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Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Citation	9VAC5-130
Regulation title	Regulation for Open Burning
Action title	Open Burning (Revision E12)
Date this document prepared	April 30, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Regulation for Open Burning is intended to meet three goals: 1) to protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth; 2) to reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards; and 3) to require that open burning be conducted in a manner as to prevent the release of air pollutants. The purpose of the planned action is to revise the regulation as needed to efficiently and effectively meet its goals while avoiding unreasonable hardships on the regulated community, the department, and the general public.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Statutory Authority

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 110(a) of the federal Clean Air Act mandates that each state adopt and submit to the U.S. Environmental Protection Agency (EPA) a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

1. establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

2. establish schedules for compliance;

3. prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

4. require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

6. require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D of the Clean Air Act specifies state implementation plan requirements for nonattainment areas, with Subpart 1 covering nonattainment areas in general and Subpart 2 covering additional provisions for ozone nonattainment areas.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification." Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;

2. the requirement of reasonable further progress;

3. a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

4. an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

5. the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

6. the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

7. if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

8. the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Under Part D, Subpart 2, § 182(a)(2)(A) requires reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

EPA has issued detailed guidance that sets out its views on the implementation of the air quality planning requirements applicable to nonattainment areas: the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

State Requirements

These specific regulations are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Specifically, § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act. It further provides that no such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the proposal is developed.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air in order to protect public health and welfare. EPA requires that each state submit a State Implementation Plan (SIP), including any

laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future. The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant – ozone – has proven problematic. While ozone is needed at the earth's outer atmospheric layer, excess concentrations at the surface have an adverse effect on human health and welfare. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NO_X), and sunlight. When VOC and NO_X emissions are reduced, ozone is reduced.

The Act establishes a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Once a nonattainment area is defined, each state is then obligated to submit a SIP demonstrating how it will attain the air quality standards in each nonattainment area. Certain specific control measures and other requirements must be adopted and included in the SIP. In cases where the specific federal control measures are inadequate to achieve the emission reductions or attain the air quality standard, the state is obligated to adopt additional control measures as necessary to achieve this end. The open burning rule

is needed to make legally enforceable one of several control measures identified in plans submitted by the Commonwealth for the attainment and maintenance of the ozone air quality standard.

The regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a restriction during ozone season (May through September) in the volatile organic compound (VOC) emissions control areas, which generally correspond to nonattainment areas, as well as maintenance and Early Action Compact areas that require additional controls to avoid a nonattainment designation. It also provides a model ordinance for localities that wish to adopt their own legally enforceable mechanisms to control burning. Finally, open burning is limited to clean burning waste and debris waste; certain materials may never be burned anywhere at any time.

In addition to controlling ozone, open burning restrictions control particulate matter (smoke) and hazardous air pollutants, which are harmful to human health. The control of nuisance smoke is also necessary to protect public safety and welfare.

Open burning in the Commonwealth has been regulated by the board since 1972. As the years pass, the need to control certain types of burning and how to do so evolves, and the regulation must be evaluated and revised from time to time in order to effectively meet its goals. Since the last substantive revision of the regulation in 2003, the following specific issues have been identified.

1. Although the population has increased and cities and towns have expanded, so too have methods of dealing with certain waste materials; for example, opportunities for recycling and composting have increased. Numerous localities have also opted to adopt open burning ordinances in the interest of expeditiously meeting their residents' needs. In addition, areas with recognized pollution problems, such as ozone nonattainment areas, have open burning restrictions that enable the Commonwealth to meet targeted national standards. In the interests of continuing to encourage local control of what is essentially a local issue, it is believed that the board's open burning regulation should be limited to VOC control areas (see 9VAC5-20-206), which correspond to localities with recognized air pollution issues. Other localities would still be able to adopt and implement local burning ordinances in accordance with state law should local conditions and needs warrant.

2. 9VAC5-130-40 A 5 allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service. Urban areas are defined generally in 9VAC5-10 (General Definitions), with the specific localities listed in 9VAC5-20-201. This list is based in part on an outdated federal list of urbanized areas. Since population characteristics are not necessarily indicative of an air pollution problem, the criteria for burning limitations should not be based on a list of "urban areas," but simply as to whether or not collection service is available.

