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Details Reports

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 Title: Open-air Burning and Air Quality Complaints
 Attachments: 1. [Attach. A - Va- Air Pollution Board](#), 2. [Attach.B - Albemarle County Code Ch06 Fire Protection](#), 3. [Attach.C-- Burn Law Pamphlet](#), 4. [Attach. D--July 2008 Exec Summary](#), 5. [Attach. E--Jan 2013 Exec summary with attachments](#), 6. [Attach. F--march 04, 2015 Exec Summary](#), 7. [Attach. G--Jurisdictional Comparisons](#), 8. [Attach. H--Blower system](#)

History (0) Executive Summary

AGENDA DATE: 12/6/2017

TITLE:

Title

Open-air Burning and Air Quality Complaints

BODY

SUBJECT/PROPOSAL/REQUEST: Open-Air Burning

ITEM TYPE: Regular Information Item

STAFF CONTACT(S): Richardson, Walker, Eggleston, Oprandy, Lagomarsino

PRESENTER (S): Howard Lagomarsino

LEGAL REVIEW: Yes

REVIEWED BY: Jeffrey B. Richardson

BACKGROUND: The Board has addressed the issue of open air burning on a number of occasions previously. Specifically, the Board was briefed on open burning associated with land clearing on July 02, 2008 (Attachment D), barring open air burning of trash on January 09, 2013 (Attachment E) and increasing open air burning permit fees associated with land clearing on March 04, 2015 (Attachment F).

The purpose of regulating open-air burning is to provide for fire safety and healthy air quality. The County regulates open air burning in accordance with Federal Codes, Virginia Code, the Statewide Fire Prevention Code, the regulations promulgated by the Virginia Air Pollution Control Board (Attachment A) and Albemarle County Code Chapter 6, Article IV (Attachment B). The local code must conform to the provisions of federal and state codes, including the model open-air burning code adopted by the Virginia Air Pollution Control Board. Any change to local open-air burning code requires the approval of the Virginia Air Pollution Control Board prior to enactment. Local codes can be more stringent, but not less stringent.

Albemarle County Fire Rescue's approach to the control of open-air burning includes emergency response, education, engineering and enforcement.

Emergency response accounts for the vast majority of the interactions regarding open-air burning and is usually handled by responders without referral to Fire Marshal staff. Consequently, no data is readily available as to the specific findings from these incidents. Fire Marshal staff investigated two open-air burning inquiries (complaints) from the public in FY 16 and six in FY 17. The majority of these burns were related to land clearing/development.

Education is an important aspect of Albemarle Fire Rescue's efforts to deal with open-air burning issues. This includes the use of printed materials, including a burn law pamphlet (Attachment C), and providing educational programs, such as the Certified Open-Air Burn class, multiple times per year. Education also includes interactions on the scene with the open-air burner through the permitting process or in response to a complaint. If compliance and understanding can be reached, there is no need to graduate to punitive sanctions.

Engineering involves providing processes (such as the requirement of a permit) that identify the what, where, and when related to burning. Permit stipulations/requirements may include the use of special equipment to minimize impacts from the open-air burn, requiring that some debris is hauled away without burning, or limiting the times the permit holder is allowed to burn. An engineering type alternative to burning is grinding debris and using the chips as mulch to influence soil health.

Enforcement is typically the method of last resort when controlling open-air burning. Enforcement may include a warning, a notice of violation, a cease order, a summons, or arrest and prosecution for non-compliance. Violations of the open-air burn laws are a class 1 misdemeanor and carry a potential penalty of up to a \$2500 fine and up to 12 months in jail for each offense. Rarely does an issue escalate as far as prosecution and jail time.

Open air burning is allowed in Albemarle County under the conditions set forth in the County Code. It often occurs as a part of the cleanup of yard waste, land maintenance, storm cleanup and the clearing of land for development. A permit is not required for burning associated with private residence yard maintenance or land maintenance on agricultural or larger properties where owners/staff have attended the Albemarle Fire Marshal Certified Open Burn class. Permits are required for land clearing operations associated with construction and land development.

The effects of open air burning are a concern for some citizens and generate complaints to the Virginia Department of Environmental Quality (DEQ), the Air Pollution Control Board, the Board of Supervisors and County staff. The complaints generally address odors, air quality and ash deposits. Lately the frequency of these complaints has raised concerns and questions about open-air burning processes in Albemarle County.

STRATEGIC PLAN: *Natural Resources Stewardship:* Thoughtfully protect and manage Albemarle County's ecosystem and resources both in the rural and development areas to safeguard the quality of life for current and future generations. *Quality Government Operations:* Ensure the County's capacity to achieve high quality service that achieves Community priorities

DISCUSSION: Staff has examined open-air burning processes among comparable Virginia jurisdictions (Attachment G). Most were in DEQ mandated ozone zones, so open-air burning is banned in many of these jurisdictions annually from May through September. Albemarle County is not in a DEQ ozone control zone, so this state code restriction does not apply. However, restricting burning during the "ozone season" is an option the Board may wish to consider.

Controlling the timing of burning is utilized by a few jurisdictions analyzed. In Henrico County, burning cannot begin prior to 8 am (4 pm during the forestry restrictions Feb 15-April 30) and must be finished by 8 pm. Stafford prohibits open-air burning from noon on Friday through the weekend. Roanoke County requires burning to be completed by midnight. The Board may wish to consider similar limitations in Albemarle County.

Identifying specifically in code what materials are permissible to burn may also be a strategy the Board wishes to consider in addressing this issue. This may be particularly effective if the County Code becomes more restrictive than the Statewide Fire Code and DEQ regulations. Most jurisdictions ban the burning of household trash, but some even ban open-air burning of leaves and yard debris. A factor in these bans is the availability of roadside leaf clean up, leave pick-up and trash service. The availability of convenience sites for disposal are also factors. A concern for implementing similar bans may be the availability, or lack thereof, of services for disposal, which transfers the cost and burden to the citizen. This could negatively impact the maintenance of property, thus affecting overall health and safety within the County.

Another tactic is designating where open-air -burning may take place. None of the jurisdictions examined ban open-air burning jurisdiction-wide. Most ban burning based on zoning districts. Typically, burning is prohibited in developed, residential and urban areas. Although this does limit the negative effects of burning (such as smoke and odors) in congested/developed areas, often specific district enforcement is problematic. On one side of a "map line," one can burn and the on the other, one cannot. Meanwhile, smoke and odors may travel for miles.

Separation distance from occupied structures and property lines is yet another tactic to better control open-air burning. If minimum distances that burns occur from occupied structures are increased, fewer complaints may occur. The obvious advantage is that the smoke is less intrusive over the longer distance. Currently, Albemarle County utilizes a 300-foot minimum distance for residential burns and 500 feet for land clearing burns. Increasing the land clearing distance requirement to 1000 feet (approx. 1/5th of a mile) for occupied structures is an option the Board may wish to consider. This change would limit burning to areas with more separation distance available (typically more rural areas) and may not negatively impact burning currently occurring related to farming and agricultural practices. It is important to note that, even with a minimum distance requirement, burns may still occur closer to occupied structures if permission is first obtained from the structure's owner/occupants.

Albemarle County Code Section §6 -407 already requires adherence to conditions imposed by the Fire Official (Office of the Fire Marshal). As written, the code allows the Office of the Fire Marshal to require as a condition of the permit, the use of special processes such as "air curtain" machinery and trenches (Attachment H). This ensures more complete combustion and reduces the carbon footprint of the burn by minimizing smoke emissions. The Board may wish to consider codifying the use of such equipment as opposed to the current practice of allowing the Fire Marshal discretion within the permit process.

BUDGET IMPACT: The budget impact varies significantly based on the degree to which the Board wishes to regulate open-air burning. The County currently assesses a fee of \$500 for a burn permit specific to land clearing. Should the Board desire to ban burning completely or limit it by district, the budget impact will be a reduction in permit revenue of up to approximately \$21,000 annually. Should the Board endorse staff's recommendations (see below), there will be no budget impact.

RECOMMENDATION:Recommendation

This matter is scheduled for discussion at the request of the Board. If, after discussion, the Board is interested in pursuing any amendments to the current regulations, staff would, at a minimum, recommend two specific changes: 1) increasing the required distances from the burn location to occupied structures and property lines, and 2) requiring the "air curtain/trench" process for land clearing open air burning. Since these changes are more restrictive than the Virginia Air Pollution Control Board model code, a request for approval of the code changes will need to go to them before the changes can be enacted locally.

Staff also requests that the Board identify which, if any, of the other options in the discussion section the Board wishes to pursue with additional discussion or regulations.

ATTACHMENTS:

Attachment A - Virginia Air Pollution Board
Attachment B - Albemarle County Code: Ch 06 Fire Protection
Attachment C - Burn Law Pamphlet
Attachment D-July 2008 Board Executive Summary
Attachment E--Jan 2013 Board Executive Summary
Attachment F - March 2015 Board Executive Summary
Attachment G - Jurisdictional Comparisons
Attachment H - Blower system

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9VAC5 CHAPTER 130
REGULATION FOR OPEN BURNING

PART I
General Provisions

9VAC5-130-10. Applicability.
9VAC5-130-20. Definitions.
9VAC5-130-30. Open burning prohibitions.
9VAC5-130-40. Permissible open burning.
9VAC5-130-50. Forest management and agricultural practices.
9VAC5-130-60. Waivers.

9VAC5-130-10. Applicability.

A. Except as provided in subsections C and D of this section, the provisions of this article apply to any person who permits or engages in open burning or who permits or engages in burning using special incineration devices.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to such an extent as to prohibit the burning of leaves by persons on property where they reside if the local governing body of the county, city or town in which such persons reside has enacted an otherwise valid ordinance (under the provisions of § 10.1-1308 of the Virginia Air Pollution Control Law) regulating such burning in all or any part of the locality.

D. The provisions of this article do not apply to air curtain incinerators subject to the provisions of (i) Article 45 (9VAC5-40-6250 et seq.), Article 46 (9VAC5-40-6550 et seq.), or Article 54 (9VAC5-40-7950 et seq.) of 9VAC5-40 (Existing Stationary Sources) or (ii) Subparts Eb, AAAA or CCCC of 40 CFR 60.

9VAC5-130-20. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined:

"Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.

"Automobile graveyard" means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this article and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by other state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part I (9VAC20-80-10 et seq.) of 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9VAC20-80-10 et seq.) of 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

9VAC5-130-30. Open burning prohibitions.

