



## Regulation of Open Burning of Solid Waste

### What You Need to Know

This fact sheet provides background concerning the Maryland Department of the Environment's air and solid waste regulations governing open burning of solid waste.

#### Background

The issuance of certain permits for the burning of solid waste may violate existing Maryland solid waste regulations. This can be problematic due to the likelihood of nuisance and pollution attributed to the uncontrolled burning of certain materials. MDE understands that the interaction of the applicable regulations can be complex, and seeks to provide additional information to local Approving Authorities. The Land and Materials Administration (LMA), with input from the Air and Radiation Administration (ARA), have put together this guidance in an effort to further clarify the appropriate application of open burning regulations.

Open burn permits issued by the local health officer can help to address air pollution, nuisance and public safety concerns when all applicable laws and regulations are followed. However, open burn permits issued under Air Quality Control regulations may not shield a permittee from an enforcement action for violations under the solid waste disposal regulations. Relevant to previous guidance from MDE, individuals seeking to burn material which is a "solid waste" must also comply with the solid waste regulations of COMAR 26.04.07, as well as any other applicable state or federal regulations. Therefore, care must be taken in the consideration of what materials are being proposed for open burning and under what circumstances.

#### Environmental Considerations

In addition to smoke and odors that are commonly associated with the open-air burning of solid waste, the release of potentially toxic compounds from the combustion of many natural and household materials is well known and has been documented by studies conducted by the United States Environmental Protection Agency ("EPA") and other researchers. Such releases include the production of dioxins and furans from the combustion of plastics and other organic compounds, and the liberation of heavy metals from paint and metallic objects within the waste. This is of concern because the pollutant discharges have been known to occur at levels that exceed concentrations occurring in discharges from controlled sources like incinerators and waste-to-energy facilities for many parameters. This can pose a significant risk to users of the property where the burning takes place, and potentially to surrounding neighbors. Additional information regarding the environmental affects of the release of pollutants by the burning of household and wood waste can be found on the EPA website:

[www.epa.gov/ttn/atw/burn/burnpq.html](http://www.epa.gov/ttn/atw/burn/burnpq.html)

#### Legal Considerations

Open fires are generally regulated under MDE's Air Management Regulations and the issuance of open fire permits is specifically addressed in the Air Quality regulations (COMAR 26.11.07.). These regulations are part of the State Implementation Plan and are also federally enforceable. Additionally, any decision made to issue a permit may be subject to review by MDE. Certain open fires are allowed without the local health officer's approval, in accordance with the provisions of COMAR 26.11.07.05.



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For those situations where an open burning permit may be appropriate, issuance by local environmental health departments is prohibited when it would violate other fire control laws and regulations of other government agencies.

In accordance with COMAR 26.11.07.03A(1), generally open fire permits may be issued in designated counties when:

1. The control officer is satisfied that there is no practical alternate method to dispose of the material to be burned or to conduct the desired activities;
2. A hazardous condition or air pollution or nuisance will not be created;
3. Fire control laws or regulations of other governmental agencies will not be violated;
4. Materials which produce dense smoke when burned, including, but not limited to, tires and roofing material, will not be burned; and
5. The material to be burned shall have originated on the premises on which it is to be burned.

Consideration must also be given to solid waste laws and regulations prior to the issuance of an open burn permit. Section 9-101(j) of the Environment Article, Annotated Code of Maryland, generally defines solid waste as, "any garbage, refuse, sludge, or liquid from industrial, commercial, mining, or agricultural operations or from community activities." As further defined in the solid waste management regulations, COMAR 26.04.07, regulated solid waste also includes land clearing debris such as stumps, limbs, logs, and brush, and construction and demolition debris derived from dwellings and other structures (see COMAR 26.04.07.11B for a definition of land-clearing debris).

Pursuant to COMAR 26.04.07.03A, a person may not engage in solid waste handling that, among other things, creates a nuisance, pollutes the air, impairs the quality of the environment or creates other hazards to the public health, safety, or comfort as may be determined by MDE. Therefore, the open burning of solid waste could potentially be in violation of fire controls laws or other governmental agency regulations, should it negatively impact health or the environment. In addition, the burn sites constitute an unpermitted open dump unless the ash and other residuals are removed to a proper disposal site.

