

NYSDEC BURNING REGULATION

Part 215: Open Fires

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 9-0105, 9-1103, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 70-0707, 71-2103, 71-2105)

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For administrative information about this posting, contact: Division of Air Resources. The Bureau of Stationary Sources at (518) 402-8403 is the contact for technical questions pertaining to this rule.

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§215.1 Definitions

(a) *Open Fire*. Any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. *Open fires* include burning in barrels or modified barrels. *Open fires* do not include burning in outdoor furnaces or boilers that are used to heat buildings when the devices are actually used for such purpose.

(b) *Agricultural land*. The land and on-farm buildings, equipment, manure processing and handling facilities, and practices that contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a 'commercial horse boarding operation' and 'timber processing'. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

(c) *Camp fire*. A camp fire or any other outdoor open fire less than three feet in height, and less than four feet in length and width or diameter.

(d) *Agricultural waste*. Any waste from naturally grown products such as vines, trees and branches from orchards, leaves and stubble. In addition, any fully organic waste either grown or generated on the premises, including but not limited to paper feed bags, wood shavings used for livestock bedding, baling twine, and other non-plastic materials. *Agricultural waste* does not include pesticide containers, fertilizer bags, large plastic storage bags (including bags commonly known as "Ag bags"), offal, tires, plastic feed bags, and other plastic or synthetic materials.

(e) *Acquired structure*. A structure donated or loaned from a property owner for the purpose of conducting fire training.

(f) *Untreated wood*. For the purposes of this Part, any wood or lumber which is not chemically treated, coated, stained, sealed, glued or otherwise adulterated. *Untreated wood* does not include such materials as pressure treated lumber, plywood, particle board, fiberboard, and oriented strand board.

(g) *On-site burning*. The burning of material, grown or generated on a particular property, in an open fire on the same property. For purposes of this definition, the *same property* shall include only property that is geographically contiguous and under the control or ownership of the same person.

§215.2 Prohibitions

Except as allowed by section 215.3 of this Part, no person shall burn, cause, suffer, allow or permit the burning of any materials in an open fire.

§215.3 Exceptions and restricted burning

Burning in an open fire, provided it is not contrary to other law or regulation, will be allowed as follows:

(a) On-site burning in any town with a total population less than 20,000 of downed limbs and branches (including branches with attached leaves or needles) less than six inches in diameter and eight feet in length between May 15th and the following March 15th. For the purposes of this subdivision, the *total population* of a town shall include the population of any village or portion thereof located within the town. However, this subdivision shall not be construed to allow burning within any village.

(b) Barbecue grills, maple sugar arches and similar outdoor cooking devices when actually used for cooking or processing food.

(c) Small fires used for cooking and camp fires provided that only charcoal or untreated wood is used as fuel and the fire is not left unattended until extinguished.

(d) On-site burning of agricultural wastes as part of a valid agricultural operation on contiguous agricultural lands larger than five acres actively devoted to agricultural or horticultural use, provided such waste is actually grown or generated on those lands and such waste is capable of being fully burned within a 24-hour period.

(e) The use of liquid petroleum fueled smudge pots to prevent frost damage to crops.

(f) Ceremonial or celebratory bonfires where not otherwise prohibited by law, provided that only untreated wood or other agricultural products are used as fuel and the fire is not left unattended until extinguished.

(g) Small fires that are used to dispose of a flag or religious item, and small fires or other smoke producing process where not otherwise prohibited by law that are used in connection with a religious ceremony.

(h) Burning on an emergency basis of explosive or other dangerous or contraband materials by police or other public safety organization.

(i) Prescribed burns performed according to Part 194 of this Title.

(j) Fire training, including firefighting, fire rescue, and fire/arson investigation training, performed under applicable rules and guidelines of the New York State Department of State's Office of Fire Prevention and Control. For fire training performed on acquired structures, the structures must be emptied and stripped of any material that is toxic, hazardous or likely to emit toxic smoke (such as asbestos, asphalt shingles and vinyl siding or other vinyl products) prior to burning and must be at least 300 feet from other occupied structures. No more than one structure per lot or within a 300 foot radius (whichever is bigger) may be burned in a training exercise.