A. No owner or other person shall cause or permit open burning of refuse or use of special incineration devices except as provided in 9VAC5-130-40.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in-process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

9VAC5-130-40. Permissible open burning.

A. Open burning or the use of special incineration devices is permitted in the following instances provided the provisions of subsections B through E of 9VAC5-130-30 are met:

1. Upon the request of an owner or a responsible civil or military public official, the board may approve open burning or the use of special incineration devices under controlled conditions for the elimination of a hazard that constitutes a threat to the public health, safety or welfare and that cannot be remedied by other means consonant with the circumstances presented by the hazard. Such uses of open burning or the use of special incineration devices may include, but are not limited to, the following:

a. Destruction of deteriorated or unused explosives and munitions on government or private property when other means of disposal are not available. Hazardous waste permits may be required under the provisions of 9VAC20-60 (Hazardous Waste Management Regulations).

b. Destruction of debris caused by floods, tornadoes, hurricanes or other natural disasters where alternate means of disposal are not economical or practical and when it is in the best interest of the citizens of the Commonwealth. Solid waste management permits may be required under the provisions of 9VAC20-80 (Solid Waste Management Regulations).

c. On-site destruction of animal or plant life that is infested, or reasonably believed to be infested, by a pest or disease in order (i) to suppress, control, or eradicate an infestation or pest; (ii) to prevent or retard the spread of an infestation or pest; or (iii) to prevent further disease transmission or progression.

2. Open burning is permitted for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel with clearance from the local fire fighting authority. The designated official in charge of the training shall notify and obtain the approval of the regional director prior to conducting the training exercise. Training schools where permanent facilities are installed for fire fighting instruction are exempt from this notification requirement. Buildings which have not been demolished may be burned under the provisions of this subdivision only.

3. Open burning or the use of special incineration devices is permitted for the destruction of classified military documents under the supervision of the designated official.

4. Open burning is permitted for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers provided the materials specified in subsections B and C of 9VAC5-130-30 are not burned.

5. In urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that no regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road. In non-urban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for

such trimmings.

6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.

7. Open burning is permitted for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack. Use of a flare or flare stack for the destruction of hazardous waste or commercial/industrial waste is allowed provided written approval is obtained from the board and the facility is in compliance with Article 3 (9VAC5-40-160 et seq.) of 9VAC5-40 (Existing Stationary Sources) and Article 3 (9VAC5-50-160 et seq.) of 9VAC5-50 (New and Modified Stationary Sources). Permits issued under 9VAC5-80 (Permits for Stationary Sources) may be used to satisfy the requirement for written approval. This activity must be consistent with the provisions of 9VAC20-60.

8. Open burning or the use of special incineration devices is permitted on-site for the destruction of clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

9. Open burning is permitted for forest management and agriculture practices approved by the board (see 9VAC5-130-50), provided the following conditions are met:

a. The burning shall be at least 1000 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

b. The burning shall be attended at all times.

10. Open burning or the use of special incineration devices is permitted for the destruction of clean burning waste and debris waste on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas. Open burning or the use of special incineration devices for the purpose of such destruction is prohibited in volatile organic compounds emissions control areas (see 9VAC5-20-206) during May, June, July, August, and September.

B. Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws,

ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to § 10.1-1142 of the Code of Virginia, which is enforced by the Department of Forestry.

C. With regard to the provisions of subsection B of this section, special attention should also be directed to the regulations of the Virginia Waste Management Board. No destruction of waste by open burning or transportation of waste to be destroyed by open burning shall take place in violation of the regulations of the Virginia Waste Management Board.

9VAC5-130-50. Forest management and agricultural practices.

A. Open burning is permitted in accordance with subsections B and C of this section provided the provisions of subsections B through E of 9VAC5-130-30 are met.

B. Open burning may be used for the following forest management practices provided the burning is conducted in accordance with the Department of Forestry's smoke management plan:

1. To reduce forest fuels and minimize the effect of wild fires.
2. To control undesirable growth of hardwoods.
3. To control disease in pine seedlings.
4. To prepare forest land for planting or seeding.
5. To create a favorable habitat for certain species.

6. To remove dead vegetation for the maintenance of railroad, highway and public utility right-of-way.

C. In the absence of other means of disposal, open burning may be used for the following agricultural practices:

1. To destroy undesirable or diseased vegetation.
2. To clear orchards and orchard prunings.
3. To destroy empty fertilizer and chemical containers.

4. To denature seed and grain that may no longer be suitable for agricultural purposes.

5. To prevent loss from frost or freeze damage.

6. To create a favorable habitat for certain species.

7. To destroy strings and plastic ground cover remaining in the field after being used in growing staked tomatoes.

PART II Local Ordinances

9VAC5-130-100. Local ordinances on open burning.

A. General.

1. If the governing body of any locality wishes to adopt an ordinance relating to air pollution and governing open burning within its jurisdiction, the ordinance must first be approved by the board (see § 10.1-1321 B of the Code of Virginia).

2. In order to assist local governments in the development of ordinances acceptable to the board, the ordinance in subsection C of this section is offered as a model.

3. If a local government wishes to adopt the language of the model ordinance without changing any wording except that enclosed by parentheses, that government's ordinance shall be deemed to be approved by the board on the date of local adoption provided that a copy of the ordinance is filed with the department upon its adoption by the local government.

4. If a local government wishes to change any wording of the model ordinance aside from that enclosed by parentheses in order to construct a local ordinance, that government shall request the approval of the board prior to adoption of the ordinance by the local jurisdiction. A copy of the ordinance shall be filed with the department upon its adoption by the local government.

5. Local ordinances that have been approved by the board prior to April 1, 1996, remain in full force and effect as specified by their promulgating authorities.

B. Establishment and approval of local ordinances varying from the model.

1. Any local governing body proposing to adopt or amend an ordinance relating to open burning that differs from the model local ordinance in subsection C of this section shall first obtain the approval of the board for the ordinance or amendment as specified in subdivision A 4 of this section. The board in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

d. If a waiver from any provision of this chapter has been requested under 9VAC5-130-60, the language of the ordinance shall achieve the objective of the provision from which the waiver is requested.

2. Approval of any local ordinance may be withdrawn if the board determines that the local ordinance is less strict than state regulations or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, such local amendment will be made within six months of the effective date of the amended state regulations.

4. Local ordinances are a supplement to state regulations. Any provisions of local ordinances that have been approved by the board and are more strict than state regulations shall take precedence over state regulations within the respective locality. If a locality fails to enforce its own ordinance, the board reserves the right to enforce state regulations.

5. A local governing body may grant a variance to any provision of its air pollution control ordinance(s) provided that:

a. A public hearing is held prior to granting the variance;

b. The public is notified of the application for a variance by notice in at least one major newspaper of general circulation in the affected locality at least 30 days prior to the date of the hearing; and

c. The variance does not permit any owner or other person to take action that would result in a violation of any provision of state regulations unless a variance is granted by the board. The public hearings required for the variances to the local ordinance and state regulations may be conducted jointly as one proceeding.

6. 9VAC5-170-150 shall not apply to local ordinances concerned solely with open burning.

C. Model Ordinance.

ORDINANCE NO. (000)

CH-130: 10

Section (000-1). Title. This article shall be known as the (local jurisdiction) Ordinance for the Regulation of Open Burning.

Section (000-2). Purpose. The purpose of this article is to protect public health, safety, and welfare by regulating open burning within (local jurisdiction) to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the State Air Pollution Control Board and other applicable regulations and laws.

Section (000-3). Definitions. For the purpose of this article and subsequent amendments or any orders issued by (local jurisdiction), the words or phrases shall have the meaning given them in this section.

"Automobile graveyard" means any lot or place that is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and that it would not be economically practical to make operative, are placed, located or found.

"Built-up area" means any area with a substantial portion covered by industrial, commercial or residential buildings.

"Clean burning waste" means waste that is not prohibited to be burned under this ordinance and that consists only of (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

"Clean lumber" means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, by-products of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

"Construction waste" means solid waste that is produced or generated during construction remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction

wastes and the disposal of such materials must be in accordance with the regulations of the Virginia Waste Management Board.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

"Hazardous waste" means a "hazardous waste" as described in 9VAC20-60 (Hazardous Waste Management Regulations).

"Household waste" means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) which is regulated by state agencies.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Junkyard" means an establishment or place of business that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary landfills.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Local landfill" means any landfill located within the jurisdiction of a local government.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open pit incinerator" means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain incinerators and over draft incinerators.

"Refuse" means all solid waste products having the characteristics of solids rather than liquids and which are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination or other discarded materials.

"Salvage operation" means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See 9VAC20-80 (Solid Waste Management Regulations) for further definitions of these terms.

"Smoke" means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

"Special incineration device" means an open pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

"Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and

shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

"Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

Section (000-4). Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for the destruction of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the destruction of commercial/industrial waste.

E. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries that may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

F. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9VAC5-70 (Air Pollution Episode Prevention) or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause

or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Section (000-5). Exemptions. The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

A. Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

B. Open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

C. Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

D. Open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and

E. Open burning for the destruction of classified military documents.

Section (000-6). Permissible open burning.

A. Open burning is permitted on-site for the destruction of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the conditions are met:

1. The burning takes place on the premises of the private property; (and)

2. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

3. No regularly scheduled public or private collection service for such trimmings is available at the adjacent street or public road¹).

B. Open burning is permitted on-site for the destruction of household waste by homeowners or tenants, provided that the following conditions are met:

1. The burning takes place on the premises of the dwelling;

¹This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

2. Animal carcasses or animal wastes are not burned;

3. Garbage is not burned; (and)

4. The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted(; and

5. No regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road²).

C. Open burning is permitted on-site for destruction of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations that may be approved by (designated local official), provided the following conditions are met:

1. All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by (designated local official);

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

3. The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

4. The burning shall be conducted at the greatest distance practicable from highways and air fields,

5. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;

6. The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

D. Open burning is permitted for destruction of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided

²This provision shall be included in ordinances for urban areas. It may be included in ordinances for non-urban areas.

that the following conditions are met:

1. The burning shall take place on the premises of a local sanitary landfill that meets the provisions of the regulations of the Virginia Waste Management Board;

2. The burning shall be attended at all times;

3. The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning waste, clean burning debris waste, or clean burning demolition waste;

4. All reasonable effort shall be made to minimize the amount of material that is burned;

5. No materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and (designated local official); no other site shall be used without the approval of these officials. (Designated local official) shall be notified of the days during which the burning will occur.

(E. Sections 000-6.A. through D. notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during May, June, July, August, or September.³)

Section (000-7). Permits.

