

#### **401 KAR 63:005. Open burning.**

RELATES TO: KRS 149.400, 224.10-100, 224.20-100, 224.20-110, 224.20-120, 42 U.S.C. 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.20-110 prohibits any person from directly or indirectly, emitting into or discharging into the air under the jurisdiction of the commonwealth, or causing, permitting, or allowing to be emitted or discharged into the air, any contaminants as provided for in subsection (1) of KRS 224.01-010 that shall cause or contribute to the pollution of the air of the commonwealth in contravention of any of the rules, administrative regulations, or orders of the cabinet. This administrative regulation establishes requirements for the control of open burning.

##### Section 1. Definitions.

- (1) "Clean lumber" means wood or wood products that have been cut or shaped and includes wet, air-dried, and kiln-dried wood products and does not include commercial or industrial waste or wood products that have been painted, pigment-stained, or pressure-treated using any hazardous or toxic compounds.
- (2) "Fire training" means the instruction of industrial, public and private firefighters conducted in accordance with safety standards and procedures as accepted by the Kentucky State Fire Marshal, the Kentucky Fire Commission or the National Wildfire Coordinating Group.
- (3) "Garbage" means putrescible animal and vegetable matter accumulated in the course of ordinary day-to-day living.
- (4) "Household rubbish" means waste material and trash normally accumulated by a family in a residence in the course of ordinary day-to-day living, except for garbage, cans, glass, plastic, or other potentially hazardous waste materials.
- (5) "Land clearing" means clearing of land for agricultural, residential, industrial, or commercial development purposes, including the construction of roads.
- (6) "Open burning" means the burning of any matter without a burn chamber approved by the Kentucky Division for Air Quality, or without a stack or chimney with control devices approved by the Kentucky Division for Air Quality.
- (7) "Priority I Region" means a region classified as Priority I in 401 KAR 50:020, Appendix A.
- (8) "Recognized agricultural, silvicultural, range, ecological, or wildlife management practices" means burning recognized by the Kentucky Department of Agriculture, the United States Department of Agriculture, the Kentucky Division of Forestry, the United States Forest Service, the Kentucky Department of Fish and Wildlife, the Kentucky State Nature Preserves Commission, or the United States Fish and Wildlife Service as necessary to promote cultivation of crops, range, and forest lands, weed and understory abatement and pest control and prevention.
- (9) "Wood waste" means untreated wood and untreated wood products, including tree stumps (whole or chipped), felled trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings and shavings. Wood waste does not include:
  - (a) Yard waste;
  - (b) Construction, renovation, or demolition wastes; or
  - (c) Clean lumber.
- (10) "Yard waste" means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs, which 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:

- (a) Construction, renovation, and demolition wastes; or
- (b) Clean lumber.

Section 2. Applicability. This administrative regulation shall apply to all open burning that is not subject to another administrative regulation in 401 KAR Chapters 50 to 65.

Section 3. Prohibition of Open Burning. Except as provided in Sections 4 and 5 of this administrative regulation, open burning shall be prohibited.

Section 4. Allowable Open Burning. Subject to the limitations contained in this section and the restrictions contained in Section 5 of this administrative regulation, open burning shall be allowed for:

- (1) Fires set for the cooking of food for human consumption;
- (2) Fires set for recreational or ceremonial purposes;
- (3) Small fires set by construction and other workers for comfort heating purposes if:
  - (a) The ambient temperature is below fifty (50)degrees Fahrenheit;
  - (b) Excessive or unusual smoke is not created;
  - (c) Only clean lumber or vegetative matter is burned; and
  - (d) The fire is burned in a container not exceeding fifty-five (55) gallons in size;
- (4) Fires set for the purpose of weed abatement, disease, and pest prevention;
- (5) Fires set for prevention of a fire hazard, including the disposal of dangerous materials if no safe alternative is available;
- (6) Fires set for the purpose of instruction and training of public and industrial employees in the methods of fighting fires as set forth in Section 6 of this administrative regulation;
- (7) Fires set for recognized agricultural, silvicultural, range, ecological, and wildlife management practices;
- (8) Fires set by individual homeowners for burning of leaves except in cities greater than 8,000 population located in a Priority I Region;
- (9) Fires for disposal of household rubbish, which shall not include garbage, originating at dwellings of five (5) family units or less, if the fires are maintained by an occupant of the dwelling at the dwelling, except in cities greater than 8,000 population located in a Priority I Region;
- (10) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning;
- (11) Fires set for disposal of natural growth for land clearing and maintenance, and trees and tree limbs felled by storms if no extraneous materials, such as tires or heavy oil which tend to produce dense smoke, are used to cause ignition or aid combustion and the burning is done on days when conditions do not pose a threat of igniting a forest fire. In regions classified Priority I, with respect to particulate matter pursuant to 401 KAR 50:020, Appendix A, the emissions from these fires shall not be equal to or greater than forty (40) percent opacity;
- (12) Heating ropes that are set on fire to repair steel rails during cold weather; and
- (13) Fires set by county or municipal governments to dispose of wood waste or clean lumber. This activity shall not be considered in violation of 401 KAR 47:030, Section 10.

