 2014-120, Section 28, Effective Date: the 18th day of September, 2014	VI-16
CHAPTER VII	Documentation	VII-1

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CHAPTER I

Summaries and Recommendations

Proposed amendments to Rules 15A NCAC 02D .1902, Definitions, and 15A NCAC 02D .1903, Open Burning without an Air Quality Permit.

BACKGROUND AND SUMMARY

A public hearing was held in Raleigh, NC on July 21, 2015 to receive public comments on amendments to Rules 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, and 15A NCAC 02D .1902, Definitions, which propose changes to the open burning rules for adoption by the Environmental Management Commission (EMC) to fulfill the implementation requirements of Section 24.(c) of S.L. 2014-120.

The current version of the Rule 15A NCAC 02D .1903 prohibits 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.

The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014 to require the EMC to adopt a rule that pertains to residential open burning without an air quality permit. Section 24.(b) of S.L. 2014-120 mandates that the EMC and the Division of Air Quality (DAQ) shall implement 15A NCAC 02D .1903, Open Burning, without an Air Quality Permit, as provided in Section 24.(c) of S.L. 2014-120, which adds logs and stumps to the list of permissible open burning without an air quality permit and specifies that 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 exceptions listed in Section 24.(c).

Amendments to the Rule 15A NCAC 02D .1903 are governed by Section 24.(d) of S.L. 2014-120 which dictates that: “The Commission shall adopt a rule to amend the Rule 15A NCAC 02D .1903 (Open Burning Without an Air Quality Permit) consistent with Section 24.(c) of S.L. 2014-120. 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 S.L. 2014-120 of this section”.

The Rule 02D .1902, Definitions, contains the definition of “Nuisance” as 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. At the same time, Section 24.(c) of S.L. 2014-120 requires that residential open 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 exceptions. Removing the condition that the burning does not create a nuisance from the Subparagraph .1903(b)(1)(E) and the definition of nuisance from the Paragraph .1902(10) is an attempt to resolve these conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies for implementation of the rule.

The Regulatory Impact Analysis states, “Eliminating the restriction of not causing a nuisance may result in the potential additional adverse impacts to the public, to which generally available general nuisance laws could be the only remaining remedy”. It further explains that “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”.

Rules adopted pursuant to Section 24 of S.L. are not subject to review by the Rules Review Commission (RRC) under 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). This means that the rules automatically return to the legislature for their review prior to becoming effective which provides opportunity for the legislature to address concerns with the rule language.

The Division of Air Quality (DAQ) began implementing the provisions of Section 24.(c) of the S.L. 2014-120 when it became effective on September 18, 2014. That statutory implementation of revision to the 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 removes 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 following legislative review as required by Section 24.(d) of S.L. 2014-120.

DAQ completed a regulatory impact analysis pursuant to the North Carolina Administrative Procedures Act (APA) and determined the proposed amendments did not require a fiscal note. That analysis has been reviewed and found adequate by the Office of State Budget and Management (OSBM), with little or no impact on state and local governments.

PUBLIC COMMENTS AND RESPONSES THERETO

Comment: Ms. Mary Maclean Asbill of the Southern Environmental Law Center (SELC) asked for clarification regarding striking the language that the burning is not creating a nuisance in the proposed rule .1903 and elimination of the definition of nuisance in the Rule .1902 and how this is inspired by the session law.

Response: The current Rule 02D .1902, applies the definition of nuisance to lower impact material such as residential vegetation to be burned without a permit. At the same time, Section

24(c) of S.L. 2014-120 requires that such open 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. The proposed removal of the condition that the burning does not create a nuisance from the Subparagraph .1903(b)(1)(E) and the definition of nuisance from the Paragraph .1902(10) is an attempt to resolve these conflicting provisions in the exceptions relative to what is considered to be a nuisance.

In developing language staff considered the principles applicable to rule development in G.S. 150B-19.1 and the standards under which rules are typically reviewed in G.S. 150B-21.9. G.S. 150B-21.9 indicates that the standards typically applied in review of a rule are: (1) It is clear and unambiguous; (2) whether it is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and (3) the Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

Comment: Ms. Laura Wenzel, manager of Medical Advocates for Healthy Air, an initiative of Clean Air Carolina, noted that the DAQ impact analysis shows that eliminating the restrictions of not causing a nuisance may result in the potential additional adverse impacts to the public and that general nuisance laws were the only remaining remedy. While the law removes the requirements of an air quality permit for residential debris burns and authority for the DAQ to investigate nuisance complaints, it does not discharge the DAQ of its responsibility to protect public health.

Ms. Wenzel advised the DAQ to initiate the following measures to protect public health: (1) provide information regarding the impacts of open burning on air quality and potential health consequences to other agencies such as the NC Forest Service and the NC Department of Agriculture that also issue burning permits and (2) assist county health departments and hospitals with warning people residing downwind of potential burning sites for adverse health effects and ways to mitigate them.

Response: In consideration of the Session Law, the DAQ recognized, from its experience in implementing the rule, that stumps and logs that are greater than six inches in diameter tend to burn longer and have the potential for higher impact than other permissible open burning materials. However, Section 24.(b) deems that the burning of logs or stumps of any size shall not be considered to create a nuisance. Nevertheless, the current open burning rules apply the definition of nuisance to burning of lower impact material such as leaves and twigs. From an equity standpoint, it seems that lower impact material such as leaves and twigs also shall not be considered to create a nuisance. That is the logic behind proposing to remove the definition of nuisance from rule .1902.