A. When open burning of debris waste (Section 000-6.C.) or open burning of debris on the site of a local landfill (Section 000-6.D.) is to occur within (local jurisdiction), the person responsible for the burning shall obtain a permit from (designated local official) prior to the burning. Such a permit may be granted only after confirmation by (designated local official) that the burning can and will comply with the provisions of this ordinance and any other conditions that are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by (designated local official).

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from (designated local official), such permits to be granted only after confirmation by (designated local official) that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that

³ This provision shall be included in ordinances for jurisdictions within volatile organic compound emissions control areas. It may be included in ordinances for jurisdictions outside these areas.

any conditions are met that are deemed necessary by (designated local official) to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. All reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

2. The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

3. The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If (designated local official) determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

4. The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

5. The burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

6. The use of special incineration devices shall be allowed only for the destruction of debris waste, clean burning construction waste, and clean burning demolition waste.

7. Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by (designated local official).

(C. An application for a permit under Section 000-7.A. or 000-7.B. shall be accompanied by a processing fee of \$—.⁴)

Section (000-8). Penalties for violation.

A. Any violation of this ordinance is punishable as a Class 1 misdemeanor. (See § 15.2-1429 of the Code of Virginia.)

B. Each separate incident may be considered a new violation.

⁴The fee stipulation in this section is optional at the discretion of the jurisdiction.

9VAC5-130-60. Waivers.

A. A waiver from any provision of this article may be granted by the board for any person or geographic area provided that satisfactory demonstration is made that another state or local government entity has in effect statutory provisions or other enforceable mechanisms that will achieve the objective of the provision from which the waiver is granted.

B. Demonstrations made pursuant to subsection A of this section should, at a minimum, meet the following criteria:

1. The demonstration should show that the statutory provisions or other enforceable mechanisms essentially provide the same effect as the provision from which the waiver is granted.

2. That the governmental entity has the legal authority to enforce the statutory provisions or enforceable mechanisms.

C. Waivers under subsection A of this section shall be executed through a memorandum of understanding between the board and affected governmental entity and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.

D. A waiver from any applicable provision of this article may be granted by the board for any locality which has lawfully adopted an ordinance in accordance with 9VAC5-130-100.

HISTORICAL NOTES:

Effective Date: March 18, 2009

Promulgated: March 18, 2009

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(Code 1967, § 10-14; Ord. No. 97-9(1), 1-8-97; Code 1988, § 9-20; Ord. 98-A(1), 8-5-98)

State law reference--For state law basis of this section, see Va. Code § 15.2-974.

ARTICLE IV. BURNING OF BRUSH, ETC.

State law reference--For state law similar to provisions of this article, see Va. Code § 10.1-1142.

Sec. 6-400 Title.

This article shall be known as the Albemarle County Ordinance for the Regulation of Open Burning.

(Code 1988, § 9-21; Ord. 98-A(1), 8-5-98)

Sec. 6-401 Purpose.

The purpose of this article is to protect public health, safety, and welfare by regulating open burning within Albemarle County to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development.

(Code 1988, § 9-21.1; Ord. 98-A(1), 8-5-98)

Sec. 6-402 Adoption of Virginia State air pollution control board regulations.

The Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, Part IV, Emissions Standards for Open Burning (Rule 4-40), in current form and as amended in the future, are hereby adopted and incorporated by reference; provided, however, any county regulation specified in this article more restrictive than such state regulations shall apply and take precedence over the state regulations. Any permits required by such state regulations may be issued by the county, if authorized by the state agency otherwise responsible.

(Code 1988, § 9-21.1; Ord. 98-A(1), 8-5-98)

Sec. 6-403 Definitions.

For the purpose of this article and subsequent amendments or any orders issued by Albemarle County, the words or phrases shall have the meaning given them in this section.

(1) *Automobile graveyard.* The term “automobile graveyard” means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

(2) *Built-up area.* The term “built-up area” means any area with a substantial portion covered by industrial, commercial or residential buildings.

(3) *Clean burning waste.* The term “clean burning waste” means waste that is not prohibited to be burned under this ordinance and that consists of only (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

(4) *Clean lumber.* The term “clean lumber” means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

(5) *Clean wood.* The term “clean wood” means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest

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management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

(6) *Commercial waste.* The term “commercial waste” means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants and shopping centers.

(7) *Construction waste.* The term “construction waste” means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall be in accordance with the regulations of the Virginia Waste Management Board.

(8) *Debris waste.* The term “debris waste” means wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

(9) *Demolition waste.* The term “demolition waste” means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction waste.

(10) *Garbage.* The term “garbage” means readily putrescible discarded materials composed of animal, vegetable or other organic matter.

(11) *Hazardous waste.* The term “hazardous waste” means a “hazardous waste” as described in 9 VAC 20-60 (Hazardous Waste Management Regulations).

(12) *Household waste.* The term “household waste” means any waste material, including garbage, trash and refuse derived from households. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (seepage) that is regulated by other state agencies.

(13) *Industrial waste.* The term “industrial waste” means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(14) *Junk.* The term “junk” means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(15) *Junkyard.* The term “junkyard” means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(16) *Landfill.* The term “landfill” means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part 1 (9 VAC 20-81-10 et seq.) of 9 VAC 20-81 (Solid Waste Management Regulations) for further definitions of these terms.

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(17) *Local landfill*. The term “local landfill” means any landfill located within the jurisdiction of a local government.

(18) *Open burning*. The term “open burning” means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to produce sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products’ emission.

(19) *Open pit incinerator*. The term “open pit incinerator” means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

(20) *Refuse*. The term “refuse” means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up spoils or contamination or other discarded materials.

(21) *Salvage operation*. The term “salvage operation” means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

(22) *Sanitary landfill*. The term “sanitary landfill” means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9 VAC 20-81-10 et seq.) of 9 VAC 20-81 (Solid Waste Management Regulations) for further definitions of these terms.

(23) *Smoke*. The term “smoke” means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

(24) *Special incineration device*. The term “special incineration device” means an open pit incinerator, conical or tepee burner, or any other device specifically designed to provide good combustion performance.

(25) *Wood waste*. The term “wood waste” means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.
2. Construction, renovation, or demolition wastes.
3. Clean lumber.

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(26) *Yard waste.* The term “yard waste” means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

(Code 1988, § 9-21.3; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13)

Sec. 6-404 Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of household waste or garbage.

F. Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

G. Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in Part VII of the Regulations for the Control and Abatement of Air Pollution or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

(Code 1988, § 9-22; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13)

Sec. 6-405 Exemptions.

The following activities are exempted to the extent covered by the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution:

1. open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house firefighting personnel;

2. open burning for camp fires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers;

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3. open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;
4. open burning for forest management and agriculture practices approved by the State Air Pollution Control Board; and
5. open burning for the destruction of classified military documents.

(Code 1988, § 9-22.1; Ord. 98-A(1), 8-5-98)

Sec. 6-406 Permissible open burning.

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. the burning takes place on the premises of the private property; and
2. the location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.

B. Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or any other clearing operations which may be approved by the fire official, provided that all of the following conditions are met:

1. all reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by the fire official;
2. the material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. the burning shall be at least 500 feet from an occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. the burning shall be conducted at the greatest distance practicable from highways and air fields;
5. the burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;
6. the burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and
7. the burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

C. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that all of the following conditions are met:

1. the burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board;

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2. the burning shall be attended at all times;
3. the material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;
4. all reasonable effort shall be made to minimize the amount of material that is burned;
5. no materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board.

The exact site of the burning on a local landfill shall be established in coordination with the regional director and the fire official; no other site shall be used without the approval of these officials. The fire official shall be notified of the days during which the burning will occur.

(Code 1988, § 9-22.1; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13)

Sec. 6-407 Permits.

A. When open burning of debris waste (section 6-406(B)) or open burning of debris on the site of a local landfill (section 6-406(C)) is to occur within Albemarle County, the person responsible for the burning shall obtain a permit from the fire official prior to the burning. Such a permit may be granted only after confirmation by the fire official that the burning can and will comply with the provisions of this ordinance and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by fire official.

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from the fire official, such permits to be granted only after confirmation by the fire official that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by the fire official to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. all reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood;
2. the material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. the burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If the fire official determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased;
4. the burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;
5. the burning shall be conducted only when the prevailing winds are away from any city, town or built-up area;

ALBEMARLE COUNTY CODE

6. the use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste; and

7. permits issued under this paragraph shall be limited to a specific period of time deemed appropriate by the fire official.

C. An application for a permit under section 6-407(A) or 6-407(B) shall be accompanied by a processing fee as set forth in the fee schedule maintained by the fire official, as may be amended from time to time.

(Code 1988, § 9-24; Ord. 98-A(1), 8-5-98; Ord. 13-6(1), 1-9-13)

Sec. 6-408 Penalties for violation.

A. Any violation of this ordinance is punishable as a class 1 misdemeanor.

B. Each separate incident may be considered a new violation.

C. The fire official shall enforce the terms and conditions of this ordinance.

(Code 1988, § 9-25; Ord. 98-A(1), 8-5-98)

ARTICLE V. EMERGENCY MEDICAL SERVICES COST RECOVERY

Sec. 6-500 Purpose.

Pursuant to Virginia Code §32.1-111.14, it is hereby determined that the powers set forth herein must be exercised in order to assure the provision of adequate and continuing emergency services and to preserve, protect and promote the public health, safety and general welfare.

(Ord. 09-6(1), 9-9-09)

State law reference—Virginia Code § 32.1-111.14.

Sec. 6-501 Definitions.

"Agency" means any person engaged in the business, service or regular activity, whether or not for profit, of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless, or of rendering immediate medical care to such persons.

"Ambulance" means any vehicle, vessel or aircraft, which holds a valid permit issued by the Office of Emergency Medical Services, that is specially constructed, equipped, maintained and operated, and is intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid permit.

"Emergency medical services vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of Emergency Medical Services that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

(Ord. 09-6(1), 9-9-09)

State law reference—Definitions, Virginia Code § 32.1-111.1.

BONFIRE PERMIT REQUIRED

A Bonfire Permit shall be issued to the owner of the land upon which the bonfire will be kindled. Fire is utilized for ceremonial purposes only. Size shall not exceed 5' x 5' x 5'. The duration of the fire shall not exceed three (3) hours. The permit is valid for the date or dates specified only.

KEY DEFINITIONS

- Bonfire: an outdoor fire used for ceremonial purposes.
- Open Burning: the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct, or chimney.
- Debris wastes: wastes resulting from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.
- Household waste. The term "household waste" means any waste material, including garbage, trash and refuse derived from households.