Section 5. Restrictions to Open Burning.

- (1) For those counties, or portions of counties, which are, or were previously, designated moderate nonattainment for the one (1) hour ozone or nonattainment for the National Ambient Air Quality Standards (NAAQS) PM<sub>10</sub> or those counties, or portions of counties, which are, or were designated nonattainment for the eight (8) hour ozone or

PM<sub>2.5</sub> national ambient air quality standards, pursuant to 401 KAR 51:010, fires may be set in accordance with this administrative regulation except during the months of May, June, July, August, and September. During these months, the only open burning activities allowed shall be:

- (a) Fires set for the cooking of food for human consumption;
  - (b) Fires set for prevention of a fire hazard, including disposal of dangerous materials if no safe alternative is available;
  - (c) Fires set for the purpose of bona fide instruction and training of public and industrial employees in the methods of fighting fires;
  - (d) Fires set for recognized agricultural, silvicultural, range, ecological, and wildlife management practices;
  - (e) Fires set for the purpose of disposing of accidental spills or leaks of crude oil, petroleum products or other organic materials, and the disposal of absorbent material used in their removal, if no other economically feasible means of disposal is available and practical. Permission shall be obtained from the cabinet prior to burning; and
  - (f) Fires set for recreational or ceremonial purposes.
- (2) Open burning shall comply with the fire hazard season requirements of KRS 149.400.
  - (3) Open burning for land clearing purposes associated with residential, commercial, or industrial development shall be limited to a maximum of two (2) contiguous acres at any one (1) time.
  - (4) This administrative regulation shall not authorize open burning that is prohibited by any local ordinance.

Section 6. Procedures for Fire Training. Burning conducted in conjunction with training for public, private and industrial firefighters shall be subject to the following criteria:

- (1) Excluding fire training that has been approved by the Kentucky State Fire Marshal, or which has been certified by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, any entity intending to conduct fire training shall submit written notification to the local Division for Air Quality regional office a minimum of fifteen (15) days prior to the scheduled training. The written notification shall state the location and the date of the proposed fire training, the name and contact information for the on-site training coordinator, the number of firefighters to be trained, the goals and the objectives of the training, and a brief summary of what is to be taught.
- (2) Any materials that contain asbestos shall not be burned.
- (3) Materials likely to produce hazardous or toxic emissions shall be removed prior to the fire training burning event, to the extent practicable, and properly disposed.
- (4) Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, entities conducting fire training shall be limited to one burning event related to training per year for every ten firefighters under their supervision.
- (5) Excluding fire training approved by the Kentucky Division of Forestry or the Kentucky State Fire Marshal, or which has been certified by the Kentucky State Fire Commission, or which is conducted in accordance with standards adopted by the National Wildfire Coordinating Group, between May 1 and September 30, fire training shall not be conducted in any counties, or portions of counties, which are, or were previously, designated moderate nonattainment for ozone, or designated, or previously designated, nonattainment for the eight (8) hour ozone or PM<sub>2.5</sub> (particulate matter) national ambient air quality standard, pursuant to 401 KAR 51:010.

(5 Ky.R. 510; eff. 6-6-1979; 10 Ky.R. 634; eff. 3-1-1984; 24 Ky.R. 654; 1299; eff. 1-12-1998; 31 Ky.R. 1354; 32 Ky.R. 63; eff. 7-13-2005; Crt eff. 9-12-2018.)