Section 24.(d) of the S.L. 2014-120 states that the rules adopted pursuant to this section shall become effective following legislative review 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). The DAQ is implementing this requirement as directed by Section 24.(d) to bring the North Carolina Administrative Code into alignment with the legislative mandates.

The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects.

1. The DAQ maintains websites <https://xapps.ncdenr.org/aq/ForecastCenter> and <http://www.ncair.org/enf/openburn/> designed to warn the public of unhealthy weather conditions when all open burning is prohibited and to assist general public with understanding health impacts and requirements associated with open burning.

The DAQ also maintains “EnviroFlash” - an electronic information system designed to communicate environmental issues to the public. “EnviroFlash” is a partnership between the Environmental Protection Agency (EPA) and state and local air quality agencies (<http://www.ncair.org/airaware/enviroflash/>). The “EnviroFlash” provides customers with timely air quality information including information about open burning prohibition days.

2. The web site of the NC Forest Service http://ncforestservice.gov/burn_permits/burn_standard.asp encourages permittees to get familiar with open burning instructions, rules, and regulations, before applying for an open burning permit. The site also contains links to the DAQ websites on open burning.

Comment: Mr. R. Scott Davis, Chief, Air Planning and Implementation Branch, United States Environmental Protection Agency Region 4 commented that Paragraph (b) outlines the types of open burning are permissible without an air quality permit and the proposed change now includes logs and stumps in the list of items that can be burned. The prehearing submission contained a fiscal analysis for these additional items but did not contain a 110(1) demonstration to address how this proposed change will affect the national ambient air quality standards (NAAQS). Mr. R. Scott Davis asked to address 110(1) in the final submission to assure that air quality is not impacted by this change to the State Implementation Plan (SIP).

Response: A Clean Air Act Section 110(1) noninterference with maintenance of the NAAQS demonstration for the open burning rule amendments will be submitted in the final submission of the amended rules.

Comment: Mr. R. Scott Davis, Chief, Air Planning and Implementation Branch, United States Environmental Protection Agency Region 4, noted that the added text in the subparagraph (b)(1)(E) "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 Subparagraph," does not include all of the types of open burning that are permissible without an air quality permit in paragraph (b)(1). It appears that not including all types in this subparagraph will be inconsistent with Section 24.(c) of the S .L. 2014-120. He requested an explanation of how this change is consistent with the provisions of Section 24.(c) of the S.L. 2014-120.

Response: The current Rule 02D .1902, applies the definition of nuisance to lower impact material such as residential vegetation to be burned without a permit. At the same time, Section

24.(c) of S.L. 2014-120 requires that such open 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 exceptions. The proposed removal of the condition that the burning does not create a nuisance from the Subparagraph .1903(b)(1)(E) and the definition of nuisance from the Paragraph .1902(10) is an attempt to resolve these conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9.

G.S. 150B-21.9 indicates that the RRC must determine: (1) It is clear and unambiguous; (2) whether it is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and (3) the Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

Comment: Mr. R. Scott Davis, Chief Air Planning and Implementation Branch, United States Environmental Protection Agency Region 4 noted that the definition of nuisance has been removed, however it affects this section. He requested an explanation of how allowing the burning of logs and stumps will not cause a nuisance or "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."

Response: In consideration of the Session Law, the DAQ recognized, from its experience in implementing the rule, that stumps and logs that are greater than six inches in diameter tend to burn longer and have higher burning impact than other permissible open burning materials. However, Section 24.(b) deems that the burning of logs or stumps of any size shall not be considered to create a nuisance as a matter of law. Nevertheless, the current open burning rules apply the definition of nuisance to burning of lower impact material such as leaves and twigs. From an equity standpoint, it seems that lower impact material such as leaves and twigs also shall not be considered to create a nuisance. That is the logic behind the proposed removal of the definition of nuisance from rule .1902.

Section 24.(d) mandates that the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of Section 24.(c). The Section 24.(d) of the S.L. 2014-120 states that the 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). The rule automatically returns to the legislature for a review prior to becoming effective.

Comment: Mr. Terry Koonce commented that someone who owns a tree cutting service and property near him brings material there and burns it periodically which results in Mr. Koonce's residence being inundated with smoke and ash getting on his property when the wind shifts.

Response: Pursuant to changes incorporated into 02D .1903 to reflect S.L. 2013-413 Section 28.(c), such burning is permissible without an air quality permit so long as the criteria regarding pile size and frequency of burning in 02D .1903 are met.

Overall Response:

Upon consideration of the comments received the hearing officer has concluded the following.

SL 2014-120 mandated that rule 15A NCAC 02D.1903 be amended, and that the amended rule be "substantively identical to" the provisions of 24(c) of the law.

Section 24(c) reads:

"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 synthetic materials, are not burned.
- (4) The burning is initiated no earlier than 8AM and no additional combustible material is added to the fire between 6PM on one day and 8AM 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 the purposes of the application of the open burning air quality permitting exception described in this subsection."