For additional definitions, please refer to the entire Albemarle County Code available online at www.albemarle.org/countyattonney



ADDITIONAL INFORMATION

The information in this pamphlet is provided as a courtesy and is for general reference only.

Please refer to the entire *Albemarle County Code* and/or the *Code of Virginia* for complete guidelines, rules, regulations, laws, and ordinances.

For more information
www.ACFireRescue.org
prevention@ACFireRescue.org
434.296.5833



County of Albemarle
Department of Fire Rescue
460 Stagecoach Road, Suite F
Charlottesville, VA 22902-6489
Voice: 434.296.5833
FAX: 434.972.4123
www.ACFireRescue.org

BURN LAWS

*A guide to open air burning
in Albemarle County*



BURN LAWS

INTENT

The County of Albemarle, in an effort to achieve and maintain such levels of air quality as to protect human health, welfare, and safety of its residents, has regulated open air burning within the County.

The entire text of the applicable burn laws can be obtained by visiting www.ACFireRescue.org or calling 434.296.5833.

The 4:00 PM BURN LAW

During the period beginning 15 February and ending 30 April of each year, open burning may only take place between the hours of 4:00 PM and 12:00 AM (midnight), unless you are burning a distance of 300 feet or greater from woodland, brushland, or other material capable of spreading fire.



REQUIRED PRECAUTIONS

It shall be unlawful for anyone to set fire or procure another to set fire to any woods, brush, logs, leaves, grass, debris, or other flammable material without first taking reasonable care and precaution, by having cut and piled the same or carefully cleared around the pile to prevent the spread of such fire to another's land.

PROHIBITED OPEN BURNING

- The burning of garbage, household waste, tires, refuse, demolition waste, construction waste, impregnated woods, hazardous waste and plastics shall be prohibited at all times.
- Any burning shall be prohibited within 300 feet of any occupied building without first obtaining permission from the occupant. This distance shall be increased to 500 feet for contractors who desire to burn.

BURN PERMIT REQUIRED

A permit is required from the Department of Fire Rescue for the burning of land clearing debris such as brush, stumps, trees, and other clean wood to be burned at the site at which it is generated. This would include debris waste generated from the development of property and from burning unwanted, leaning, or dead trees regardless of size. The duration of this permit is for sixty (60) days per location. A fee of \$500.00 is required (§ 301.2).

Note: A permit is not required for the burning of vegetation that is removed from trees, shrubs, or garden plants. This would also include twigs and branches that fall or are removed from trees (§ 301.2).

GUIDELINES FOR OPEN BURNING

- Fire must be attended at all times.
- Adequate means of extinguishment must be on-site at all times.
- Must maintain a minimum of 50 feet clearance around pile at all times.
- The location for any open burning shall not be less than 50 feet from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet of any structure.
- Burning shall be a minimum of 300' from any occupied building unless permission is obtained from the occupant.
- No flammable/combustible liquids or solids shall be placed in the fire.
- Fires in approved containers shall be permitted, provided that such fires are not less than 15 feet from any structure.
- Must comply with all applicable Federal, State, and Local laws, rules, regulations, codes, and ordinances.



CERTIFIED OPEN BURN PROGRAM

The Certified Open Burn Program consists of attending an informational session regarding safe open-air burn precautions to review Albemarle County's rules & regulations concerning open burning. This class is offered to county property owners and/or their employees. Upon attending this session, a certification card will be issued to the attendee and any fee for a burn permit would then be waived. The duration of this permit is for one year.

Note: This permit is not available to contractors.

COUNTY OF ALBEMARLE

EXECUTIVE SUMMARY

AGENDA TITLE: Open Burning of Debris Waste	AGENDA DATE: July 2, 2008
SUBJECT/PROPOSAL/REQUEST: Approve staff-recommended option to strengthen existing regulations regarding open air burning.	ACTION: X INFORMATION:
STAFF CONTACT(S): Messrs Tucker, Elliott, Davis, Eggleston, and Barber	CONSENT AGENDA: ACTION: INFORMATION:
LEGAL REVIEW: Yes	ATTACHMENTS:
	REVIEWED BY:

BACKGROUND:

The County Executive's Office requested Fire and Rescue staff to provide information to the Board regarding open burning in the development areas of the County, as well as options to address citizen concerns about open burning. Open burning has been a topic of Board discussion for some time; however, the issue has not been presented to the Board for official discussion or action.

STRATEGIC PLAN:

Goal 1: Enhance the Quality of Life for All Citizens

Goal 2: Protect the County's Natural Resources

DISCUSSION:

Overview of Permit Process. The County's burn ordinance, County Code §§6-400 to 408, generally prohibits the open burning of debris waste except under certain circumstances. Residents and contractors may openly burn "debris waste," which is defined as "stumps, wood, brush, and leaves from land clearing operations," once a permit is obtained from the Department of Fire and Rescue. Staff issues permits after evaluating the proposed burn site and determining whether the burn plan would meet all state and local requirements under County Code §6-406(C).

Currently, the County generally charges a \$325 fee for debris waste burn permits in order to offset the cost of inspection and administration. In Fiscal Year 2007, Fire Rescue issued a total of 157 burn permits requiring fees.

Complaints and Current Enforcement. The Department of Fire and Rescue and individual Board members have received complaints about smoke and ash fallout from open burning sites in developed areas of the County; Still Meadows, Belvedere, Pantops and Fontana are a few recent examples. Over the past two years, the complaints Fire and Rescue has received for contractors clearing land have come almost exclusively from the development areas (nine of nine complaints in FY 2007 and nine of ten complaints in FY 2008).

If a complaint raises substantive concerns, staff requires the permittee to take any steps needed to remedy the problem. If the complaint cannot be addressed adequately through that process, staff requires the burning to cease until conditions change. Every effort is made to work with the developer and the residents to reach a mutually acceptable solution.

Under the current County Code requirements:

1. Contractors are not required to utilize an open pit incinerator (pit) and air curtain device (blower) to minimize the smoke and ash; this is currently optional. In the development areas, however, staff generally requires that contractors use a pit and blower as a condition of their burn permit. This process involves digging a pit of specified width, length, and depth in accordance with the air curtain manufacturers' specifications. Air curtain devices direct the air flow around the burn and minimize the particulate matter released during the burning process.
2. Contractors must have written permission from residents of all occupied dwellings within 500 feet of the burn location.
3. The County does not currently require the contractor to provide a site plan showing the location of the burn.

AGENDA TITLE: Open Burning of Debris Waste

July 2, 2008

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Options for Board Consideration. Staff wishes to present two options for the Board's consideration:

Option one: Ban all open burning in the development areas.

At this time, staff does not recommend banning open burning entirely for several reasons:

1. Complaints will continue – An alternative to burning would be grinding the material on site. This operation results in considerable noise and dust, which may generate complaints from nearby residents similar to those for burning.
2. Increased truck traffic – Another alternative is to truck the material off site, which would result in increased large truck and dump truck traffic throughout neighborhoods and main roadways to and from the site.
3. Cost – Other methods are believed to be more costly, although estimated differences are not available to staff at this time.
4. Comparable localities have not gone this far in prohibiting open burning altogether in development areas.

Option two: Strengthen current debris waste regulation in the development areas.

Staff believes this may be the best option, as it addresses concerns from both the development community and the residential community. Most of the complaints concern offensive smoke odor or off-site ash. Staff proposes two changes to the current practices:

1. Currently, Fire and Rescue generally requires through burn permit conditions that developers utilize a pit and air curtain. This practice could be made a uniform requirement in the ordinance itself.
2. Currently, contractors must have written permission from residents of all occupied dwellings within 500 feet of the burn location. This distance could be expanded to 1000 feet, which would potentially reduce the number of complaints for two reasons. First, the increased communications between the developer and residents would increase awareness and understanding of the burn and its consequences. Secondly, any resident within 1000 feet of the proposed burn with a strong opposition to the burn could prevent it from occurring.

Staff does not recommend requiring the contractor to provide a site plan at this time, as staff is currently able to conduct a physical visit of the site for each permit request.

Staff has discussed their concerns, as well as possible solutions, with four prominent area contractors that regularly conduct open burning. These contractors all agreed that burning is the most cost effective method for clearing land. Additionally, each voiced concerns that banning open burning would make land clearing and development more costly, although most concede that alternatives to open burning exist. Further, these contractors believe that using a pit and blower is the most effective way to reduce the smoke and ash from a typical burn operation, and that adhering to such a requirement is more desirable than other, more costly alternatives.

In addition, staff has researched how some other localities that regulate burning in developed areas address open debris waste burning. The relevant results are below:

County	Allow burning in densely populated areas?	If so, do you require pit and blower?	If so, what is the notification distance?	Other relevant requirements?
Stafford	Yes	No	500 feet	Site plan
Henrico	Yes	No	300 feet	Site plan
Hanover	Yes	No	500 feet	
Loudon	Yes	No	500 feet	
Roanoke	Yes	No	500 feet	
Albemarle	Yes	No	500 feet	Burn plan
Spotsylvania	Yes	No	500 feet	
Prince William	Yes	Yes	1000 feet	

BUDGET IMPACT:

The County currently assesses a fee of \$325 for a burn permit specific to land clearing. Should the Board decide to strengthen the existing regulation there will be no budget impact. Should the Board desire to ban burning completely, the budget impact is predicted to be minimal; however, a specific estimate would have to be developed. At this time, it is unknown how many of the total burn permits issued annually are issued within the development area.

AGENDA TITLE: Open Burning of Debris Waste

July 2, 2008

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RECOMMENDATIONS:

Staff recommends that the Board strengthen existing open burning regulations as outlined in option two above: requiring contractors to use burn pits and blowers and increasing the resident permission distance from 500 to 1000 feet. If the Board approves this action, staff will bring forward an executive summary introducing appropriate language in the burn ordinance at a future Board meeting. Under Virginia Code §10.1-1321 and State Air Pollution Control Board regulations, a locality that seeks to deviate in a substantive manner from the State Air Pollution Control Board's model ordinance must obtain that board's prior approval. Accordingly, staff would need to seek approval from the Board of Supervisor, present the proposed ordinance to the State Air Pollution Control Board for its approval, and then bring the ordinance back to the Board of Supervisors for adoption.

