

(5) Except as provided in ARM 17.8.606, a person may not open burn any nonprohibited material without first obtaining an air quality open burning permit from the department. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 689, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; AMD, 1996 MAR p. 1844, Eff. 7/4/96; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11.)

17.8.605 SPECIAL BURNING PERIODS (1) The following categories of open burning may be conducted during the entire year:

- (a) prescribed wildland open burning;
- (b) open burning to train firefighters under ARM 17.8.615;
- (c) open burning authorized under the emergency open burning permit provisions in ARM 17.8.611;
- (d) essential agricultural open burning;
- (e) conditional air quality open burning;
- (f) commercial film production open burning;
- (g) Christmas tree waste open burning; and
- (h) any minor open burning that is not prohibited by ARM 17.8.604 or that is allowed by ARM 17.8.606.

(2) Open burning other than those categories listed in (1) may be conducted only during the months of March through November. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02.)

17.8.606 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) Unless required to obtain an open burning permit under another provision of this subchapter, a minor open burning source need not obtain an air quality open burning permit.

(2) A minor open burning source must:

- (a) conform with BACT;
- (b) comply with all rules in this subchapter, except ARM 17.8.610; and
- (c) comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under 75-2-301, MCA, of the Montana Clean Air Act, or any other municipal or county agency responsible for protecting public health and welfare.

(3) During September, October, or November, to conduct any minor open burning not prohibited by ARM 17.8.604, a minor open burning source must adhere to the burning restrictions established by the department that are available by calling the department at (800) 225-6779.

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING (1) The following material may not be disposed of by open burning:

- (a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.604(2), 17.8.611, or 17.8.612(4)(a) or (4)(b);
 - (b) food wastes;
 - (c) Styrofoam and other plastics;
 - (d) wastes generating noxious odors;
 - (e) wood and wood byproducts that have been coated, painted, stained, treated, or contaminated by a foreign material, unless open burning is allowed under ARM 17.8.614 or 17.8.615;
 - (f) poultry litter;
 - (g) animal droppings;
 - (h) dead animals or dead animal parts;
 - (i) tires, except as provided in ARM 17.8.615;
 - (j) rubber materials;
 - (k) asphalt shingles, except as provided in ARM 17.8.614 or 17.8.615;
 - (l) tar paper, except as provided in ARM 17.8.614 or 17.8.615;
 - (m) automobile or aircraft bodies and interiors, except as provided in ARM 17.8.614 or 17.8.615;
 - (n) insulated wire, except as provided in ARM 17.8.614 or 17.8.615;
 - (o) oil or petroleum products, except as provided in ARM 17.8.614 or 17.8.615;
 - (p) treated lumber and timbers;
 - (q) pathogenic wastes;
 - (r) hazardous wastes, as defined by 40 CFR Part 261, incorporated by reference in ARM 17.8.602;
 - (s) trade wastes, except as provided in ARM 17.8.611 or 17.8.612;
 - (t) any materials resulting from a salvage operation;
 - (u) chemicals, except as provided in ARM 17.8.614 or 17.8.615;
 - (v) Christmas tree waste as defined in ARM 17.8.601, except as provided in ARM 17.8.613;
 - (w) asbestos or asbestos-containing materials;
 - (x) standing or demolished structures containing prohibited material, except as provided in ARM 17.8.612, 17.8.614, or 17.8.615; and
 - (y) paint, except as provided in ARM 17.8.614 or 17.8.615.
- (2) A person may not conduct open burning of any wood waste that is moved from the premises where it was generated, except as provided in ARM 17.8.611 or 17.8.612(4)(a) or (4)(b), or unless the department determines:
- (a) the material is wood or wood byproducts that have not been coated, painted, stained, treated, or contaminated by a foreign material; and
 - (b) alternative methods of disposal are unavailable or infeasible.
- (3) A person conducting open burning of wood waste which is moved from the premises where it was generated shall comply with BACT.
- (4) A person intending to conduct open burning of wood waste which is moved from the premises where it was generated shall contact the department by calling the number listed in ARM 17.8.601(1) prior to conducting open burning.

