

# KDHE Regulations Regarding Controlled Burns

**28-19-645. Open burning prohibited.** A person shall not cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by K.A.R. 28-19-647 and K.A.R. 28-19-648. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

**28-19-646. Responsibility for open burning.** It shall be prima facie evidence that the person who owns or controls property on which open burning occurs has caused or permitted the open burning. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

**28-19-647. Exceptions to prohibition on open burning.** (a) The following open burning operations shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645:

(1) open burning carried out on a residential premise containing five or less dwelling units and incidental to the normal habitation of the dwelling units, unless prohibited by any local authority with jurisdiction over the premises;

(2) open burning for cooking or ceremonial purposes, on public or private lands regularly used for recreational purposes;

(3) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648; or

(4) open burning approved by the department pursuant to paragraph (b).

(b) A person may obtain an approval from the department to conduct an open burning operation that is not otherwise exempt from the prohibition imposed by K.A.R. 28-19-645 if it is demonstrated that the open burning is:

(1) necessary, which in the case of burning for the purpose of disposal of any materials, shall mean that there is no other practical means of disposal;

(2) in the public interest; and

(3) is not prohibited by any local government or local fire authority.

(c) Open burning operations for which an approval is required but which are deemed to be necessary and in the public interest include the following:

(1) the use of safety flares for disposal of flammable gases;

(2) fires related to the training of government or industrial personnel in fire fighting procedures;

(3) fires set for the removal of dangerous or hazardous liquid materials;

(4) open burning of trees and brush from non-agricultural land clearing operations; and

(5) open burning of clean wood waste from construction projects carried out at the construction site.

(d) Each person seeking an approval to conduct an open burning operation pursuant to

this regulation shall submit a written request to the department containing the following information:

(1) the location of the proposed open burning and the name, address and telephone number of the person responsible for the open burning;

(2) a description of the open burning including:

(A) the estimated amount and nature of material to be burned;

(B) the proposed frequency, duration and schedule of the burning;

(C) the size of the area to which the burning will be confined;

(D) the method of igniting the material;

(E) the location of any public roadways within 1,000 feet of the proposed burn;

(F) the number of occupied dwellings within 1,000 feet of the proposed burn; and

(G) evidence that the open burning has been approved by appropriate fire control authority having jurisdiction over the area; and

(3) the reason why the proposed open burning is necessary and in the public interest if the activity is not listed in subsection (c) of this regulation.

(e) Each open burning operation for which the department issues an approval pursuant to paragraph (b) shall be subject to the following conditions, except as provided in paragraph (f):

(1) The person conducting the burning shall stockpile the material to be burned, dry it to the extent possible before it is burned, and assure that it is free of matter that will inhibit good combustion.

- (2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.
- (3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.
- (4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.
- (5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.
- (6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.
- (7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.
- (8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.
- (9) The department may revoke any approval upon 30 days notice.
- (10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:
  - (A) may be injurious to human health, animal or plant life, or property; or
  - (B) may unreasonably interfere with the enjoyment of life or property.
- (f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:
  - (1) is necessary and in the public interest;
  - (2) can be conducted in a manner that will not result in emissions which:
    - (A) may be injurious to human health, animal or plant life, or property; or
    - (B) may unreasonably interfere with the enjoyment of life or property; and
  - (3) will be conducted in accordance with such conditions as the department deems necessary. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

**28-19-648. Agricultural open burning.** (a) Open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be exempt from the prohibition on the open burning of any materials imposed by K.A.R. 28-19-645, provided that the following conditions are met:

- (1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;
  - (2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;
  - (3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and
  - (4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.
- (b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)