3. The term "on-site" was originally added in order to limit open burning where the waste material was generated. However, there may be air pollution and waste management benefits associated with removal of debris from one site and burning it at another. Instead of limiting open burning to on-site destruction of waste generated at the site, it should be allowed off-site.

During the regulatory development process, other options for improving the regulation will be entertained.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

1. The statewide open burning regulation may be limited to VOC control areas (9VAC5-20-206), which correspond to localities with recognized air pollution issues.

2. 9VAC5-130-40 A 5 may be revised such that the criteria for burning limitations will not be based on a list of "urban areas," but simply whether or not public collection service is available.

3. The concept of "on-site" limitations will be considered.

4. Other options for improving the regulation will be entertained.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Alternatives for achieving the purpose of the regulation have been considered by the department. In addition to internal agency discussion among planning, permitting, and compliance staff, the department used the periodic regulatory review process to obtain further information as to what alternatives should be considered. The department has determined that amending the regulation (the second alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option was not selected because a number of issues have been identified that require resolution if the regulation is to meet its goals and operate properly.

2. Amend the regulation. This option was selected because a number of issues have been identified that require resolution if the regulation is to meet its goal of protecting public health and welfare while avoiding unreasonable hardships on the regulated community, the department, and the general public.

3. Repeal the regulation. This option was not selected because the regulation is still needed to protect public health and welfare.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The board is seeking comments on this regulatory action, including but not limited to 1) ideas to assist in the development of the proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) potential impacts of the regulation, and 4) impacts of the regulation on farm and forest land preservation. The board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received on the last day of the public comment period. All testimony, exhibits and documents received are part of the public record.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) and on the Commonwealth Calendar website (http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi). Both oral and written comments may be submitted at that time.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email mary.major@deq.virginia.gov, phone 804-698-4423, fax 804-698-4510).

Regulatory panel

Please also indicate, to the extent known, if standing or ad hoc advisory panels (also known as regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate whether 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The board does not intend to establish a panel to assist in the development of the proposal. However, in response to requests received during the NOIRA public comment period the board will consider establishing a panel. Persons requesting the agency use a panel and interested in assisting in the development of a proposal should notify the department contact by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the panel will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that the proposal will have a direct impact on families. However, there will be positive indirect impacts in that the proposal will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

Periodic review

If this NOIRA is the result of a periodic review/small business impact review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

In addition, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A periodic review for this regulation was conducted from February 13 through March 5, 2012. In the Notice of Periodic Review, the department and board sought public input on the following additional specific issues:

1. Since the open burning regulation was originally promulgated in 1972, methods for addressing open burning have evolved. Although the population has increased and cities and towns have expanded, so too have methods of dealing with certain waste materials; for example, opportunities for composting have increased. Numerous localities have also adopted open burning ordinances that address their local concerns. In addition, areas with recognized pollution problems, such as ozone nonattainment areas, have open burning restrictions that enable the Commonwealth to meet targeted national standards. In the interests of encouraging local control of what is essentially a local issue, should the statewide open burning regulation be limited to VOC/NO_X control areas (see 9VAC5-20-206), which correspond to localities with recognized air pollution issues?

2. If a statewide rule is retained: 9VAC5-130-40 A 5 allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service. Urban areas are defined generally in 9VAC5-10 (General Definitions), with the specific localities listed in 9VAC5-20-201. This list is based in part on the federal list of urbanized areas. Since population characteristics are not necessarily indicative of an air pollution problem, should the criteria for burning limitations be based on urban areas, or simply whether or not collection service is available? If urban areas continue to be a determining criterion, should the state list be revised to reflect the most current federal list of urbanized areas and clusters? Or perhaps something else?

3. If a statewide rule is retained: The term "on-site" was originally added in order to limit open burning where the waste material was generated. However, it is believed that there may be air pollution and waste management benefits associated with removal of debris from one site and burning it at another. Should open burning be limited to on-site destruction of waste generated at the site, or should open burning be allowed off-site?