(k) Individual open fires as approved by the Director of the Division of Air Resources as may be required in response to an outbreak of a plant or animal disease upon request by the commissioner of the Department of Agriculture and Markets, or for the destruction of invasive plant and insect species.

(l) Individual open fires that are otherwise authorized under the environmental conservation law, or by rule or regulation of the Department.

Questions and Answers

Regarding New Open Burning Reg. Effective 10/14/09

1. Do the new regulations on open burning make burning household trash in burn barrels or piles illegal?

Yes. Burning trash is now prohibited statewide in all cases. Our existing incinerator rule already prohibits burning household trash in wood stoves, fireplaces, and outdoor wood boilers. DEC recommends that you recycle all appropriate materials (such as newspaper, paper, glass and plastic) and compost your organic kitchen and garden waste.

2. What are the new regulations on open burning in New York State?

Effective on October 14, 2009, all open burning is prohibited in New York with several exceptions including the following:

- Campfires less than 3 feet in height and 4 feet in length, width or diameter are allowed.
- Small cooking fires are allowed.
- Fires cannot be left unattended and must be fully extinguished.
- Only charcoal or clean, dry, untreated or unpainted wood can be burned.
- Ceremonial or celebratory bonfires are allowed.

In towns with a total population less than 20,000, you may burn tree limbs with attached leaves. The limbs must be less than 6 inches in diameter and 8 feet in length (also referred to as brush). However, this is not allowed from March 16 through May 14 due to the increased risk of wildfires.

See Section 215.3 for a full list of exceptions.

3. Why has the DEC changed the regulations allowing open burning in New York State?

Open burning of household trash releases dangerous compounds including arsenic, carbon monoxide, benzene, styrene, formaldehyde, lead, hydrogen cyanide and dioxin, among others. Open burning is also the single greatest cause of wildfires in New York.

4. Can I burn leaves if I live in a rural area?

No, burning leaves is banned in New York State. We encourage you to compost leaves.

5. Your rule says firewood must be untreated, some firewood is heat-treated, is that allowed?

Some firewood is heat treated (kiln dried) to control invasive insect species if it is to be transported over 50 miles. Heat treated firewood is not intended to be prohibited. However, the burning of chemically treated wood such as pressure-treated lumber and plywood is prohibited.

6. Are open fires allowed to control invasive plant and insect species?

Yes. Case-by-case DEC approval is not required.

7. Can agricultural wastes be burned?

Yes, organic agricultural wastes may be burned on-site where they are grown or generated including brush and wood produced by clearing fields and other activities. The fire must be located on contiguous agricultural land larger than 5 acres, and the materials capable of being fully burned within 24 hours.

The burning of pesticides, plastics or other non-organic material is prohibited.

8. Can I burn liquid petroleum fueled smudge pots to prevent frost damage to crops?

Yes. However, burning tires and other wastes for smudge is not allowed.

9. Can prescribed burns be performed?

Yes. Prescribed burns, the burning of forest land to achieve a vegetative or wildlife management goal, can be performed but only in accordance with DEC regulations. Check with your regional DEC office.

10. Are fire training burning activities allowed?

Yes, with some restrictions on the use of acquired structures and in accordance with guidance from NYS Dept. of State's Office of Fire Prevention and Control. The Fire Services Bureau may be reached at 518-474-6746.

11. Are individual open fires to control plant and animal disease outbreaks allowed?

Yes, as approved case-by-case by DEC, upon the request by the Commissioner of Agriculture and Markets.

12. Can I dispose of a flag or religious item in an open fire?

Yes, in a small-sized fire if it is not otherwise prohibited by law or regulation.