Removing of condition (5) (prohibition against creating a nuisance), as well as the definition of "nuisance" in .1902 is neither necessary nor desirable.

Prior to the changes enacted in 2014-120, it was possible, and in fact did occur, that open burning of the allowed materials (i.e., not stumps or logs) could and did create a nuisance in some cases.

Notwithstanding that the law stipulates that the burning of stumps or logs cannot, by definition, create a nuisance, this does not preclude the possibility that the burning of other permitted materials could create a nuisance, just as it sometimes did before the enactment of 2014-120.

Removal of condition (5) also implies that in all cases logs or stumps will be a part of what is being burned, and therefore no nuisance can possibly be created. This is obviously not the case.

Therefore, in light of comments received from the public, as well as the clear language of SL 2014-120, the hearing officer recommends that the rule be modified to incorporate the language

contained in section 24(c) of the law verbatim. This language retains condition (5), as well as the definition of "nuisance" at .1902.

The definition of nuisance in 02D .1902(10), 02D .1903(b)(1)(E) and the phrase “and which do not create a nuisance” in 02D .1903(b)(3) have been restored in the rules as reflected in Chapter II of this hearing report.

SUMMARY OF COMMENTS AND RESPONSES

<u>Comment</u>	<u>Response</u>
Elimination of the language that the burning is not creating the nuisance and the definition of the nuisance in the rule .1902.	The proposed elimination of the language is an attempt to resolve these conflicting provisions. The language originally proposed to be deleted has been restored as reflected in Chapter II.
Removing the requirements of an air quality permit for residential debris burns and authority for the DAQ to investigate nuisance complaints, does not discharge the DAQ of its responsibility to protect public health.	The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects.
Provide information regarding the impacts of open burning on air quality and potential health consequences to other agencies such as the NC Forest Service and the NC Department of Agriculture that also issue burning permits.	No changes. The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects.
Assist county health departments and hospitals with warning people residing downwind of potential burning sites for adverse health effects and ways to mitigate them.	No changes. The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects.
Assure that air quality is not impacted by this change to the SIP.	No changes. Section 110(l) noninterference with maintenance of the NAAQS demonstration for the open burning rule amendments will be submitted in the final submission of the amended rules.
The added text in the subparagraph (b)(1)(E) doesn't include types of open burning that are permissible without an air quality permit which is inconsistent with Section 24.(c) of the S.L. 2014-120.	The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in

<u>Comment</u>	<u>Response</u>
	G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.
How allowing the burning of logs and stumps will not cause a nuisance or "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.	The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.
Open burning of materials permissible to be burned without air quality permit on private property results in smoke inundating and ash getting on neighboring property when the wind shifts	The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.

CONCLUSION

Four persons provided comments on the proposed amendments to the open burning rules during the comment period for the hearing record.

One person asked for clarification regarding striking the language that open burning is not creating a nuisance in the proposed rule .1903, elimination of the definition of the nuisance in the Rule .1902, and clarification of how this is inspired by the session law. The proposed elimination of the language is an attempt to resolve these conflicting provisions. The language originally proposed to be deleted has been restored as reflected in Chapter II.

A second person commented that while the law removes the requirements of an air quality permit for residential debris burns and authority for the DAQ to investigate nuisance complaints, it does not discharge the DAQ of its responsibility to protect public health. She also advised the DAQ to initiate measures for public health protection caused by the open burning. The DAQ already partners with other groups to provide outreach on information on the requirements of the open burning rules including the potential for adverse health effects.

The third person asked the agency to address 110(1) in the final submission to assure that air quality is not impacted by this change to the SIP. He also requested explanations of how the rule changes are consistent with the provisions of Section 24.(c) of the S.L. 2014-120 and how allowing the burning of logs and stumps will not cause a nuisance. The proposed removal of the condition that the burning does not create a nuisance was an attempt to resolve conflicting provisions in the exceptions relative to what is considered nuisance by not including what appeared to be logical difficulties and inconsistencies in implementing the rule when considering the criteria typically applied in review of rules in G.S. 150B-21.9. Upon consideration of comments, the language originally proposed for deletion in 02D .1902(10) and .1903(b)(1)(E) and (3) is restored as reflected in Chapter II of this hearing record.

The fourth person commented regarding open burning of vegetative material by another person who offers a tree cutting service occurring on property near his property and its impacts. The commenter noted that the person brings materials permissible to be burned to property the burner owns across the road from the commenter's home and burns it which results in smoke inundating and ash getting on the commenter's property when the wind shifts. Pursuant to changes incorporated to reflect S.L. 2013-413 Section 28, such burning of land clearing or right of way maintenance material is permissible so long as the criteria regarding setback distance, pile size, frequency of burning and other criteria in 02D .1903(b)(2) are met.

As discussed in the overall response to comments on page I-6, in consideration of the comments received on the proposal, the hearing officer is recommending that the proposed deletion of the definition of nuisance in 02D .1902 and proposed deletion of 02D .1903 (b)(1)(E) criteria that "The burning does not create a nuisance," which mirrors S.L. 2014-120 24.(c)(5), be removed and the rule language restored to more closely reflect the statutory language of S.L. 2014-120 Section 24.(c). The definition of nuisance in 02D .1902(10), 02D .1903(b)(1)(E) and the phrase "and which do not create a nuisance" in 02D .1903(b)(3) have been restored in the rules as reflected in Chapter II of this hearing report.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

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CHAPTER II

Rule Change Formatting Key

Chapter IV of this hearing record represents the proposed rules as noticed in the *North Carolina Register* for public comment.

