

Virginia Administrative Code
Title 9. Environment
Agency 5. State Air Pollution Control Board
Chapter 130. Regulation for Open Burning

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** (Virginia 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 **9VAC20-81** (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 to (i) suppress, control, or eradicate an infestation or pest; (ii) prevent or retard the spread of an infestation or pest; or (iii) prevent further disease transmission or progression.
2. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting 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 firefighting instruction are exempt from this notification requirement. Buildings that 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. 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 collection service for leaves and tree, yard, and garden trimmings is available at the adjacent street or public road.
6. Open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled 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 4, Emission Standards for Toxic Pollutants from Existing Sources (Rule 6-4), (**9VAC5-60-200** et seq.) and Article 5, Emission Standards for Toxic Pollutants from New and Modified Sources (Rule 6-5), (**9VAC5-60-300** et seq.) of Part II of Hazardous Air Pollutant 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** (Virginia Hazardous Waste Management Regulations).

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 from May 1 through September 30.

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

- a. The burning shall be at least 1,000 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 device for the purpose of such destruction is prohibited May 1 through September 30.

B. Open burning or the use of special incineration devices permitted under the provisions of this chapter 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 order of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this chapter. 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.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; §§ 110, 111, 125, 129, 171, 172, and 182 of the Clean Air Act; 40 CFR Parts 51 and 60.

Historical Notes

Derived from Virginia Register Volume 25, Issue 12, eff. March 18, 2009; amended, Virginia Register Volume 27, Issue 23, eff. August 17, 2011; Volume 31, Issue 21, eff. July 15, 2015.

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