13. Are permits for open fires still required in some parts of the state?

Yes. While a permit is not required under this regulation, the Environmental Conservation Law (ECL) still requires that a permit be obtained from the Department if you plan to burn brush under the exception and you live in a town which is totally or partially located within the boundaries of the Adirondack and Catskill Parks which is designated as a "Fire Town" under the ECL (see list below). In addition, any local requirements or restrictions would apply.

- Clinton County, the towns of Altona, Ausable, Black Brook, Dannemora, Ellenburg and Saranac;
- Delaware County, the towns of Andes, Colchester, Hancock and Middletown;
- Essex County, all towns
- Franklin County, the towns of Altamont, Belmont, Brighton, Duane, Franklin, Harrietstown, Santa Clara and Waverly;
- Fulton County, the towns of Bleecker, Caroga, Mayfield, Northampton and Stratford;
- Greene County, the towns of Hunter, Jewitt, Lexington and Windham;
- Hamilton County, all towns;
- Herkimer County, the towns of Ohio, Russia, Salisbury and Webb;
- Lewis County, the towns of Crogham, Diana, Grieg, Lyonsdale and Watson;
- Oneida County, the towns of Forestport and Remsen;

- Saratoga County, the towns of Corinth, Day, Edinburg and Hadley;
- Saint Lawrence County, the towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville, Piercefield and Pitcairn;
- Sullivan County, the towns of Neversink and Rockland;
- Ulster County, the towns of Denning, Gardiner, Hardinburgh, Olive, Rochester, Shandaken, Shawangunk, Wawarsing and Woodstock;
- Warren County, the towns of Bolton, Chester, Hague, Horicon, Johnsburgh, Lake George, Luzerne, Queensbury, Stoney Creek, Thurman and Warrensburgh;
- Washington County, the towns of Dresden, Fort Ann and Putnam.

14. Can a town prohibit open burning that the state allows?

Yes, towns, villages, cities and counties can pass ordinances that are stricter than, and not inconsistent with, the open fires regulations. You should check with local authorities to find out if local law requires a permit or prohibits open fires.

15. Can explosives, or other dangerous contraband, be burned?

Yes, on an emergency basis by police or other public safety organizations only.

16. Can brush piles be burned at transfer sites?

No, the practice of burning large piles of brush collected from local residents at town or county transfer sites is prohibited. The individual landowners in small towns may burn their brush on site as discussed under question 2 above. Downed limbs and branches generated at a transfer site are also allowed to be burned on site with the same restrictions.

17. Where should I call to report an illegal open fire?

To report environmental law violations call 1-800-TIPP DEC (1-800-847-7332).

The Department has received many questions regarding DEC's implementation of Part 215, regarding open fires. This document is intended to inform the general public about open fire regulation in New York and assist the regulated community in understanding the requirements of Part 215.

NYSDEC Press Release

New Reg. on Open Burning Takes Effect Oct. 14

Initiative Will Reduce Pollutants, Risks of Wildfires

Taking a step to reduce harmful air pollutants and help prevent wildfires, the New York State Department of Environmental Conservation (DEC) has extended restrictions on the open burning of residential waste effective Oct. 14. The open burning of residential waste will be prohibited in all communities statewide, regardless of population, with exceptions for burning tree limbs and branches at limited times and other certain circumstances (detailed below). Previously, the ban applied only in towns with populations of 20,000 or more. The New York State Environmental Board approved this state regulation on Sept. 1.

Chairman of the Environmental Board and Environmental Conservation Commissioner Pete Grannis said: "Burning household trash is dangerous on several levels. It can release potentially dangerous compounds - dioxins and other potential carcinogens - from materials burned in backyard fires. And it is the largest single cause of wildfires in the state."

Once considered harmless, recent studies demonstrate that open burning releases substantial amounts of dangerous chemicals into the air. A study by the U.S. Environmental Protection Agency, in conjunction with DEC and the New York State Department of Health, found that emissions of dioxins and furans from backyard burning alone were greater than those from all other sources combined for the years 2002-04. Trash containing plastics, polystyrene, pressure-treated and painted wood and bleached or colored papers produce harmful chemicals when burned. The study found that burning trash emits arsenic, carbon monoxide, benzene, styrene, formaldehyde, lead, and hydrogen cyanide, among others.