Commenter	Comment	Agency response
Wes Wright	I've had a number of conversations with people at the local government and state level, including some of the staff in the Roanoke office around open burning. The issue that I've run in to on several occasions is that while the regulations seem to indicate that burning, particularly leaves, in	Unfortunately, even if the urban area classification were modified under the board's regulations, the issue of nuisance burning raised by Mr. Wright would not necessarily be resolved. All "urban area" jurisdictions are separated at some point by a demarcation indicating "non-urban" on the other side of the line thus allowing individuals on the non-urban side of the delineation to continue to burn. In

	residential urban areas where alternate disposal mechanisms are available (such as public/private trash) shouldn't be allowed, the definitions around urban areas seem to be vague enough that the enforcement professionals don't feel comfortable enforcing the intent. I have been told that the law was clear enough though that if I took it to civil court there would be good standing for winning the case. Let me try to put some personal color around this that I hope helps. I live in a neighborhood that borders Bedford and Campbell county. There are a couple hundred houses in the area, and the lots are about 100-150 ft wide in most cases. It's also heavily wooded. There are a handful of people that will take leaves and sometimes brush and set large fires that fill the neighborhood and surrounding homes with a thick smoke. We've even had a couple people move out because their children has asthma issues and people refused to stop. On the Campbell county side the local fire marshal banned the burning due to the number of complaints. Unfortunately Bedford has not been so progressive, despite in one instance someone creating a large fire (3 separate trucks and depts had to respond) from failing to control their burning. One time one of the burners had a fire about 20 ft high going right in the middle of three trees less than 30 ft from the main treeline. The health issues with us being very close to each other are the biggest concern that I have. It seems inherently wrong that someone else should be able to perform an action which has an adverse effect on our ability to be safely outside and even worse that they can do something to create so much smoke that the inside is also a risk. The second concern I have is around the idea that many of those deciding to burn are doing so	this particular case, even though Campbell County has a prohibition on open burning, Bedford County does not thus creating a potential nuisance for the residents on the no-burn side of the county line. Moreover, the state regulation permits open burning in urban areas that do not provide curbside pick-up; therefore, open burning would still be allowed in Bedford County even if it were to be designated "urban." It should be noted that, at this time, of the 134 political jurisdictions in Virginia (95 counties, 39 independent cities) 65 have regulations pertaining to open burning and many prohibit it. In addition, 34 towns also have adopted ordinances pertaining to open burning. Furthermore, it should be noted that DEQ personnel are neither trained nor properly equipped, nor should they be, to address neighbor disputes; rather local law enforcement personnel are best able to address neighborhood disagreements. If local police and fire services cannot resolve such problems, it is not reasonable to expect DEQ personnel to do so in their stead. Open burning is a local air pollution problem and should be addressed via local governments working together to respond to the needs of their citizens and local governments which have complete authority to adopt or intervene as they deem appropriate for the citizens of their jurisdictions. The current state regulation has a model ordinance that can be used by local governments as either a starting point for their own specific regulation or can be adopted in its entirety.

	irresponsibly in such a closely spaced neighborhood and so close to the tree-line.	
Anonymous	Regarding the three posted questions: #1 - I believe that the pollution should cover leaves, brush and others as mentioned in the regulations. It is particularly frustrating when burning keeps me from taking my kids out during the day for concern of their health. While these may essentially be local issues, the localities do not seem to be interested in monitoring or dealing with those issues. If the state does not provide controls and specific guidance then I do not believe that most localities will address the problems. #2 - I like the idea of just whether or not collection service is available. If we are trying to protect our environment, homes, and families from what is clearly identified as bad for us then we should avoid such activities whenever possible. For those that aren't concerned with burning, they should not be able to decide for others (by being permitted to burn). If the guidelines are tightened to anywhere public or private collection is available then the people will have the choice of composting or disposing of their debris without being able to affect other people around them. #3 - If it is an appropriately controlled and monitored disposal facility, which may be better than disposing of the material on-site. I do think that the language should be careful to not allow for people to drag their waste into each others yards or just anywhere off-site - the off-site option should always be a better disposal option than on-site.	#1. Section 10.1-1308 of the Air Pollution Control Law, in reference to the Board's authority to adopt regulations, states: *No such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning.* Many political jurisdictions within the Commonwealth of Virginia have enacted valid ordinances addressing opening burning; of the 134 political jurisdictions in Virginia (95 counties, 39 independent cities) 65 have regulations pertaining to open burning and many prohibit it. In addition, 34 towns also have adopted ordinances pertaining to open burning. The current regulation contains a model rule that local governments can use to assist in the development of their local ordinance. Note that in Virginia, Localities have the power to regulate only what the General Assembly expressly provides. The fact that the Virginia legislature has explicitly allowed for local control over open burning strongly suggests a preference for local control over the issue. It is the clear intent of the legislature that localities should be able to control—or not control—open burning as they see fit. #2. 9VAC5-130-40 A 6 stipulates that open burning is permitted for the on-site destruction of household waste by homeowners or tenants, provided that no regularly scheduled public or private collection service for such refuse is available at the adjacent street or public road. Should a locality determine that its waste management services are not adequate, they have the option of among other possible paths, adopting a local burning ordinance. #3. As previously noted, moving material off-site may result in a much cleaner burn if special incineration devices are utilized to ensure a cleaner burning of material.
Anonymous	The regulations on open burning ought to be reviewed in order to address the safety and health of the	9VAC5-130-30 currently prohibits the open burning of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other