Chapter II represents the proposed rules as published with changes made in response to comments received during the public comment period incorporated.

For Rule Amendments:

~~Text~~ = deleted text

Text = added text

~~Text~~ = existing text in what was published in the *North Carolina Register* (NCR) that is proposed to be deleted following the comment period

Text = text proposed to be added to what was published in the NCR following the comment period

~~Text~~ = text initially proposed in the NCR to be deleted that is restored following the comment period

~~Text~~ = text proposed in the NCR to be added that is deleted following the comment period

Note: For new rules proposed for adoption, all text is initially underlined. If there are changes to the proposed new rule following publication in the NCR, the underlining is removed, deleted text is struck through, added text is underlined, and there is no highlighting.

1 15A NCAC 02D .1902 is proposed for amendment with changes as published in 29:24 NCR 2786-2788 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) "HHCU" means the Health Hazards Control Unit of the Division of Public Health.
- 27 (7) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for
28 buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or
29 industrial development; mining activities; or the initial clearing of vegetation to enhance property
30 value; but does not include routine maintenance or property clean-up activities.
- 31 (8) "Log" means any limb or trunk whose diameter exceeds six inches.
- 32 (9) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.
- 33 (10) "Nuisance" means causing physical irritation exacerbating a documented medical condition,
34 visibility impairment, or evidence of soot or ash on property or structure other than the property on
35 which the burning is done.

1 ~~(11)(40)~~ "Occupied structure" means a building in which people may live or work, or one intended
2 for housing farm or other domestic animals.

3 ~~(12)(41)~~ "Off-site" means any area not on the premises of the land-clearing activities.

4 ~~(13)(42)~~ "Open burning" means the burning of any matter in such a manner that the products of
5 combustion resulting from the burning are emitted directly into the atmosphere without passing
6 through a stack, chimney, or a permitted air pollution control device.

7 ~~(14)(43)~~ "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)(44)~~ "Permanent site" means for an air curtain burner, a place where an air curtain burner is
10 operated for more than nine months.

11 ~~(16)(45)~~ "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)(46)~~ "Pile" means a quantity of combustible material assembled together in a mass.

16 ~~(18)(47)~~ "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant
17 material from a residence by a governmental agency, private company contracted by a governmental
18 agency, or municipal service.

19 ~~(19)(48)~~ "Public road" means any road that is part of the State highway system; or any road, street,
20 or right-of-way dedicated or maintained for public use.

21 ~~(20)(49)~~ "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
24 Quality in a 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
26 and then all, 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
29 Service's smoke management program and approved by the North Carolina Forest Service. The
30 purpose of the smoke management plan is to manage smoke from prescribed burns of public and
31 private forests 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
33 shingles or asphaltic roofing materials, construction materials, packaging for construction materials,
34 wire, electrical insulation, and treated or coated wood.

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

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Eff. July 1, 1996;

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

Amended Eff. Pending Legislative Review.

1 15A NCAC 02D .1903 is proposed for amendment with changes as published in 29:24 NCR 2788-2790 as follows:

2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (I) At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.

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

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

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

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

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

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

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

18
 19 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); S.L. 2011-394, s.2;*
 20 *Eff. July 1, 1996;*
 21 *Amended Eff. March 19, 2015; July 3, 2012; July 1, 2007; December 1, 2005; June 1, 2004; July*
 22 *1, ~~1998~~, 1998;*
 23 *Amended Eff. Pending Legislative Review.*

24

CHAPTER III
REPORT OF PROCEEDINGS

Introduction

The Department of Environment and Natural Resources, Division of Air Quality, held a public hearing on July 21, 2015 at 3:00pm in Raleigh, NC.

The hearing considered the proposed amendments to the open burning rules

The proposed effective date for these rules is pending legislative review

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the North Carolina Register at least 15 days before the public hearing and posted on the North Carolina Division of Air Quality website at least 30 days prior to the public hearing.

Mr. Gerard Carroll, Chairman of Environmental Management Commission served on this hearing as a hearing officer.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

PUBLIC NOTICE

Notice is hereby given for one public hearing to be heard by the North Carolina Department of Environment and Natural Resources, Division of Air Quality concerning the proposed amendments to air quality rules.

PURPOSE:

To receive comments on amendments to open burning rules. Amendments to Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, are proposed to incorporate requirements of Session Law 2014-120, Section 24, which allows residential open burning of logs and stumps in addition to the already permissible residential open burning of leaves, tree branches, or yard trimmings under the conditions specified in the rule and specifies that burning of logs and stumps shall not be considered to create a nuisance.

The amendments to Rule 02D .1902, Definitions, 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.

NOTE: The proposed repeals and amendments considered in these hearings, if adopted, will be effective statewide and submitted to the United States Environmental Protection Agency to be included in the North Carolina State Implementation Plan (SIP); if they are later adopted by a local air pollution control agency, then that agency will enforce them in its area of jurisdiction.