### Examples

MDE recognizes that the interaction of the Solid Waste and Air regulations can be complex. The following are some examples of common requests where the open burning of materials may or may not be allowed:

1. **Refuse and Tire Piles:** The open burning of household and commercial refuse and tires is not desirable due to the potential for environmental impact. However, pursuant to COMAR 26.11.07.05A(2) and 26.04.07.04C(1), the burning of certain household trash may be permitted, but only when:
  - a. The burn occurs in an area where there is not a public refuse collection;
  - b. The burn does not create dense smoke (emissions greater than 40 percent opacity);
  - c. The burn does not occur locations closer than 200 feet (61 meters) from any neighboring habitable dwelling or place where people work or congregate; and



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- d. The solid waste is from a single family home, and is to be burned at the residence where it was generated.

Research by the EPA indicates that the burning of household wastes can produce significant quantities of dioxin and furans, as well as releasing heavy metals and other pollutants. While MDE does not recommend the burning of household trash because of the creation of dioxins and other pollutants, burning of household trash in accordance with the above would be allowed.

2. **Land-clearing debris:** The open burning of stumps, brush, and logs from the clearing of forested land generally constitutes the impermissible burning of solid waste. However, an open-fire permit may be issued by the County for such materials where the land is being cleared for agricultural purposes, or the material constitutes yard waste from a single-family home. Waste generated when a forested lot is cleared for the construction of a housing development or commercial buildings is solid waste and therefore should not be open-burned. Also, see example #6 below on the burning of wood waste from silvicultural or forest management activities.
3. **Recreational fires:** Recreational fires such as campfires and bonfires are not considered solid waste disposal, and are permissible under the Open Fire regulations, and generally, in certain jurisdictions, do not require a permit.
4. **Construction and Demolition Debris:** Open burning of lumber and other materials derived from the construction or demolition of homes and other structures constitutes the burning of solid waste, and should not be allowed. Note that roofing materials are specifically prohibited under the Air regulations [e.g., COMAR 26.11.07.03A(1)(d) or B(1)(e)].
5. **Dwellings and other structures:** The open burning of unwanted homes and other structures prior to demolition generally constitutes the burning of solid waste, and should not be allowed, unless the activity is being performed as part of a legitimate fire training exercise. In that case, the fire company that will participate must submit a training plan prior to the open burning activity that complies with NFPA 1403, Standard on Live Fire Training Evolution in Structures. Local Fire Marshals can help determine compliance in that regard. Note that roofing materials are specifically prohibited under the Air regulations [e.g., COMAR 26.11.07.03A(1)(d) or B(1)(e)].
6. **Wastes derived from forest management and for forest-fire control:** These wastes are considered forms of silvicultural or agricultural waste, and can be burned on the site where generated pursuant to the Department of Natural Resources regulations, COMAR 08.07.04. However, this does not include the burning of land-clearing debris derived from properties cleared for development.
7. **Imported materials:** Where open fires are permitted, the waste material to be burned must originate from onsite, and additional waste may not be brought in from other properties. For example, where an area of forest or scrub land is cleared for a new field, the wood and brush may be burned, but waste from offsite cannot be added to the pile.



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8. **Disaster Debris**: In the case of disaster where significant amounts of debris are generated, MDE may assist counties in debris management if other solid waste disposal options are inadequate. For example, following Hurricane Isabel, MDE entered into Consent Orders with Counties establishing a variety of ways to manage wastes that were generated in accordance with FEMA guidelines. This may at times include burning of wood waste, if appropriate based on specific circumstances.

MDE has also issued Orders allowing the burning of natural wood in emergency situations, such as in the wake of the La Plata tornado, when available disposal capacity was limited due to the huge volume of waste produced by the disaster. In addition, in March 2010 MDE allowed a number of poultry houses that had collapsed under the weight of heavy snowfalls to be burned. However, convenience or avoidance of cost to the disposer are not factors that the Department deems eligible for consideration in support of an application to burn a material.

It is not the position of MDE that there be a total ban on outdoor burning. Counties may approve controlled burns for fire training purposes provided that the fire company submits a training plan prior to the open burning activity that complies with NFPA 1403, Standard on Live Fire Training Evolution in Structures, or in emergency situations as described in COMAR 26.11.07.04. Other open burning requests may be authorized by the Approving Authority for situations where the issuance of a solid waste permit is exempted, as in COMAR 26.04.07.04.C.

The decision to issue an open-burn permit is fact intensive and must be evaluated on a case by case basis. It should be stressed that there are practical alternative methods to burning, including recycling, composting, and disposal at permitted refuse disposal facilities. These are all accessible options at virtually all times of year in all parts of the State. The Department is always available to help answer questions or to provide additional guidance to local authorities who may have questions about the issuance of specific open burn permits.

### Questions

Please contact the Solid Waste Program at (410) 537-3315, or the Air Quality Compliance Program at (410) 537-3215.