	general public. The act of open burning releases harmful toxins into the environment, poses a general fire hazard, and creates an opportunity for the burning of non-approved materials. As an alternative, the idea of composting is attractive to me although I would not expect that to be offered as a public service. For those wishing to discard of leaves, brush, and other organic materials two options exist; either devise a private composting solution or dispose of these items as other refuse is handled. In both cases the end result will be the same and the materials will naturally decompose or else be disposed of in a controlled and professional manner. In my view the act of open burning is not a necessary one and I would like to see more controls in place to eliminate the need for it altogether.	rubber or petroleum based materials, hazardous waste or containers for such materials, or the destruction of commercial or industrial waste due to the toxic nature of such materials. As previously stated, if a local ordinance has been enacted, the Board has no authority to adopt a regulation that addresses the burning of leaves. A large number of local governments have taken the initiative and have enacted local ordinances. This is a very positive step and is encouraged.
Anonymous	DEQ air inspection staff currently refuse to enforce the open burning regulation as it clearly was intended. The reg needs to be changed to include neighborhoods that have regular collection services but do not currently exist on the federal list referred to. The reference to the federal cite requiring a neighborhood to be on the list is not effective and can be out of date. Currently, it appears that burning can take place in, what to anyone would be a neighborhood, with collection services. Virginia law clearly intended to prohibit open burning in areas that have regular collection service in residential areas. Also, waste removed from one area to another and burned could result in large areas being established in inappropriate locations.	DEQ staff endeavor to ensure that the board's regulations are properly implemented and enforced; however, they are limited in their ability to address all neighborhood disputes. The "federal list" is based in part on the federal list of urbanized areas. The concept of "urban areas" was adopted by the board in the early 1980s in order to balance the need for waste disposal in areas without access to public services such as refuse collection against the health and welfare needs those persons likely to be affected. Since then, the term "urban areas" has been superseded by other federally established terms for characterizing population groups, including "urban clusters" and "urbanized areas." It is not clear whether revising the state list to reflect some other version of a federal list could address the commenter's concern about open burning in areas that have regular collection services, as this is already forbidden by the current rule. Ultimately, each community determines what characterizes an area and treats it accordingly, whether through zoning, ordinance, or providing other services. Additionally, the delimitation of areas in the context of control of air pollution has evolved from focus on population to focus on measured air pollution (that is, to emissions control areas).

		Moving waste from one area to another for burning if the location is inappropriate could indeed create a problem. However, there may be benefits to moving waste to another more appropriate area for burning; an area equipped with a special incineration device designed to ensure more complete combustion thus dealing with the waste but being more protective of public health and welfare. In addition, Section 10.1-1410.3 requires the Department to allow for the infrequent burning of vegetative waste at permitted landfills that have ceased accepting waste but have not been released from post closure care requirements.

This regulation continues to be needed in order to protect air quality, particularly in areas that must implement specific, additional measures in order to meet national standards (that is, in nonattainment and maintenance areas).

Generally, complaints received by the department have been related to the general issue of open burning--whether or not it should be allowed at all as opposed to how it should be regulated--and not the regulation itself.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. However, it does overlap and duplicate, to a degree, open burning ordinances enacted by local governments throughout the Commonwealth.

This regulation was last amended in 2008. In that time, it has gotten generally less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. As Virginia's population expands, and opportunities for open burning alternatives expand, the need for the open burning has reduced and thereby the need for the department to involve itself in local open burning situations has reduced. It is anticipated that the contemplated revisions to the regulation will enable it to provide the most efficient and cost-effective means to manage emissions resulting from open burning.

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