DATES AND LOCATION:

July 21, 2015, 3:00 P.M.
Ground Floor Hearing Room (Rm. G19), Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604

COMMENT PROCEDURES:

All persons interested in these matters are invited to attend the public hearings. **Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing.** The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until August 14, 2015 to receive additional written statements. To be included, the statement must be

received by the Division of Air Quality by August 14, 2015.

INFORMATION:

Copies of the proposed rule changes may be downloaded at <http://daq.state.nc.us/Rules/Hearing/>. Copies of the proposals may also be reviewed at the regional offices of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, located at the following cities:

Asheville	828/296-4500
Fayetteville	910/433-3300
Mooresville	704/663-1699
Raleigh	919/791-4200
Washington	252/946-6481
Wilmington	910/796-7215
Winston-Salem	336/771-5000

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Ms. Joelle Burleson
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
(919) 707-8720 Phone/Fax
daq.publiccomments@ncdenr.gov

DATE: 6/12/2015



Sheila Holman,
DAQ Director

Transcript

A transcript of the July 21, 2015 hearing has not been prepared; however, an audio recording of the proceeding will be kept on file with the Division of Air Quality for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing as follows:

Hearing Officer

Mr. Gerard Carroll, Environmental Management Commission

Staff Members

Ms. Joelle Burleson, DAQ, DENR
Mr. Glenn Sappie, DAQ, DENR
Mr. Vladimir Zaytsev, DAQ, DENR

Members of the General Public

Ms. Laura Wenzel, Medical Advocates for Healthy Air
Mr. Terry Lansdell, Clean Air Carolina
Mr. Joe Hudyncia, NCDA&CS
Ms. Rebekah Givens, SELC
Ms. Mary Maclean Asbill, SELC
Ms. Kara Kooker, SELC
Ms. Brooks Rainey Pearson, SELC
Ms. Sarah Roberts, Medical Advocates for Healthy Air

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CHAPTER IV

EXHIBITS

<u>EXHIBIT</u>	<u>PAGE</u>
Proposed Regulations as Published in the North Carolina Register and Presented at the Hearing	IV-2
Hearing Officer comments at the public hearing	IV- 8

NORTH CAROLINA REGISTER

VOLUME 29 • ISSUE 24 • Pages 2762 - 2862

June 15, 2015

I. EXECUTIVE ORDERS	
Executive Order No. 73	2762 – 2763
Executive Order No. 74	2764
II. PROPOSED RULES	
Commerce, Department of	
Rural Electrification Authority	2765
Environment and Natural Resources, Department of	
Environmental Management Commission	2786 – 2794
Governor and Lieutenant Governor, Offices of the	
911 Board	2766 – 2783
Health and Human Services, Department of	
Child Care Commission	2783 – 2785
Occupational Licensing Boards and Commissions	
Cosmetic Art Examiners, Board of	2794 – 2802
Pharmacy, Board of	2802 – 2803
Podiatry Examiners, Board of	2803 – 2805
Public Safety, Department of	
Department	2785 – 2786
III. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	2806 – 2812
Text of ALJ Decisions	
13 EHR 17938	2813 – 2824
14 DOJ 08745	2825 – 2829
14 EDC 04419	2830 – 2841
14 OSP 05387	2842 – 2855
14 REV 05079	2856 – 2862

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leased, or maintained by the State located in the County of Wake, in the City of Raleigh and on state property located in Wake County. These Police Officers receive the minimum training as required by Criminal Justice Training and Standards Council Commission and are certified as law enforcement officers.

Authority G.S. 143B-602; 143B-91.

SECTION .0200 - FUNCTIONS

14B NCAC 13 .0201 ARRESTS

Any time an arrest is made, the following procedures will be followed:

- (1) The arresting officer must identify himself, or be clearly identified as a law enforcement officer;
- (2) Inform the individual that he is under arrest;
- (3) Inform the arrestee of the ~~cause;~~ charge or charges;
- (4) ~~Read the individual his rights;~~
- (5)(4) Transport the arrestee to a judicial official the county magistrate's office located in the Wake County Courthouse for booking; booking unless the arrestee is released subsequent to a summons or citation to appear in court; Complete the commitment papers, warrant and establish a trial date;
- (6)(5) ~~Return to office and complete report~~ Complete report(s) of arrest.

Authority G.S. 143B-602; 143B-911.

14B NCAC 13 .0202 TRAFFIC COLLISIONS

All traffic ~~accidents~~ collisions occurring on state property must be reported to State Capitol Police. All ~~accidents~~ collisions will be investigated. Those ~~accidents~~ collisions estimated to have damage over ~~four hundred one thousand dollars (\$400.00) (\$1000.00)~~ will be reported to Division of Motor Vehicles by the investigating agency. The reports of those ~~accidents~~ collisions with damage less than ~~four hundred one thousand dollars (\$400.00) (\$1000.00)~~ and not involving death or personal injury will be filed with State Capitol Police. ~~Copies of accident reports will be furnished to individuals involved and their insurance companies upon request.~~

Authority G.S. 143B-602; 143B-911.

