



DEPARTMENT OF ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
denr.sd.gov



November 20, 2014

Dave Hohn
2100 W. 5th Ave.
Mitchell, SD 57301

WARNING LETTER

SHERIFF'S OFFICE DELIVERY

Dear Mr. Hohn:

On November 14, 2014, our office was notified by Davison County Emergency Management officials about illegal open burning on your property near the west edge of Mitchell. It is our understanding that both local law enforcement and the Mitchell Fire Department responded to the fire. The incident report identified a small pile of office equipment being open burned.

Open burning office equipment will generate hazardous air pollutants because an open flame does not attain a high enough temperature to destroy toxic chemicals. Enclosed for your information is a copy of our department's Air Quality Guidelines for Open Burning. You can also find these guidelines on our website at: <http://denr.sd.gov/des/aq/openburn.aspx>. **You must immediately stop open burning office equipment and other solid waste materials unless it is a permissible activity allowed by the enclosed guidelines.** Because local governments can further restrict open burning activities, you should always notify local officials prior to conducting an open burn activity.

We assume that the office equipment burned on your property came from local businesses or off-site sources. Please be aware that if you are accepting waste office equipment on your property, you are in violation of South Dakota state law (SDCL 34A-6-1.4) because you have not secured a state solid waste permit for the operation of a solid waste disposal facility. **You must immediately stop accepting solid waste materials on your property. In addition, you must clean up and remove the ash and unburned waste materials from your property. The ash and unburned waste materials must be disposed at the Mitchell landfill as soon as possible. Please provide our office with receipts documenting disposal at the Mitchell landfill.**

If you continue to accept and/or burn solid waste on your property, our office could then pursue the enforcement remedies allowed by state law. This would likely involve a notice of violation and financial penalties. Please be aware that the Davison County State's Attorney could also pursue legal action for failure to comply with solid waste state laws. Again, please notify our office as soon as you have cleaned up your property and disposed the ash and unburned waste materials at the Mitchell landfill. We look forward to your cooperation in these matters.

Sincerely,

Vonni Kallemeyn
Vonni Kallemeyn, Administrator
Waste Management Program

Enclosure

cc: ~~Jeff~~ Bathke, Davison County Office of Emergency Management, Mitchell, SD
Mitchell Fire Department, City of Mitchell, SD

AIR QUALITY GUIDELINES FOR OPEN BURNING

- **STATUTORY AUTHORITY TO ADDRESS OPEN BURNING**
- **WHAT IS PROHIBITED**
- **WHAT IS PERMISSIBLE**
- **GUIDELINES TO FOLLOW WHEN OPEN BURNING**
- **ALTERNATIVES TO OPEN BURNING**
- **WILDLAND AND PRESCRIBED FIRE POLICY**

The South Dakota Department of Environment and Natural Resources (department) has received many questions on how the state is dealing with open burning of solid waste and vegetative material such as trees, leaves, agricultural crop burning and prescribed fires to manage ecosystems. These questions have come from local governments and citizens of these communities concerned about open burning. The following information outlines what is prohibited by regulation, what types of materials are allowed to be open burned, guidelines discussing procedures and precautions to take while conducting an open burn, and alternatives to open burning.

STATUTORY AUTHORITY TO ADDRESS OPEN BURNING

34A-1-18. Emission control and open burning requirements -- Local control -- Nonconformance as violation. The Board of Minerals and Environment, for the purpose of controlling pollution, shall by rules promulgated pursuant to chapter 1-26 establish emission control requirements and reasonable requirements for open burning. The requirements may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this chapter, and in order to take necessary or desirable account of varying local conditions. Any general prohibition against all open burning shall be determined by each municipality or by each county for areas outside the boundaries of the municipalities. The board may not adopt any rule generally prohibiting all open burning, but any board rule regulating open burning shall be only as is necessary to address a specific problem. Any person who allows an emission which does not conform to a requirement in force pursuant to this section is subject to §34A-1-39.

WHAT IS PROHIBITED

The department, through the Board of Mineral and Environment, adopted solid waste rules (**ARSD 74:27:13:11**) prohibiting the open burning of solid waste at municipal landfills. In addition, the department adopted air quality regulations to address the open burning of waste materials from both rural and urban communities that are not taken to a landfill. The department made an effort to develop rules that would address air quality issues related to public health, but with enough flexibility to allow open burning of certain items where it will not affect public health.

The air quality rules (**ARSD 74:36:06:07**) prohibit the open burning of materials that generate hazardous air pollutants that have the potential to cause serious health problems. These rules were adopted by the Board of Minerals and Environment). These materials include oils, railroad ties, coated electrical wire, rubber, tires, tarpaper, asphalt shingles and wood products treated with inorganic arsenicals, pentachlorophenol, or creosols. Open burning of these materials was prohibited because an open flame does not attain a high enough temperature to destroy the chemicals, thus causing a potential for toxic chemicals to be contained in the smoke.

WHAT IS PERMISSIBLE

The regulations do not identify what is permissible to open burn. When a person conducts an open burn, they assume all liabilities for any property damage or impacts to public health that result from an open burn.