"While bygone generations burned their garbage, that practice now must end. Decades ago, garbage didn't contain plastics, foils, batteries, paper bleached with chlorine and other materials used today," Commissioner Grannis said.

In addition to releasing pollutants, open burning is the largest single cause of wildfires in New York State. Data from DEC's Forest Protection Division show that debris burning

accounted for about 40 percent of wildfires between 1986 and 2006 - more than twice the next most-cited source. In 2006 alone, debris burning triggered 98 wildfires in the state.

"The extension of the ban on open burning to all municipalities in New York will afford people living in all communities the chance to breathe air that is free from the contaminants that are byproducts of open fires," said Michael Seilback, Vice President of Public Policy and Communications at the American Lung Association in New York. "We thank and commend Commissioner Grannis and the DEC for adopting these regulations that will undoubtedly improve the quality of the air we all breathe and improve the lives of people suffering from asthma and lung disease."

"We have known for many years that open burning of garbage releases toxic fumes and poses a serious fire hazard," said Laura Haight, NYPIRG's senior environmental associate. "Burn barrels are considered the major uncontrolled source of dioxin, a potent cancer-causing chemical that is created when plastic and other materials are burned together. We applaud Commissioner Grannis and his department for taking this critically important action to protect our health."

Jackson Morris, Air & Energy Program Director for Environmental Advocates of New York said, "We commend DEC for finalizing the state's new open burning regulations. This rule will result in immediate, on-the-ground improvements in air quality, as the open burning of household waste spews volumes of toxics into our air. Millions of New Yorkers will breathe easier with this rule on the books."

Open burning of residential wastes in any city or village or in any town with a population of 20,000 or more has been prohibited since 1972. DEC moved to expand the prohibition to all communities after holding meetings to receive input from stakeholders and state agencies. A proposal was released in May 2008 and was followed up with public hearings and an extended public comment period. Approximately 1,800 comments were reviewed by DEC.

As a result of public comments, modifications were made to the original proposal to include an exemption for burning of tree limbs and branches in smaller municipalities during certain times of the year.

The regulation bans all open burning except for the following:

- On-site burning of limbs and branches between May 15th and the following March 15th in any town with a total population less than 20,000.
- Barbecue grills, maple sugar arches and similar outdoor cooking devices.
- Small cooking and camp fires.
- On-site burning of organic agricultural wastes, but not pesticides, plastics or other non-organic material.
- Liquid petroleum fueled smudge pots to prevent frost damage to crops.
- Ceremonial or celebratory bonfires.
- Disposal of a flag or religious item.
- Burning on an emergency basis of explosive or other dangerous or contraband by police, etc.
- Prescribed burns performed according to state regulations.
- Fire training with some restrictions on the use of acquired structures.
- Individual open fires to control plant and animal disease outbreaks as approved by DEC upon the request by the Commissioner of Agriculture and Markets.
- Open fires as necessary to control invasive plant and insect species.

Towns totally or partially within the boundaries of the Adirondack and Catskill Parks are designated fire towns under Environmental Conservation Law. The law prohibits open burning without a written permit from the DEC. On-site open burning of limbs and branches allowed under the new regulation still requires a permit if it occurs in a fire town. To find out if your town is a Fire Town and/or to obtain a permit, contact your local DEC Forest Ranger. A list of rangers and their phone numbers may be obtained or by calling 518-897-1300.

In addition to the open burning regulation, the Environmental Board also approved two additional rule proposals - a regulation that requires automobiles to include environmental performance label standards and a regulation that sets new limits on emissions of smog-causing Volatile Organic Compounds (VOCs) from 11 new categories of consumer products.

A complete outline of common questions and answers on the new regulation is available on the DEC website.