COUNTY OF ALBEMARLE

EXECUTIVE SUMMARY

AGENDA TITLE: Ordinance to Amend the Open Burning provisions in Chapter 6, Fire Protection, of the County Code	AGENDA DATE: January 9, 2013
SUBJECT/PROPOSAL/REQUEST: Adoption of an ordinance to amend Section 6-403, Definitions; Section 6-404, Prohibitions on Open Burning; Sec. 6-406, Permissible Open Burning; and Section 6-407, Permits, of Chapter 6, Fire Protection, of the County Code	ACTION: X INFORMATION:
STAFF CONTACT(S): Messrs. Foley, Elliott, Davis, Eggleston, Oprandy and Lagomarsino	CONSENT AGENDA: ACTION: INFORMATION:
PRESENTER (S): Mr. Howard Lagomarsino	ATTACHMENTS: Yes
LEGAL REVIEW: Yes	REVIEWED BY: 

BACKGROUND:

A public hearing was held on November 14, 2012 on an ordinance to prohibit the open burning of household refuse. After the public hearing, the Board determined that it was in favor of adopting the ordinance and directed staff to submit the proposed ordinance to the Air Pollution Control Board for its approval before presenting the proposed ordinance to the Board for final consideration and adoption.

STRATEGIC PLAN:

Goal 5. Ensure the health and safety of the Community.

DISCUSSION:

The proposed ordinance:

1. prohibits the open burning of household waste throughout the County; and
2. updates the definitions in Section 6-403 to be consistent with the definitions set forth in the applicable sections of the Virginia Administrative Code.

Additional background information regarding the ordinance is included in the attached July 11, 2012 executive summary (Attachment B).

BUDGET IMPACT:

Should the Board adopt the proposed ordinance, staff expects only a minor increase of 10-20 hours of Court time annually if the County continues to follow a complaint-driven model, and believes this is manageable within current budget and staffing.

RECOMMENDATIONS:

Staff recommends that the Board adopt the attached ordinance (Attachment C) to amend the open burning provisions of the County Code.

ATTACHMENTS:

A – November 14, 2012 Executive Summary

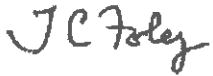
B – July 11, 2012 Executive Summary

C – Ordinance to Chapter 6, Fire Protection, of the County Code

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COUNTY OF ALBEMARLE

EXECUTIVE SUMMARY

AGENDA TITLE: Ordinance to Amend the Open Burning provisions in Chapter 6, Fire Protection, of the County Code	AGENDA DATE: November 14, 2012
SUBJECT/PROPOSAL/REQUEST: Public hearing to consider an ordinance to amend Section 6-403, Definitions; Section 6-404, Prohibitions on Open Burning; Sec. 6-406, Permissible Open Burning; and Section 6-407, Permits, of Chapter 6, Fire Protection, of the County Code	ACTION: X INFORMATION:
STAFF CONTACT(S): Messrs. Foley, Elliott, Davis, Eggleston, Brown, Oprandy and Lagomarsino	CONSENT AGENDA: ACTION: INFORMATION:
PRESENTER (S): Mr. Howard Lagomarsino	ATTACHMENTS: Yes
LEGAL REVIEW: Yes	REVIEWED BY: 

BACKGROUND:

On July 11, 2012, the Board received an executive summary on the issue of open burning of household refuse by owners and tenants of property in the County (Attachment A). The Board instructed staff to draft an ordinance prohibiting such open burning of household refuse for its consideration. On September 5, 2012, staff presented a draft ordinance (Attachment B) to the Board for its consideration and to be set for public hearing.

STRATEGIC PLAN:

Goal 5. Ensure the health and safety of the Community.

DISCUSSION:

The proposed ordinance:

1. prohibits the open burning of household waste throughout the County; and
2. updates the definitions in Section 6-403 to be consistent with the definitions set forth in the applicable sections of the Virginia Administrative Code.

BUDGET IMPACT:

Should the Board adopt the proposed ordinance, staff expects only a minor increase of 10-20 hours of Court time annually if the County continues to follow a complaint-driven model, and believes this is manageable within current budget and staffing, as set forth in the July 11, 2012 Executive summary (Attachment A).

RECOMMENDATIONS:

After the public hearing, staff recommends that the Board reach consensus on the proposed attached draft ordinance (Attachment B) and authorize staff to submit a proposed ordinance to the Air Pollution Control Board for its approval. After such approval the ordinance will be presented to the Board for final consideration and adoption.

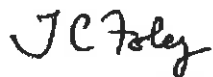
ATTACHMENTS:

- A - Executive Summary dated July 11, 2012
- B - Proposed Ordinance

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COUNTY OF ALBEMARLE

EXECUTIVE SUMMARY

AGENDA TITLE: Open Burning of Household Waste & Refuse	AGENDA DATE: July 11, 2012
SUBJECT/PROPOSAL/REQUEST: Prohibit Open Burning of Household Waste & Refuse	ACTION: X INFORMATION:
STAFF CONTACT(S): Messrs. Foley, Elliott, Davis, Brown, Eggleston, Oprandy & Lagomarsino	CONSENT AGENDA: ACTION: INFORMATION:
PRESENTER (S): Howard Lagomarsino	ATTACHMENTS: Yes
LEGAL REVIEW: Yes	REVIEWED BY: 

BACKGROUND:

This agenda item concerns the ability of citizens within certain parts of the County to continue to legally burn their household refuse. Currently, Chapter 6, Article IV of the County Code permits the burning of household refuse by homeowners and tenants when there is no regularly scheduled public or private refuse collection service available at the adjacent street or public road. The Board has the authority, subject to certain procedural requirements described below, to amend the County Code to prohibit all burning of household refuse in the County.

Open burning in Virginia is regulated by a complex combination of federal and state statutes and regulations and local ordinances. For purposes of this agenda item, the Board can focus on two bodies of law; Article 1, Chapter 13, Title 10 of the Code of Virginia and Chapter 6, Article IV of the County Code.

Several definitions set out in Section 6-403 of the County Code are critical to the discussion of open burning laws in the County.

1. *Open burning* is defined as "the burning of any matter in such a manner that the products resulting from the combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney."
2. *Household refuse* is defined as "waste or refuse normally accumulated by a household during normal day to day living."
3. *Garbage* is defined as "rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living."

State regulations use the term *household waste* instead of *household refuse*. 9 VAC-130-20 defines *household waste* as "any waste material, including garbage, trash and refuse derived from households." This executive summary will use the term household refuse.

Article 1, Chapter 13, Title 10 of the Code of Virginia establishes the Air Pollution Control Board (the APCB) and authorizes the APCB to implement regulations governing open burning in Virginia. The APCB has enacted regulations starting at 9 VAC 5-130-10. These regulations generally prohibit all open burning of refuse in Virginia, but create certain exceptions to this prohibition. Relevant to this agenda item is 9 VAC 5-130-40(A)(6), which permits open burning for the on-site destruction of household waste by homeowners or tenants in areas which do not have regularly scheduled public or private refuse collection services at the adjacent street or public road. The County Attorney's Office and the APCB both interpret "regularly scheduled public or private refuse collection service" to mean regularly scheduled public or private collection service provided by entities such as the County or a property owners association.

9 VAC-130-100 permits any locality to adopt an ordinance regulating open burning within its jurisdiction. Localities may adopt a model ordinance developed by the APCB. The County adopted APCB's then model ordinance in 1988 as Article IV, Chapter 6 of the County Code. Note that animal carcasses, animal waste and garbage, as defined above, may not be openly burned in the County.

AGENDA TITLE: Open Burning of Household Waste & Refuse

July 11, 2012

Page 2

A locality has the option of adopting an open burning ordinance which is stricter than the APCB model ordinance, but to do so must first obtain approval of the ordinance by APCB.

STRATEGIC PLAN:

Goal 5. Ensure the health and safety of the Community.

DISCUSSION:

Since 2008, citizen complaints have generated approximately 37 investigative actions for the County Fire Marshal's Office, which involved the officers opening a file and/or taking some enforcement action. The open burning of household trash and refuse has been of particular concern to certain residents for two reasons: (1) they don't like smoke and (2) the fear of plastics and other materials that may be included as "household refuse" and burned. Twenty-seven of the citizen complaints were related to the open burning of household refuse. Three of those investigations led to charges being filed in court. There was one investigation of open burning of household refuse that led to a notice of violation, essentially a warning, but this was related to the violation of County Code provisions regarding leaving the fire unattended and not to the materials being burned.

Concerns about the open burning of household refuse have led at least two citizens to contact members of the Board. This prompted the Board to request additional information from the Fire and Rescue Department on this issue.

The Virginia Code and County Code prohibit the open burning of waste materials that are hazardous or injurious to the environment and air quality. There are a number of items listed, which include hazardous materials, wastes associated with construction materials, such as wood products impregnated with chemical treatments, and petroleum-based products. Although open burning of hazardous materials, including petroleum and many petroleum based products, is prohibited, it is legal to open burn all items that are considered "household refuse". Citizens are surprised to find out that certain materials fall under the definition of household refuse and may legally be burned.

Additional research examined what similar jurisdictions are doing about open burning of household refuse. Comparable jurisdictions used in this research included Chesterfield County, Hanover County, Henrico County, Roanoke County, Rockingham County, Stafford County, and Spotsylvania County. The research found that none of these localities allow the open burning of household refuse under any circumstances.

Staff considered the option of restricting or limiting open burning in certain geographic areas of the County as a way to address the problem. A logical idea would be to prohibit open burning of household refuse in the designated growth areas. This is not a viable option as the urban/growth areas are a relatively small area of the County and limiting burning in those areas would do little to address the issue. Further, data shows that complaints are overwhelmingly associated with the rural areas.

Staff also considered the option of the Board amending the Code to completely ban the open burning of household refuse and waste in the County. This ban would not include the open burning of natural wood, leaves, yard waste, wastes associated with land clearing, forest management, and government firefighting training. Such a ban would be the easiest to manage and enforce. This option would ban the open burning of all household waste or refuse, making violations clear, as anyone burning trash would be in violation of the Code. This would provide the avenue to ensure compliance and to sustain an enforcement action if needed.

Should the Board decide to amend the Code to include a complete ban on the open burning of household refuse in the County, staff must first submit the ordinance proposed by the Board to the APCB for approval before adoption of the ordinance. Because the County would be strengthening its ordinance beyond the requirements of the Virginia Administrative Code, the request would be handled administratively by APCB staff rather than require approval of the full APCB.

BUDGET IMPACT:

Currently Fire and Rescue staff is already responding to open burning related incidents.