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) Prior to open burning, a major open burning source must submit an application to the department for an air quality major open burning permit. The application must be accompanied by the appropriate air quality permit application fee required under ARM 17.8.514 and must contain the following information:

(a) a legal description of each planned site of open burning or a detailed map showing the location of each planned site of open burning;

(b) the elevation of each planned site of open burning;

(c) the method of burning to be used at each planned site of open burning;

and

(d) the average fuel loading or total fuel loading at each site to be burned.

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments concerning the application may be submitted to the department within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(4) A major open burning source must:

(a) conform with BACT; and

(b) comply with the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance or another time frame as specified in the permit by the department.

(5) To open burn in a manner other than that described in the application for an air quality open burning permit, the source must submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by (1), and must receive approval from the department.

(History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11.)

(8) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted under (4)(a) of this rule is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11.)

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) The department may issue an air quality open burning permit for disposal of Christmas tree waste, as defined in ARM 17.8.601(2).

(2) The department may issue an air quality Christmas tree waste open burning permit if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) Christmas tree waste open burning must conform with BACT.

(4) A permit issued under this rule is valid for one year, and applicants may reapply for a permit annually.

(5) The department may place any reasonable requirements in an air quality Christmas tree waste open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. The following conditions, at a minimum, must be included in any air quality Christmas tree waste open burning permit:

(a) BACT for the year covered by the permit; and

(b) a provision that the source may be required, prior to each burn, to receive approval from the department of the date and time of the proposed burn to ensure that good ventilation exists and to assign burn priorities, if necessary. Approval may be requested by calling the department at (800) 225-6779.

(6) An application for an air quality Christmas tree waste open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(7) An applicant for an air quality Christmas tree waste open burning permit shall notify the public of its application either by publishing a notice in a newspaper of general circulation or by posting at least two public notices, one on the property as described in (a)(i), and one in a conspicuous location at the county courthouse as described in (a)(ii).

(a) Posted public notices must comply with the following conditions:

(i) at least one public notice must be posted on the property where the open burning is to occur, near the closest public right-of-way to the property, in a location clearly visible from the right-of-way;

(ii) at least one public notice must be posted in a conspicuous location at the county courthouse in the county where the burning is to take place;

(iii) the two public notices must be posted no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application and must remain posted in a visible condition for a minimum of 15 days; and

(iv) the two public notices must state the information in the application, the procedure for providing public comment to the department on the application, the date by which public comments must be submitted to the department, and the procedure for requesting a copy of the department's decision.

(b) Publication of public notices in a newspaper must:

(i) be by legal publication, at least once, in a newspaper of general circulation in the area affected by the application;

(ii) be published no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application; and

(iii) follow a form provided by the department, including a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 1999 MAR p. 1660, Eff. 7/23/99; AMD, 2011 MAR p. 569, Eff. 4/15/11.)

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) The department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial, educational film, or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

(2) The department may issue an air quality commercial film production open burning permit under this rule if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) A permit issued under this rule is valid for a single production.

(4) Open burning under this rule must conform with BACT.

(5) The department may place any reasonable requirements in an air quality commercial film production open burning permit issued under this rule that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(6) An application for an air quality commercial film production open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required by (7), must be submitted to the department before an application will be considered complete.

(7) An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of the application and no later than ten days after submittal of the application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203; 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2002 MAR p. 3586, Eff. 12/27/02; AMD, 2011 MAR p. 569, Eff. 4/15/11.)

17.8.615 FIREFIGHTER TRAINING (1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products, and automobile or aircraft bodies and interiors, for training firefighters, if:

- (a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;
- (b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;
- (c) all asbestos-containing material has been removed;
- (d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos-free;
- (e) all prohibited material that can be removed safely and reasonably has been removed;
- (f) the open burning accomplishes a legitimate training need;
- (g) clear educational objectives have been identified for the training;
- (h) burning is limited to that necessary to accomplish the educational objectives;
- (i) the training operations and procedures are consistent with nationally accepted standards of good practice; and
- (j) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollutants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax, or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final until 15 days have elapsed from the date of the decision. The filing of a request for a hearing does not stay the effective date of the department's decision. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions. (History: 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/1/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94; TRANS, from DHES, 1996 MAR p. 2285; AMD, 2011 MAR p. 569, Eff. 4/15/11.)