14B NCAC 13 .0203 STATE PARKING LOTS

~~The rules and regulations adopted by the Council of State governing state parking lots will be enforced by this department. The issuing of warning tickets, citations and the towing of illegally parked vehicles are means used to enforce those rules and regulations. All state parking lots are patrolled by mobile units.~~

Authority G.S. 143-340(21),(22); 01 NCAC 04A.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02D .1902 and .1903.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www.ncair.org/rules/hearing/>

Proposed Effective Date: *These Rules 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(d) of S.L. 2014-120.*

Public Hearing:

Date: July 21, 2015

Time: 3:00 p.m.

Location: Ground Floor Hearing Room (Rm. G19), Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604

Reason for Proposed Action: *Amendments to Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, and 02D .1902, Definitions, are proposed to incorporate requirements of Session Law 2014-120, Section 24, which allows residential open burning of logs and stumps in addition to the already permissible residential open burning of leaves, tree branches, or yard trimmings under the conditions specified in the rule and specifies that burning of logs and stumps shall not be considered to create a nuisance.*

The amendments to Rule 02D .1902, Definitions, 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.

Comments may be submitted to: Ms. Joelle Burlison, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919) 707-8720, fax (919) 707-8720, email daq.publiccomments@ncdenr.gov

Comment period ends: August 14, 2015

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D – AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1900 – OPEN BURNING

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:
- Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
 - Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
 - Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (5) "Initiated" means to start or ignite a fire or reignite or rekindle a fire.
- (6) "HHCUC" means the Health Hazards Control Unit of the Division of Public Health.
- (7) "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.
- (8) "Log" means any limb or trunk whose diameter exceeds six inches.
- (9) "Nonattainment area" means an area designated in 40 CFR 81.334 as nonattainment.
- ~~(10) "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.~~
- ~~(11)(10)~~ "Occupied structure" means a building in which people may live or work, or one intended for housing farm or other domestic animals.
- ~~(12)(11)~~ "Off-site" means any area not on the premises of the land-clearing activities.
- ~~(13)(12)~~ "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- ~~(14)(13)~~ "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- ~~(15)(14)~~ "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.
- ~~(16)(15)~~ "Person" as used in 02D .1901(c), means:
- the person in operational control over the open burning; or
 - the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- ~~(17)(16)~~ "Pile" means a quantity of combustible material assembled together in a mass.
- ~~(18)(17)~~ "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency, or municipal service.
- ~~(19)(18)~~ "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- ~~(20)(19)~~ "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- ~~(21)(20)~~ "Refuse" means any garbage, rubbish, or trade waste.
- ~~(22)(21)~~ "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- ~~(23)(22)~~ "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- ~~(24)(23)~~ "Smoke management plan" means the plan developed following the North Carolina Forest Service's smoke management program and approved by the North Carolina Forest 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.

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

Authority G.S. 143-212; 143-213; 143-215.3(a)(1).

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, logs, stumps, 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; and
 - ~~(E) The burning does not create a nuisance; and~~
 - ~~(F)~~(E) 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 Subparagraph.

- (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 or transported to:
- (i) Facilities permitted in accordance with 15A NCAC 02D .1904 (Air Curtain Burners) for the operation of an air curtain burner at a permanent site; or
 - (ii) A location, where the material is burned not more than four times per year, that meets all of the following criteria:
 - (I) At least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
 - (II) There are no more than two piles, each 20 feet in diameter, being burned at one time.
 - (III) The location is not a permitted solid waste management facility.
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort ~~and which do not create a nuisance~~ and do not use synthetic materials or refuse or salvageable materials for fuel;
- (4) fires purposely set to public or private forest land for forest management practices for which burning is acceptable to the North Carolina Forest Service and which follow the smoke management plan as outlined in the North Carolina Forest Service's smoke management program;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire-extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - (A) the North Carolina Forest Service;
 - (B) the North Carolina Insurance Department;
 - (C) North Carolina technical institutes; or
 - (D) North Carolina community colleges, including:
 - (i) the North Carolina Fire College; or
 - (ii) the North Carolina Rescue College;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
 - (A) The regional office supervisor of the appropriate regional office and the HHCB have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and
 - (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional

office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and

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

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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02L .0106.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/wq/rules>

Proposed Effective Date: January 1, 2016

Public Hearing:

Date: July 20, 2015

Time: 6:30 p.m.

Location: Archdale Building Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC 27604

Reason for Proposed Action: Session Law 2014-122 (the Coal Ash Management Act of 2014) directed the Environmental Management Commission (EMC) to review its compliance boundary and corrective action rules in 15A NCAC 2L for clarity and consistency, and to report the results of its review to the Environmental Review Commission (ERC) by December 1, 2014. In its review, the EMC identified five clarity or consistency issues in Rule 15A NCAC 2L .0106 that require this rule to be revised: (1)The use of the terminology "non-permitted" in 15A NCAC 2L .0106 to refer to some activities that in fact have permits; (2)Disagreement between the EMC and a recent court ruling over the interpretation of "immediate action to eliminate the source or sources of contamination," and the relevance of 15A NCAC 2L .0106(f) to such action; (3)whether, in the context of the corrective action rule, a compliance boundary is applicable to facilities that are truly permitted, but are considered "non-permitted" under 15A NCAC 2L .0106(e); (4)the omission of permits issued under Chapter 130A of North Carolina General Statutes from the definition of "permitted" activities under rule 15A NCAC 2L .0106, even though such permits are given compliance boundaries under rule 15A NCAC 2L .0107; and (5)various technical corrections and updates to reflect the current organizational structure of the Department of Environment and Natural Resources (DENR).