Other jurisdictions have adopted a "complaint driven" model. This means they do not actively search out violations or utilize any type of patrol to identify violations. They respond to and handle complaints as they are received. Therefore, those jurisdictions did not experience an increase in workload. If the Board amends the Code to ban all open burning

AGENDA TITLE: Open Burning of Household Waste & Refuse

July 11, 2012

Page 3

of household refuse, staff proposes following a similar model, and therefore does not anticipate an increase in complaint volume or investigative workload.

Workload will increase regarding court time for violations. If charges are filed, court time requires approximately two to four additional hours per incident. Due to the approach that the Fire Marshal's office will take, the number of court cases annually is predicted to be less than five. The Fire Marshal's office, in all enforcement cases, seeks compliance through education. More often than not, a simple discussion or notice of violation is enough to achieve compliance. Court action is reserved for those rare cases where compliance is not being achieved. Based on the history of complaints and investigations, staff expects only a minor increase of 10-20 hours of court time annually if the Board adopts an ordinance to prohibit the open burning of all household refuse that follows a complaint driven model. This is manageable within current budget and staffing.

RECOMMENDATIONS:

This Executive Summary was prepared in response to requests by Board members and is presented for informational purposes. If the Board decides to proceed, staff will present a draft ordinance to the Board for its consideration and for Board authorization to submit the ordinance to the APCB for its approval.

ATTACHMENTS:

- A- Albemarle County Code Section 6 Article IV
- B- Virginia Administrative Code 9VAC5-130-30
- C- Virginia Administrative Code 9VAC5-130-40
- D- Virginia Administrative Code 9VAC5-130-20
- E- Stafford County Open Burning Guidelines
- F- Albemarle County Land Use Map

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ORDINANCE NO. 13-6(1)

AN ORDINANCE TO AMEND CHAPTER 6, FIRE PROTECTION, ARTICLE IV, BURNING OF BRUSH, ETC., OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 6, Fire Protection, Article IV, Burning of Brush, etc., is hereby amended and reordained as follows:

By Amending:

Sec. 6-403	Definitions
Sec. 6-404	Prohibitions on open burning
Sec. 6-406	Permissible open burning
Sec. 6-407	Permits

Chapter 6. Fire Protection

Article IV. Burning of Brush, etc.

Sec. 6-403 Definitions.

For the purpose of this article and subsequent amendments or any orders issued by Albemarle County, the words or phrases shall have the meaning given them in this section.

(1) *Automobile graveyard.* The term “automobile graveyard” means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

(2) *Built-up area.* The term “built-up area” means any area with a substantial portion covered by industrial, commercial or residential buildings.

(23) *Clean burning waste.* The term “clean burning waste” means waste ~~that which does not produce dense smoke when burned and~~ is not prohibited to be burned under this ordinance and that consists of only (i) 100% wood waste, (ii) 100% clean lumber or clean wood, (iii) 100% yard waste, or (iv) 100% mixture of only any combination of wood waste, clean lumber, clean wood or yard waste.

(4) *Clean lumber.* The term “clean lumber” means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

(5) *Clean wood.* The term “clean wood” means uncontaminated natural or untreated wood. Clean wood includes, but is not limited to, byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders or resins; or painted, stained or coated.

(6) *Commercial waste.* The term “commercial waste” means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes, but is not limited to, waste resulting from the operation of stores, markets, office buildings, restaurants

and shopping centers.

(37) *Construction waste.* The term “construction waste” means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings and other structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials shall ~~must~~ be in accordance with the regulations of the Virginia Waste Management Board.

(48) *Debris waste.* The term “debris waste” means wastes resulting stumps, wood, brush, and leaves from land clearing operations. Debris wastes include but are not limited to stumps, wood, brush, leaves, soil and road spoils.

(59) *Demolition waste.* The term “demolition waste” means that solid waste ~~that~~ which is produced by the destruction of structures, or and their foundations, or both, and includes the same materials as construction waste.

(610) *Garbage.* The term “garbage” means readily putrescible discarded materials composed of rotting animal, and vegetable or other organic matter accumulated by a household in the course of ordinary day-to-day living.

(711) *Hazardous waste.* The term “hazardous waste” means a “hazardous waste” as described in 9 VAC 20-60 (Hazardous Waste Management Regulations). Refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristic may:

——— (a) ——— ~~cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or~~

——— (b) ——— ~~pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.~~

(812) *Household waste refuse.* The term “household waste refuse” means any waste material, including garbage, and trash and normally accumulated by a refuse derived from households in the course of ordinary day-to-day living. For purposes of this regulation, households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

(913) *Industrial waste.* The term “industrial waste” means any solid all waste generated on the premises of by manufacturing and or industrial process that is not a regulated hazardous waste operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter houses, and steel mills. Such waste may include, but is not limited to waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(14) *Junk.* The term “junk” means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(1415) *Junkyard*. The term “junkyard” means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(1416) *Landfill*. The term “landfill” means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See Part 1 (9 VAC 20-81-10 et seq.) of 9 VAC 20-81 Virginia (Solid Waste Management Regulations) (VR-672-20-10) for further definitions of these terms.

(1417) *Local landfill*. The term “local landfill” means any landfill located within the jurisdiction of a local government.

(1418) *Open burning*. The term “open burning” means ~~the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney~~ the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;
2. Containment of the combustion reaction in an enclosed device to produce sufficient residence time and mixing for complete combustion; and
3. Control of the combustion products’ emission.

(1419) *Open pit incinerator*. The term “open pit incinerator” means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion by-products emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

(1420) *Refuse*. The term “refuse” means all solid waste products having the characteristics of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up spoils or contamination or other discarded materials ~~garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations.~~

(1421) *Salvage operation*. The term “salvage operation” means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

(1422) *Sanitary landfill*. The term “sanitary landfill” means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from conditionally exempt small quantity generators, construction, demolition, or debris waste and nonhazardous industrial solid waste. See Part I (9 VAC 20-81-10 et seq.) of 9 VAC 20-81 Virginia (Solid Waste Management Regulations) (VR-672-20-10) for further definitions of these terms.

(1423) *Smoke*. The term “smoke” means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

(1424) *Special incineration device*. The term “special incineration device” means ~~a~~ an open pit incinerator, conical or tepee burner, or any other device specifically designed to provide good combustion

performance.

(25) Wood waste. The term "wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

1. Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

2. Construction, renovation, or demolition wastes.

3. Clean lumber.

(26) Yard waste. The term "yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs that come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include (i) construction, renovation, and demolition wastes or (ii) clean wood.

(Code 1988, § 9-21.3; Ord. 98-A(1), 8-5-98)

Sec. 6-404 Prohibitions on open burning.

A. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this ordinance.

B. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instruction at fire fighting training schools having permanent facilities.

C. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of hazardous waste or containers for such materials.

D. No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

E. No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of household waste or garbage.

~~EF.~~ Open burning or the use of special incineration devices permitted under the provisions of this ordinance does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this ordinance. In this regard special attention should be directed to § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the Virginia Waste Management Board, and the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution.

~~FG.~~ Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in Part VII of the Regulations for the Control and Abatement of Air Pollution or when deemed advisable by the State Air Pollution Control Board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special

incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.
(Code 1988, § 9-22; Ord. 98-A(1), 8-5-98)

Sec. 6-406 Permissible open burning.

A. Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that the following conditions are met:

1. the burning takes place on the premises of the private property; and
2. the location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted.

~~B. Open burning is permitted for the disposal of household refuse by homeowners or tenants, provided that all of the following conditions are met:~~

- ~~1. the burning takes place on the premises of the dwelling;~~
- ~~2. animal carcasses or animal wastes are not burned;~~
- ~~3. garbage is not burned; (and)~~
- ~~4. the location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and~~
- ~~5. no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road.~~

CB. Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or any other ~~from another~~ clearing operations which may be approved by the fire official, provided that all of the following conditions are met:

1. all reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by the fire official;
2. the material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. the burning shall be at least 500 feet from an occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;
4. the burning shall be conducted at the greatest distance practicable from highways and air fields;
5. the burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced;
6. the burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

7. the burning shall be conducted only when the prevailing winds are away from any city, town or built-up area.

DC. Open burning is permitted for disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that all of the following conditions are met:

1. the burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the Virginia Waste Management Board;
2. the burning shall be attended at all times;
3. the material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;
4. all reasonable effort shall be made to minimize the amount of material that is burned;
5. no materials may be burned in violation of the regulations of the Virginia Waste Management Board or the State Air Pollution Control Board.

The exact site of the burning on a local landfill shall be established in coordination with the regional director and the fire official; no other site shall be used without the approval of these officials. The fire official shall be notified of the days during which the burning will occur.

(Code 1988, § 9-22.1; Ord. 98-A(1), 8-5-98)

Sec. 6-407 Permits.

A. When open burning of debris waste (section 6-406(CB)) or open burning of debris on the site of a local landfill (section 6-406(DC)) is to occur within Albemarle County, the person responsible for the burning shall obtain a permit from the fire official prior to the burning. Such a permit may be granted only after confirmation by the fire official that the burning can and will comply with the provisions of this ordinance and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the State Air Pollution Control Board's Regulations for the Control and Abatement of Air Pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by fire official.

B. Prior to the initial installation (or reinstallation, in cases of relocation) and operation of special incineration devices, the person responsible for the burning shall obtain a permit from the fire official, such permits to be granted only after confirmation by the fire official that the burning can and will comply with the applicable provisions in Regulations for the Control and Abatement of Air Pollution and that any conditions are met which are deemed necessary by the fire official to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

1. all reasonable effort shall be made to minimize the amount of material that is burned. Such efforts shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood;
2. the material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;
3. the burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

burning shall be conducted at the greatest distance practicable from highways and air fields. If the fire official determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased;

4. the burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials;

5. the burning shall be conducted only when the prevailing winds are away from any city, town or built-up area;

6. the use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste; and

7. permits issued under this paragraph shall be limited to a specific period of time deemed appropriate by the fire official.

C. An application for a permit under section 6-407(A) or 6-407(B) shall be accompanied by a processing fee as set forth in the fee schedule maintained by the fire official, as may be amended from time to time.

(Code 1988, § 9-24; Ord. 98-A(1), 8-5-98)

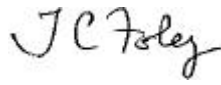
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I, Ella W. Jordan, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of ____ to ____, as recorded below, at a regular meeting held on _____.

