

## **Title 40: Protection of Environment**

### **PART 49 – TRIBAL CLEAN AIR ACT AUTHORITY**

#### Subpart C – General Federal Implementation Plan Provisions

##### **§ 49.131 General rule for open burning.**

- (a) *What is the purpose of this section?* This section limits the types of materials that can be openly burned within the Indian reservation to control emissions of particular matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter. It is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal and methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.
- (b) *Who is affected by this section?* This section applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.
- (c) *What is exempted from this section?* The following open fires are exempted from this section:
- (1) Outdoor fires set for cultural or traditional purposes;
  - (2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;
  - (3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;
  - (4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service must ensure that the structure does not contain any asbestos or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;
  - (5) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;
  - (6) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, open burning for the disposal of diseased animals or other materials by order of a public health official.
- (d) *What are the requirements for open burning?*
- (1) A person must not openly burn, or allow the open burning of, the following materials:
    - (i) Garbage;
    - (ii) Dead animals or parts of dead animals;

- (iii) Junked motor vehicles or any materials resulting from a salvage operation;
  - (iv) Tires or rubber materials or products;
  - (v) Plastics, plastic products, or Styrofoam;
  - (vi) Asphalt or compositing roofing, or any other asphaltic material or product;
  - (vii) Tar, tarpaper, petroleum products, or paints;
  - (viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwellings units and is burned at the residential site;
  - (ix) Lumber or timbers treated with preservatives;
  - (x) Construction debris or demolition waste;
  - (xi) Pesticides, herbicides, fertilizers, or other chemicals;
  - (xii) Insulated wire;
  - (xiii) Batteries;
  - (xiv) Light bulbs;
  - (xv) Materials containing mercury (e.g., thermometers);
  - (xvi) Asbestos or asbestos-containing materials;
  - (xvii) Pathogenic wastes;
  - (xviii) Hazardous wastes;
  - (xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.
- (2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particular matter, and these levels are projected to continue or reoccur over at least the next 24 hours.
- (3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to §49.137 Rule for air pollution episodes.
- (4) Nothing in this section exempts or excuses any person from complying with applicable laws and ordinances of local fire departments and other governmental jurisdictions.

(e) *Are there additional requirements that must be met?*

- (1) A person subject to this section must conduct open burning as follows:
- (i) All materials to be openly burned must be kept as dry as possible through the use of a cover or dry storage;
  - (ii) Before igniting a burn, non-combustibles must be separated from the materials to be openly burned to the greatest extent practicable;
  - (iii) Natural or artificially induced draft must be present, including the use of blowers or air curtain incinerators where practicable;
  - (iv) to the greatest extent practicable, materials to be openly burned must be separated from the grass or peat layer; and
  - (v) A fire must not be allowed to smolder.
- (2) Except for exempted fires set for cultural or traditional purposes, a person must not initiate any open burning when;
- (i) The Regional Administrator has declared a burn ban;

- (ii) An air stagnation advisory has been issued or an air pollution alert, warning, or emergency had been declared by the Regional Administrator.
- (3) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this section.*

The following terms that are used in this section are defined in §49.123 General provisions: Air pollutant, ambient air, emission, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

**§ 49.132 Rule for general open burning permits.**

(a) *What is the purpose of this section?*

This section establishes a permitting program for open burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?*

This section applies to any person who conducts open burning.

(c) *What is exempted from this section?*

The following open fires are exempted from this section:

- (1) Outdoor fires set for cultural or traditional purposes;
- (2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;
- (3) First set for recreational purposes, provided that no prohibited materials are burned;
- (4) Forestry and silvicultural burning; and
- (5) Agricultural burning.

(d) *What are the requirements for open burning?*

- (1) A person must apply for and obtain a permit for the open burn, have the permit available on-site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.
- (2) The date after which a person must apply for and obtain a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.
- (3) A person must comply with the §49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.
- (4) Nothing in this section exempts or excuses any person from complying with an applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(e) *Are there additional requirements that must be met?*

- (1) A person subject to this section must submit an application to the Regional Administrator for each proposed open burn. An application must be submitted in writing at least one working day, and no earlier than five working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:
  - (i) Street address of the property upon that the proposed open burning will occur, or if there is no street address of the property, the legal description of the property.

- (ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.
  - (iii) A plot plan showing the location of the proposed open burning in relation to the property line and indicating the distances and directions of the nearest residential and commercial properties.
  - (iv) The type and quality of materials proposed to be burned, including the estimated volume of material to be burned and the area over which burning will be conducted.
  - (v) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water.
  - (vi) The requested date when the proposed open burning would be conducted and the duration of the burn if it is more than one day.
  - (vii) Any other information specifically requested by the Regional Administrator.
- (2) If the proposed open burning is consistent with this section and §49.131 General rule for open burning, or the EPA-approved Tribal open burning rule, the Regional Administrator may issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this section, §49.131 General rule for open burning or the EPA-approved Tribal open burning rule, and to protect the public health and welfare.
- (3) When reviewing an application, the Regional Administrator will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.
- (4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the open burning permit programs of surrounding jurisdictions.
- (f) *Definitions of terms used in this section.*  
The following terms that are used in this section are defined in §49.123 General provisions: Agricultural burning, air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.