Comments may be submitted to: Evan Kane, Groundwater Planning and Environmental Review Branch Chief, NC Division of Water Resources, 1611 Mail Service Center, Raleigh, NC 27699-1611, email CorrectiveActionRule@lists.ncmail.net

Comment period ends: August 14, 2015

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery

Hearing Officer's Suggested Hearing Comments

INTRODUCTION

[Hearing officer]:

Good evening ladies and gentlemen. My name is Gerard Carroll. I am a member of the Environmental Management Commission. My role as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is Ms. Joelle Burleson. She is with the North Carolina Division of Air Quality, Planning Section.

Some of the staff from the Division of Air Quality are here to assist. Ms. Burleson, please introduce the staff present.

[Ms. Burleson] (Introduces staff)

[Hearing officer]:

This afternoon we will take comments on amendments to North Carolina's open burning rules. A regulatory impact analysis has been written for the rule amendments presented in this hearing and was reviewed by the Office of State Budget and Management (OSBM) and determined not to cause substantial economic impact, to have little to no impact on state or local governments, and not to require a fiscal note. The hearing will be held according to the North Carolina Administrative Procedures Act. The public notice for this hearing has been published in the *North Carolina Register* and on the Division of Air Quality website. Copies of the notice have been sent to those on the official DAQ mailing list. I will enter the public notice, the proposed amendments and the regulatory impact analysis into the hearing record without reading them at this time.

It would be helpful if any person desiring to comment also submits a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent.

I will now open the hearing and take relevant comments on amendments to North Carolina's open burning rules.

The General Assembly enacted Session Law 2014-120 (S.L. 2014-120) on September 18, 2014. Section 24 requires the Environmental Management Commission (EMC) to adopt rule amendments that pertain to residential open burning without an air quality permit. Per the Session Law, the rule amendments are not subject to review by the Rules Review Commission. The amendments are to become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review. The amended rule must be substantively identical to the provisions of Section 24.(c) of S.L. 2014-120, which allows for residential open burning of logs of any size or stumps and which specifies that such burning shall not be considered to create a nuisance for purposes of the application of the open burning air quality permitting exception described in Rule 02D .1903, Open Burning without an Air Quality Permit.

The proposed amendments to Rule 15A NCAC 02D .1903, Open Burning without an Air Quality Permit, incorporate the requirements of Section 24 of Session Law 2014-120 and allow open burning of logs and stumps in addition to the already permissible residential open burning of leaves, tree branches, or yard trimmings under the conditions specified in the rule.and deem residential open burning of logs or stumps as not causing a nuisance for the purpose of enforcement of these residential open burning rules.

The proposed amendments to Rule 02D .1902, Definitions, 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 in Rule 02D .1903.

{ optional script if there are a large number of speakers }

[Hearing officer]: Optional Time Limit

Due to time constraints, speakers' presentations will be limited to 3 minutes. It would be helpful if speakers would also submit a written statement by the close of the comment period for inclusion into the hearing record.

[Hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[Hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until August 14, 2015, for additional written comments.

CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

INDEX OF COMMENTERS

<u>NAME</u>	<u>REPRESENTING</u>	<u>PAGE</u>
Mary Maclean Asbill	Southern Environmental Law Center	V-2
Laura Wenzel	Medical Advocates for Healthy Air	V-3
R. Scott Davis	EPA Region 4, Air Planning and Implementation Branch	V-4
Terry Koonce	Citizen	V-6

Transcribed Comment by Ms. Mary Maclean Asbill

Hi, I am Ms. Mary Maclean Asbill, the Southern Environmental Law Center. Sorry, I didn't register properly. I have more like a question than the public comment. I am a little confused reading session law and seeing the proposed rule change. I didn't understand why you have struck that burning does not create the nuisance and removed the definition of nuisance from the previous section. I didn't understand your explanation how that needs to be inspired by the session law.

Comment Regarding Revisions to Open Burning Rules to Reflect S.L. 2014-120 (529)

I am Laura Wenzel, manager of Medical Advocates for Healthy Air, an initiative of Clean Air Carolina. Our members are public health and medical professionals.

The Division of Air Quality is well aware of the public health threats that come from open burning. The toxins and particulate matter affect human health from gestation to old age. Exposure for just a few hours can trigger heart and asthma attacks and other respiratory problems and cause symptoms of suffocation, such as headaches and nausea. Prolonged exposure can cause cancer, immune system problems, obesity, neurological problems, and low birth weight. Children are more susceptible than adults: their lungs are developing, they breathe more air for their body weight, and they're closer to the ground, where toxic particles fall. The asthma epidemic is the leading cause for school absence in North Carolina.

Open burning from land clearing to which large stumps and logs are added can persist for days or weeks. Despite regulations regarding the distance an open burn must be from residences, schools and other facilities, there is no way to control where the airborne toxins and particulates will drift. These materials can travel for miles, polluting the air and endangering public health far from their source. I'm sure you can remember the smoky days in Raleigh as a result of wildfires several counties away in the summer of 2011.