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COUNTY OF ALBEMARLE

EXECUTIVE SUMMARY

AGENDA TITLE: Fire Prevention Code Fee Schedule	AGENDA DATE: March 04, 2015
SUBJECT/PROPOSAL/REQUEST: Adoption of a Resolution to adopt a revised Fire Prevention Code Fee Schedule	ACTION: X INFORMATION:
STAFF CONTACT(S): Foley, Walker, Davis, Blair, Eggleston, Oprandy and Lagomarsino	CONSENT AGENDA: ACTION: INFORMATION:
PRESENTER (S): Dan Eggleston, Howard Lagomarsino	ATTACHMENTS: Yes
LEGAL REVIEW: Yes	REVIEWED BY: 

BACKGROUND:

The Albemarle County Fire Rescue Department Prevention Division (ACFR-Prevention) presented information regarding the Virginia Statewide Fire Prevention Code (VSFPC) Fee Schedule to the Board at its September 3, 2014 meeting (See Attachment A). The current fee schedule has not been amended by the Board since 2005, and it references outdated code sections and omits several hazardous activities and occupancies that require enforcement actions pursuant to the VSFPC. Prevention is the most effective way of protecting the citizens of Albemarle County from fires. One method of prevention discussed on September 3rd is the ACFR-Prevention "target hazard" permit and inspection program. It was identified that this program's current fee schedule recovered only 10-16 % of the costs of the program's administration from 2005 to 2013. A proposal was presented that would modify the fee schedule to potentially recover as much as 25% of the associated expenses. The Board expressed an interest in revising the fee schedule to recover more of the ACFR-Prevention program expenses. The discussion focused on "user" fees and fair application of those fees. Board members expressed an interest in recovering 100% of the costs associated with those operations that are discretionary, such as fireworks displays, while costs for other operations, such as facility inspections for permits, should be recovered relative to the time and effort expended in administering the programs. The Board requested that staff engage stakeholders and citizens through meetings, focused discussions and/or surveys, and provide a report to the Board in the first quarter of 2015.

STRATEGIC PLAN:

Economic Prosperity: Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals.

DISCUSSION:

As directed by the Board, ACFR-Prevention staff, with the assistance of Community Engagement staff, conducted a focus group meeting and a survey. Four stakeholders (of the 200 invited) attended the focus group meeting and 197 people (of the 4600 invited) responded to the survey. The Community Engagement Report is attached (Attachment D).

There was a low turnout for the stakeholder meeting, but those present spent several hours discussing the proposed fee changes. Attendees expressed concern regarding fee increases and generally did not agree with increasing the fees. Additionally, potential process changes and efficiencies were discussed, which ACFR-Prevention staff will evaluate internally.

The survey sought to gauge attitudes towards cost recovery among citizens and business owners. The survey included links to the September 3, 2014 Board meeting agenda, discussion, fee proposal, and associated documents as a means of providing background and education on the topic. 197 people responded to the survey in total but not every respondent answered every question. Of the 197 respondents, 49 (approximately 25%) indicated they are business owners.

As expected, not everyone agrees with the proposed increases, but survey respondents overwhelmingly supported increasing the fees and recovering more of the costs of the ACFR-Prevention permit and inspection programs.

When asked if a greater percentage of costs should be recovered through fees (183 respondents answered the question), 131 (72%) responded "yes" while 52 (28%) responded "no."

AGENDA TITLE: Fire Prevention Code Fee Schedule

March 4, 2015

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When asked if a 25% recovery rate from fees is reasonable (184 respondents answered the question), 94 (51%) responded yes, 48 (26%) indicated fees should recover less than 25%, and 42 (23%) indicated fees should recover more than 25%. Of the 184 responses to that question, 136 respondents (74%) believe a 25% or higher recovery rate for fees is reasonable.

When asked the appropriate percentage recovery rate for administrative costs for fireworks permits (181 respondents answered the question) 121 (67%) indicated that 100% of the costs should be recovered, 57 (31%) indicated less than 100% should be recovered, and three (2%) indicated that more than 100% should be recovered.

The survey showed a high level of support exists among respondents for an increase in the fees associated with other inspections, re-inspections and plan reviews as well.

The survey results and specific comments made by many respondents may be found in the attached Report (Attachment D.) The comments include support for cost recovery; recommending caution because pricing may cause people to avoid inspections/permits, ultimately lessening community safety; ensuring that the prevention operation is efficient to control costs; concern that re-inspections will be generated just to increase revenue; and opposition to any fee increase.

Attachment E sets forth the current and proposed fees for each category. The current fee schedule does not include fees for several permits that are required by the VSFPC. Those are identified in Attachment E as being new fees. The proposed fee schedule includes an approximate 14% increase (from \$175 to \$200) in many fees. These include hazardous materials operations and similar programs. There are some fees with greater proposed increases, such as open burning, which increases from \$325 to \$500. Complaints about open burning increase the work load associated with these events, and the increase is to cover the additional work load. Other fees, such as tire plants, dry cleaning and other hazardous operations, are proposed to be increased from various amounts to \$200 to ensure uniformity. Firework displays represent the largest increase. There is a desire as expressed in the survey responses to recover all costs associated with these events. The current fee of \$75 barely covers reviewing the application. The work load for a normal firework display equated to a \$600 fee or a 700% increase.

Some categories of the proposed fee schedule require a permit fee, but do not require an inspection fee. The inspection fee is designed to capture the additional time spent conducting the inspection at a permanent/fixed facility to issue a recurring permit. Those permits that do not require an inspection fee are generally for one-time operations outside of fixed facilities. The permits not requiring the inspection fee have the cost of providing the service built into the permit fee. These permits include open burning, firework displays, carnivals/fairs, some hot works/welding events, floor finishing and tents.

BUDGET IMPACT:

Costs recovered based on the County's current fee schedule range from \$41,512.00 in FY 2005 to \$83,950.00 in FY 2013, which represents between 10% and 16% of the operating budget for the ACFR-Prevention Division. Staff estimates that implementation of the proposed fee schedule would offset as much as 25% of the ACFR-Prevention Division's operating budget annually and/or could provide additional funding for additional fire prevention resources.

RECOMMENDATIONS:

Staff recommends that the Board adopt the attached Resolution adopting the proposed revised fee schedule (Attachment F) effective May 15, 2015.

ATTACHMENTS:

- A – [September 3, 2014 Executive Summary](#)
- B – [2005 Fire Code Fee Schedule Resolution](#)
- C – [Albemarle County Fire Rescue- Office of the Fire Marshal Fee Schedule-Jurisdictional Comparison](#)
- D – [Community Engagement Results](#)
- E – [Chart showing fee increases by category](#)
- F – [Resolution adopting the proposed Albemarle County Fire Rescue-Office of the Fire Marshal Fee Schedule](#)

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Jurisdictional Open Air Burning Comparison

<u>Jurisdiction</u>	<u>Allows Burning in Urban Areas?</u>	<u>Requires "Air Curtain/Trench" Process for Land Clearing Burns</u>	<u>Occupied Structure /Property Line Distances?</u>	<u>Other Requirements?</u>
Albemarle	Yes	No	300 ft. – all others 500 ft. – land clearing	Permit-Land clearing only No Trash Burning
Hanover	No (By Zoning classification)	Yes	750ft.	Permit Ozone area No trash burning Land clearing allowed
Henrico	Yes	Encourages	500 ft.	Ozone area Limits pile size to 25x25x15 15 day notice prior to burning No trash burning No leaf burning if pick up available Requires insurance – residential -\$500,000 liability and land clearing liability of \$1.5 million Only 2 permits /location /annually 8 am – 8 pm limit Land clearing allowed



Jurisdictional Open Air Burning Comparison

Loudoun	No	No	1000 ft.	Permit Ozone area No trash/leave burning if pick up available Land clearing allowed
Prince William	Yes	Yes	1000 ft.	Ozone area Permit No trash/leaves Land clearing allowed
Roanoke	No	No	500 ft.	Call ECC Ozone area Permit No trash/leaves if pick up available
Spotsylvania	No	Yes (Urban area)	750-1000ft by zoning status	Ozone area Permit
Stafford	No (By Zoning classification)	No	300ft. (residential) 500 ft. (Land Clearing)	Site plan Notify ECC 10 days notice No weekend burns Ozone area No trash burns



REGULATING AIR CURTAIN BURNERS

INTRODUCTION

This brochure is intended to provide guidance and insight to the purpose, the benefits and the regulations concerning Air Curtain Burners.

Air Curtain Burners, also known as Air Curtain Incinerators are machines designed as an environmentally friendly alternative to open burning or grinding of wood and other vegetative waste. Air Burners, Inc. are the originators and the leading manufacturers of air curtain machines. This brochure will give you a brief overview of the principles behind the Air Curtain machine and it will provide guidance to more in-depth information regarding the environmental benefits of these machines, official testing results and the Federal regulations governing the use of these machines.

The first question you might ask; why should I be interested in Air Curtain Burners? As most environmentally concerned people know, Black Carbon is one of the most significant components of climate change. Most of the scientific community now consider Black Carbon the number two concern behind CO₂. (see www.StopBlackCarbon.com for more detailed information) Black Carbon has risen in attention not only because of its effect in the atmosphere, but also because of all the climate change contributors, Black Carbon is the one we can correct the quickest. Compared to CO₂ with an atmospheric life of 100 years, Black Carbon's life span seldom exceeds 5 years. Air Curtain Burners are the only machines available today that were designed specifically to eliminate Black Carbon.

The common process of grinding wood and other vegetative waste is one of the worst contributors to climate change with large releases of both non-biogenic CO₂ and Black Carbon both from the large engines and from the grinding process. (see www.WoodWasteBurners.com for an environmental comparison of grinding vs. Air Curtain Burners) Grinding is a "process" it is not an "end solution." Open burning, landfill and Air Curtain Burners are end solutions, and Air Curtain Burners have the lowest impact on the environment.

If you are considering regulations for your state, county and/or town regarding Air Curtain Burners we would suggest you consider two levels of permitting: 1) Temporary and 2) Stationary.

- 1) **Temporary Use** - As an alternative to open burning and to encourage a move away from open burning, allow permits under a similar system as was used for open burning. This generally means a local permit easily and quickly obtained from a local authority such as the fire department or the forestry department. Typical applications would be for land clearing, forest fuels reduction, pipeline clearing, roads and parks cleanup, invasive species removal, etc. Typically these machines would not be allowed to operate at a location for more than 6 months.
- 2) **Stationary Use** - These applications would include county landfill, parks, transfer stations, industrial sites, etc. These applications would require Title V permitting through the State air quality office. The Code of Federal Regulations provides for a simplified system to allow an abbreviated Title V permit for these applications as Air Curtain Burners are exempt from all performance requirements except opacity (EPA method 9). The combustion of clean vegetative waste is considered carbon neutral, therefore the concern in permitting a stationary unit should be 1) Particulate release and 2) local effects or impacts.