Open burning is typically conducted for the following practices:

- o Fire training;
- o Land clearing;
- o Right-of-way maintenance operations;
- o Agricultural crop burning;
- o Prescribed fires to manage ecosystems;
- o Elimination of fire hazards;
- o Untreated lumber scraps and trees; and
- o Recreational or ceremonial campfires.

It should be noted that there could be restrictions to burning in the area you are planning to burn. You will want to contact your local government (city or county), National Park Service, State Park Service, National Forest Service or State Forest Service if you are planning to burn in these areas for prior approval.

For example:

The Wildland Fire Suppression District (South Dakota Department of Agriculture) requires that a person obtain an open burning permit for burns conducted in the Black Hills Forest Fire Protection District. **Click here** to view a map that outlines the Black Hills Forest Fire Protection District. A person can obtain an open burning permit from the Wildland Fire Suppression District by going to <http://sd.gov/burnpermits> or calling the following toll free number: 1-800-275-4955. This call has to be made within South Dakota.

Pennington County has developed open burning regulations (Pennington County Ordinance #12 - 2.02) for the City of Rapid City and the area immediately surrounding the city limits (this area is better defined in the ordinance). If you obtain a State Forest Service opening

burning permit in the Black Hills Forest Fire Protection District in the Rapid City area, you will not need to obtain an open burning permit from the city. **Click here** to view the boundary separation. For more information on this permit, please contact Michelle Tech with the Rapid City Air Quality Division at (605) 394-4120 or E-mail her at **airquality@rcgov.org**.

To determine if there are opening burning or nuisance requirements in your area, the best place to check is the County's States Attorney's Office or the City Attorney's Office.

GUIDELINES TO FOLLOW WHEN OPEN BURNING

The following guidelines apply to the open burning of trees, brush, grass, wood, and any vegetation in the clearing of land, right-of-way maintenance operations, and agricultural crop burning. This includes the open burning of structures or material for fire training, open burning for management of forests and wildlife or the disposal of a fire hazard.

1. The prevailing winds during the burn should be away from any city or any occupied residence likely to be affected by the smoke to the best extent possible;
2. The amount of dirt in the material being burned should be minimized to reduce smoldering;
3. Oils, rubber, tarpaper, asphalt shingles, tires, railroad ties, treated wood, pesticide containers, materials containing asbestos, coated electrical wire, and any other material creating unreasonable amounts of smoke or air pollutants may not be burned. For the purposes of burning buildings as a means of disposal or fire training, the above listed items should be removed, to the best extent possible, prior to burning;
4. No hazardous waste or material shall be burned. This will create hazardous air pollutants;
5. Open burning should be conducted between three hours after sunrise and three hours before sunset. This allows for good smoke dispersion. Air inversions that would trap the smoke at breathing level are less likely to occur between these hours. Additionally, fuel should not be added outside the timelines listed above. An open burn should be extinguished completely to ensure smoldering of material does not persist;
6. Open burning should not obscure visibility or create a traffic hazard on any public road or airport right of way; and
7. The following entities should be notified of when and where the open burn will occur: local fire department, municipality nearest the burn, the county sheriff's department and any military, commercial, county, municipal or private airport or landing strip that may be affected by the open burn. Many complaints and disputes can be avoided by informing people ahead of time of the open burn. It is very important to contact your local fire department. This will ensure that sufficient personnel will be available in the event that control of the burn is lost; and
8. Common sense precautions, such as having someone watching the fire until it is extinguished and assuring smoke does not impact residences or impair vehicular travel on highways, should be followed.

ALTERNATIVES TO OPEN BURNING

There are other ways to properly dispose of these materials. In many cases, products can be recycled or reused in a way that may pay back dividends. Where recycling or reuse is not possible, the materials can be disposed at a permitted solid waste landfill. For suggestions on alternatives or information on open burning, please contact the Waste Management Program at (605) 773-3153.

WILDLAND AND PRESCRIBED FIRE POLICY

EPA issued a policy on Wildland and Prescribed fires. This policy was developed by EPA, Federal Land Managers, Private Land Managers and State Air Quality Agencies. Wildland and prescribed fires are planned burns to reduce the potential for wild fires that pose danger to the public or are conducted to enhance the health of the forest. Federal Land Managers, such as the National Forest Service and National Park Service, are currently increasing planned burns to enhance forest health and to reduce the potential for dangerous wild fires. Using fire in ecosystem management is a necessary tool, but there is a potential public health risk due to the air pollution generated from this practice.

The purpose of the policy is to require government and private entities conducting wildland or prescribed fires to develop a Smoke Management Plan to minimize air quality impacts. The plans will be developed by the burning entity and reviewed and approved by state or local air quality agencies. The department is currently working with the National Forest Service, National Park Service, Bureau of Land Management, and State Forest Service to develop Smoke Management Plans for the Black Hills Region.

At the present time, if a planned fire causes an exceedance of a National Ambient Air Quality Standard (NAAQS), then it will be counted towards a violation of the standard. If an entity develops a Smoke Management Plan that addresses air quality issues and a burn causes an exceedance of the standard, the exceedance will not be counted towards a violation of the NAAQS. Non-planned wild fires are not counted towards a violation if they cause an exceedance of the NAAQS.

For more information on open burning, please contact the Air Quality Program at (605) 773-3151 or the Waste Management Program at (605) 773-3351.