The DAQ impact analysis states, "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." While the law removes the requirement of an air quality permit for residential debris burns and authority for the DAQ to investigate nuisance complaints, it does not discharge the DAQ of its responsibility to protect public health. Measures that the DAQ can initiate to protect public health include:

- 1) provide information regarding the impacts of open burning on air quality, and potential health consequences, to other agencies, such as the NC Forest Service and the NC Department of Agriculture, that do issue burn permits, and
- 2) assist county health departments and hospitals with warning people residing downwind of potential burns of the potential for adverse health effects and ways to mitigate them.

I urge the DAQ to make every effort to protect public health within the constraints of the law.

laura@cleanaircarolina.org

919 428 6296

*OBOT
Open Burning
Outreach Team
Jeff Buchelle
RRO*

*Wick
Elliott
FP on large
scale fires
& forecasting*

V-4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 14, 2015

Ms. Sheila C. Holman, Director
North Carolina Department of Environment
and Natural Resources
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Dear Ms. Holman:

Thank you for your letter dated June 15, 2015, transmitting a prehearing package regarding the North Carolina Open Burning regulations. These revisions are the subject of a public comment period beginning June 15, 2015, with written comments due by the close of business on August 14, 2015. We have completed our review of the submittal and offer comments in the enclosure.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Ms. Nacosta Ward at (404) 562-9140.

Sincerely,

A handwritten signature in blue ink that reads "R. Scott Davis".

R. Scott Davis
Chief
Air Planning and Implementation Branch

Enclosure

EPA Region 4 Comments
North Carolina Department of Environment and Natural Resources
Division of Air Quality
Open Burning Prehearing Package Dated June 22, 2015

I. Key Comments

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

Paragraph (b): This paragraph outlines the types of open burning are permissible without an air quality permit and the proposed change now includes logs and stumps in list of items that can be burned. The prehearing submission contained a fiscal analysis for these additional items but did not contain a 110(l) demonstration to address how this proposed change will affect the national ambient air quality standards. Please address 110(l) in the final submission to assure that air quality is not impacted by this change to the SIP.

II. General Comments

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

Paragraph (b)(1)(E):

a. The added text in this subparagraph “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 Subparagraph,” does not include all of the types of open burning that are permissible without an air quality permit in paragraph (b)(1). It appears that not including all types in this subparagraph will be inconsistent with Section 24(c) of the S.L. 2014-120. Please explain how this change is consistent with the provisions of Section 24(c) of the S.L. 2014-120.

b. The definition of nuisance has been removed, however it affects this section. Please explain how allowing the burning of logs and stumps will not cause a nuisance or “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.”

Burleson, Joelle

From: Koonce, Terry <tkoonce@aointl.com>
Sent: Wednesday, July 01, 2015 10:40 AM
To: daq.publiccomments@ncdenr.gov
Cc: Burleson, Joelle; Roger Dail; Fisher, Robert; Rep. George Graham; Senator Don Davis; Eric S. Rouse; Rep. John Bell
Subject: Open Burning

Public Comment On Open Burning Permits :

It is my understanding that the "Nuisance Ruling" is being considered to be removed from 15A NCAC 02D 1903 I have an example that I need some help and consideration with and this may be my only avenue to correct the problem.

I live in the county of Lenoir HWY 258 North in Kinston and I have been there for about 12 years. About two year ago it's my understand a person that owns a tree cutting service purchase the land a cross the road from my property approximately 1000' to 1200 ' ft. from my house.

What he's doing is going out and cutting tree down all over the county and surrounding counties for people and charging then to take them down and removing them from their property, Then he's transporting the trees and the debris to the lot across from my property and is burning it . This had created two or more problemsthere is now a private "dumb site" in front our neighborhood and it's attracting additional rodents to the area and Smoke's everywhere when he's burning!

I contacted Robert Fisher in the Washington office about this last year and he's telling me this guy has a permit to burn 4 times per year.

My problem is when the wind shifts it's blowing toward my property it gets ash all over my property , house, cars, outside animals etc. and you can smell smoke inside and outside of my house for days and sometimes weeks This can't be healthy .

I was think this would be avenue I could get some relief from this problem.

Any feel back or comments on this issue for some type of relief would be greatly appreciated .

Please feel free to give me a call about this matter and we can discuss in more details .

Best Regards,
 Terry A. Koonce
 3769 Hwy 258 North
 Kinston, NC 28504
 252-258-8817
 tkoonce@aointl.com

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CHAPTER VI
INDEX OF ATTACHMENTS

<u>ATTACHMENTS</u>	<u>PAGE</u>
1. Fiscal Note	VI-2
2. Session Law 2014-120, Section 24, Effective Date: the 18 th day of September, 2014	VI-16

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 *Eff. July 1, 1996;*
2 *Amended Eff. _____ ; January 1, 2015; July 1, 2007; December 1, 2005; June 1, 2004;*
3 *July 1, 1998.*
4

- (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:

VII-1

Chapter VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. ENR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 29, Issue 24, pages 2786-2790.
4. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
5. Memorandum transmitting hearing notice and proposal to local programs.
6. Submission of Filing Forms and material filed with Office of Administrative Hearings.
7. Executive Order No. 70 Certification Form
8. Letter notifying EPA of hearing.
9. Letter transmitting hearing record to EPA.

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