Air Curtain Burners are a well proven technology that when implemented can significantly reduce your Black Carbon and provide you a means to reduce open burning. They are also the most cost effective "end solution" for wood and vegetative waste. In these times of difficult municipal budgets, communities can benefit by reducing their load on the local landfills and at the same time take one more step forward in the battle on climate change. The following sections will provide you more details on the machines and the federal regulations. You can find addition resources at www.AirBurners.com or by calling our offices.

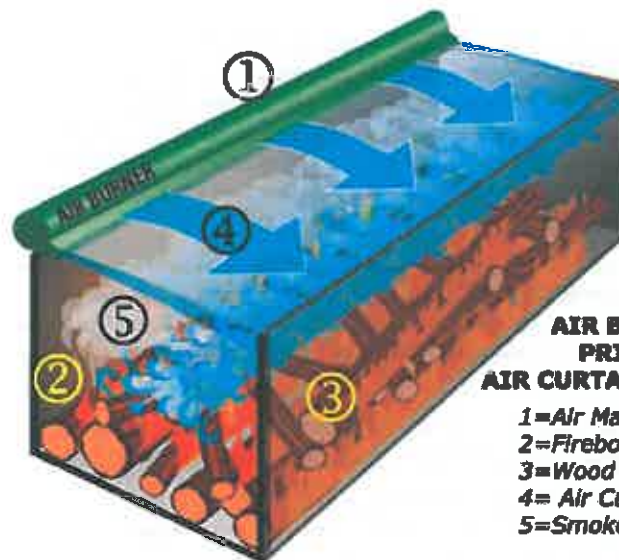


PRINCIPLE OF OPERATION

Air Curtain Burners were designed principally as a pollution control device. The primary objective of an air curtain machine is to reduce the particulate matter (PM) or smoke, that results from burning clean wood waste. It is sometimes hard to visualize without seeing a machine in operation (see video at: www.AirBurners.com), but the machines do not burn anything, rather they control the results of something burning. You could look at it as a pollution control device for open burning. Clean wood waste is loaded into the FireBox, an accelerant like diesel is poured onto the wood and the pile is ignited. Once the fire is ignited the vegetative waste burns naturally, no additional fuels are used. Very similar to starting a campfire. The air curtain is not fully-engaged until the fire has grown in strength or the air curtain may blow the fire out. Once the fire has reached suitable strength, usually in 15 to 20 minutes, the air curtain is engaged. The air curtain then runs at steady-state throughout the burning operations and the waste wood is loaded at a rate consistent with the rate of burn.

Principle

The purpose of the air curtain is to stall or slow down the smoke particles on their way out of the FireBox. In doing this the particles (PM) are subjected to the highest temperatures in the FireBox. Stalling the smoke particles in this region just under the air curtain causes them to re-burn, further reducing their size to an acceptable limit. The result is a very clean burn with opacities well under 10 on the Ringelmann scale (as compared to open burning which typically can run at 80 to 100 on the Ringelmann scale).



AIR BURNERS, LLC PRINCIPLE OF AIR CURTAIN INCINERATION

- 1=Air Manifold
- 2=Firebox Refractory Wall
- 3=Wood Waste or Wood Fuel
- 4= Air Curtain (left to right)
- 5=Smoke (PM)

Operation

You can see in the picture to the right two standard Air Burners FireBoxes completely full and burning while in the background a pile of wood is open burned. This is a photograph taken by BC Hydro in Canada at one of their hydro-electric dams during the first test of the Air Burners machines. The wood is regularly removed from the water intakes.

The wood pile that is open burning continued to burn for several days. That open burning pile could have been eliminated with the FireBox in less than 2 hours with significantly less impact on the environment.



REGULATIONS

Air Curtain Burners are typically regulated in two ways:

- 1) under the States authority for control of open burning ,
- 2) by an abbreviated Title V permit in accordance with 40 CFR part 60.

1) Alternative to open burning - Temporary site location

Air Curtain Burners are a “tool” to help regulators move away from hazardous practices such as open burning and grinding. They are a sound alternative to open burning and the process of grinding and hauling of wood and vegetative waste. In both cases Air Curtain Burners are significantly better for the environment, and they offer the user a significant reduction in overall cost for waste disposal as well, everyone benefits. (see white paper ACB vs. Grinders by visiting www.WoodWasteBurner.com)

The authority to regulate open burning resides with the States, most States familiar with Air Curtain machines permit the use of these machines using the same process as is used to permit open burning. In some areas burning is only allowed if an air curtain machine is used. An applicant would typically apply for their permit at either the local fire department or the local office of the State Forestry Department. In these instances the air curtain machine will be temporarily located at a site for no more than 6 months and must meet the Federal guidelines for air quality as defined in 40 CFR 60.

2) Title V permit - Stationary site location

If an air curtain machine is to be used at a stationary site then an abbreviated Title V permit is required in accordance with 40 CFR 60. In the Federal regulations Air Curtain Burners burning clean wood and vegetative waste as defined by these regulations are required only to meet the EPA Method 9 type opacity test. The reasoning behind this is twofold; first, the contributions to the atmosphere from the burning of clean wood and vegetative wastes are well know as it is a natural process that is part of the Earth’s carbon cycle. As Air curtain machines do not use any supplementary fuels to support combustion then the combustion in an Air Curtain machine is well understood and is considered “carbon neutral.” Second, the purpose of an Air Curtain machine is to reduce particulate matter (PM) therefore the most applicable test is a visual opacity test. Air Curtain machines are required to meet a maximum 10 percent opacity reading for steady state operation. This is of course significantly better than any type of open burning which regularly runs 80 to 100 percent opacity. Even whole log grinding operation can’t meet the ten percent opacity limits.

Typical results for an Air Burners FireBox

Listed below are typical test results for an Air Burners, Inc. air curtain FireBox. These test result have been generated during various testing programs that include the US EPA, the USDA Forest Service, the US Military and company hired consultants. Some of these test results are available on our website at; www.AirBurners.com and we can provide more details upon request. Air Burners is proud to be a CRADA partner with the USEPA. We regularly participate in training and test program with environmental agencies to help create a better understanding of the use and benefit of an Air Curtain Burner from Air Burners.

USDA Forest Service	CO2	CO	CH4	NMHC	PM2.5	CE
lbs per ton of waste burned	(lbs/ton of waste)	(lbs/ton of waste)	(lbs/ton of waste)	(lbs/ton of waste)	(lbs/ton of waste)	%
Air Curtain Burner Test Results	3616	2.6	1.4	1.1	1.1	99

Federal Regulations Concerning Air Curtain Incinerators

CODE of FEDERAL REGULATIONS (CFR)

Title 40 – Protection of the Environment
Chapter 1 – Environmental protection
Sub Chapter C – Air programs
Part 60 – Standards of performance for new stationary sources
Sub Part CCCC (CSWI) and/or Sub part EEEE (OSWI)

The following pages will provide some excerpts from 40 CFR 60

Sub Part CCCC (CSWI)

Sub part EEEE (OSWI)



EXCEPTS FROM 40 CFR PART 60

Sub Part CCCC (CSWI)

§ 60.2020 What combustion units are exempt from this subpart?

This subpart exempts fifteen types of units described in paragraphs (a) through (o) of this section.

Note: We only included the paragraphs between (a) and (q) that are applicable to Air Curtain Incinerators.

(i) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in paragraphs (i)(1) through (3) of this section are only required to meet the requirements under "Air Curtain Incinerators" (§§ 60.2245 through 60.2260).

- (1) 100 percent wood waste.
- (2) 100 percent clean lumber.
- (3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

AIR CURTAIN INCINERATORS

§ 60.2245 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. (Air curtain incinerators **are** not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors.)

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (3) of this section are only required to meet the requirements under "Air Curtain Incinerators" (§§ 60.2245 through 60.2260).

- (1) 100 percent wood waste.
- (2) 100 percent clean lumber.
- (3) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2250 What are the emission limitations for air curtain incinerators?

(a) Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

- (1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.
- (2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times, and each malfunction must not exceed 3 hours.

§ 60.2250 What are the emission limitations for air curtain incinerators?

Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a) and (b) of this section.

- (a) Maintain opacity to less than or equal to 10 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values), except as described in paragraph (b) of this section.
- (b) Maintain opacity to less than or equal to 35 percent opacity (as determined by the average of three 1-hour blocks consisting of ten 6-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

§ 60.2255 How must I monitor opacity for air curtain incinerators?

- (a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.
- (b) Conduct an initial test for opacity as specified in § 60.8.
- (c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.2260 What are the recordkeeping and reporting requirements for air curtain incinerators?

(a) Prior to commencing construction on your air curtain incinerator, submit the three items described in paragraphs (a)(1) through (3) of this section.

(1) Notification of your intent to construct the air curtain incinerators.

(2) Your planned initial startup date.

(3) Types of materials you plan to burn in your air curtain incinerator.

(b) Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Administrator approves another format, for at least 5 years.

(c) Make all records available for submittal to the Administrator or for an inspector's onsite review.

(d) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(f) Keep a copy of the initial and annual reports onsite for a period of 5 years.

Sub part EEEE (OSWI)

§ 60.2887 What combustion units are excluded from this subpart?

This subpart excludes the types of units described in paragraphs (a) through (q) of this section, as long as you meet the requirements of this section.

Note: We only included the paragraphs between (a) and (q) that are applicable to Air Curtain Incinerators.

(o) *Temporary-use incinerators and air curtain incinerators used in disaster recovery.*

Your incineration unit is excluded if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism and you comply with the requirements in § 60.2969.

(p) *Units that combust contraband or prohibited goods.*

Your incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across State lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.

§ 60.2888 Are air curtain incinerators regulated under this subpart?

(a) Air curtain incinerators that burn less than 35 tons per day of municipal solid waste or air curtain incinerators located at institutional facilities burning any amount of institutional waste generated at that facility are subject to all requirements of this subpart, including the emission limitations specified in table 1 of this subpart.

(b) Air curtain incinerators that burn only less than 35 tons per day of the materials listed in paragraphs (b)(1) through (4) of this section collected from the general public and from residential, commercial, institutional, and industrial sources; or, air curtain incinerators located at institutional facilities that burn only the materials listed in paragraphs (b)(1) through (4) of this section generated at that facility, are required to meet only the requirements in §§ 60.2970 through 60.2974 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

For additional information please visit

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