RESOLUTION NO.: 2012-04  
SUBJECT: Public Hearing for Adoption of 2012 Air Quality Fee Schedule, Air Quality Regulations,  
EFFECTIVE DATE: March 19, 2012

RESOLUTION OF THE EL PASO COUNTY  
BOARD OF HEALTH

WHEREAS, pursuant to Section 25-1-506(3)(b)(XII), C.R.S., the El Paso County Board of Health ("Board of Health") has the power and duty to initiate and carry out public health programs consistent with State law that are necessary or desirable to protect public health and the environment; and,

WHEREAS, pursuant to Section 25-1-508(5)(g), C.R.S., the Board of Health has the power and duty to adopt rules not inconsistent with the public health laws of this State; and,

WHEREAS, pursuant to Section 25-1-508(5)(j), the Board of Health has the power and duty to provide environmental health services, and to adopt fees to offset the cost of environmental health services in El Paso County to carry out its powers and duties; and,

WHEREAS, El Paso County Public Health ("Public Health") has recommended that the Board of Health amend El Paso County Board of Health Regulations by amending Chapter 3 Fee Schedule and Civil Penalties, Section 3.1.A.: Fees, by adoption of environmental health service fees relating to Air Quality Regulations for 2012, and by the addition of Chapter 5 Air Quality Regulations, all as indicated in Attachment "A" hereto, and incorporated herein by reference; and,

WHEREAS, the Board of Health has determined that it is appropriate to conduct a public hearing to consider adoption of said amendments to Chapter 3 Fee Schedule and Civil Penalties, and to adopt Chapter 5 Air Quality Regulations, as it deems appropriate, following said public hearing;

NOW, THEREFORE, BE IT RESOLVED BY THE EL PASO COUNTY BOARD OF HEALTH:

1. That the Board of Health shall conduct a public hearing on Monday, May 14, 2012, commencing at about 2:00 p.m. in the Assessor’s Training Room or alternatively in Room 1020 on the first floor of the Citizens Service Center, 1675 West Garden of the Gods Road, Colorado Springs, Colorado, to consider amendment to El Paso County Board of Health Regulations, Chapter 3 Fee Schedule and Civil Penalties, Section 3.1.A.: Fees, by the addition of Air Quality related fees; and, by the addition of a new Chapter 5 Air Quality Regulations, all as indicated in Attachment “A” hereto, and incorporated herein by reference.

2. That following said hearing, the Board of Health shall adopt such Air Quality Regulations, and related fees, as it deems appropriate.
3. That Public Health shall advertise said public hearing as provided by law.

MOVED, SECONDED AND ADOPTED BY THE EL PASO COUNTY BOARD OF HEALTH AT ITS REGULAR MEETING HELD ON MARCH 19, 2012.

EL PASO COUNTY BOARD OF HEALTH

BY: [Signature]
President

ATTEST: [Signature]
Secretary
ATTACHMENT “A”

For Chapter 3, words and numbers in blue are proposed for addition. Words and numbers in black are in the current regulation for which no changes are proposed.

REGULATIONS OF THE EL PASO COUNTY BOARD OF HEALTH

EL PASO COUNTY, COLORADO

Chapter 3

Fee Schedule and Civil Penalties

El Paso County Department of Health and Environment
301 S. Union Blvd.
Colorado Springs, CO 80910
(719) 575-8631
CHAPTER 3

FEE SCHEDULE AND CIVIL PENALTIES

SECTION 3.1: FEES
A. Effective January 1, 2012, the following fees are adopted by the Board of Health pursuant to Subpart 3 of Part 5 of Title 25, C.R.S., and shall be charged by Public Health for services indicated:

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Quality (Effective May 14, 2012)</td>
<td></td>
</tr>
<tr>
<td>Construction Activity Permit (Per Six Months)</td>
<td>$209 per six months</td>
</tr>
<tr>
<td>Demolition Permit (Per Structure)</td>
<td>$96 per structure</td>
</tr>
</tbody>
</table>

NOTE: All OTHER 2012 FEES SHALL REMAIN IN EFFECT.
NOTE: ALL OF CHAPTER 5 IS NEW.

REGULATIONS OF THE EL PASO COUNTY BOARD OF HEALTH

EL PASO COUNTY, COLORADO

Chapter 5

Air Quality Regulations

El Paso County Public Health
1675 W. Garden of the Gods Road, Ste. 2044
Colorado Springs, CO 80907
(719) 575-8631
CHAPTER 5

AIR QUALITY REGULATIONS

SECTION 5.1: PURPOSE AND APPLICABILITY
These regulations are established to protect public health by reducing the release of fugitive particulate emissions from certain activities into ambient air. Unless otherwise established by these regulations, the application, operation, and enforcement of these regulations by El Paso County Public Health shall be in compliance with regulatory standards established by the Colorado Air Quality Control Commission.

SECTION 5.2: DEFINITIONS
Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meaning they have in common usage and to give this chapter the most reasonable application.
A. AIR POLLUTANT: Any fume, smoke, particulate matter, vapor, gas, or combination thereof which is emitted into or otherwise enters the atmosphere (ambient air); including but not limited to any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product materials) substance or material. This does not include water vapor or steam condensate.
B. AGRICULTURAL OPEN BURNING: The open burning of cover vegetation for the purpose of preparing the soil for crop production, weed control along fence rows or other boundaries, maintenance of water conveyance structures related to agricultural operations, or other agricultural cultivation purposes.
C. AMBIENT AIR: That portion of the atmosphere, external to the source, to which the general public has access.
D. ASBESTOS: Fibrous forms of actinolite, amosite, anthophyllite, chrysotile, crocidolite, or tremolite, or other forms of asbestos deemed a potential public health hazard by the Colorado Department of Public Health and Environment (CDPHE).
E. ASBESTOS MATERIAL: Asbestos or any material containing asbestos in excess of 1%.
F. BROADCAST BURN: A prescribed fire over a defined area of ground to remove vegetative fuels in accordance with an approved burn plan. Broadcast burns do not include the burning of wild land fuels that have been concentrated in piles by manual or mechanical methods.
G. BOARD OF HEALTH: The El Paso County Board of Health.
H. BURN BOSS: An individual with the appropriate training, experience and National Wildfire Coordination Group certification to conduct a prescribed burn.
I. BONFIRE: A large open fire primarily used for recreation and ceremonial purposes.
J. CAMPFIRE: A small open fire primarily used for recreation purposes and cooking food.
K. CONSTRUCTION ACTIVITY: Includes, but not limited to excavations, grading, and overlotting by mechanical processes which may result in particulate matter being released into the ambient air.
L. DEMOLITION: The destruction or dismantling of a structure by means of mechanical equipment such as bulldozers, front-end loaders, or cranes, with the loading of debris primarily by mechanical equipment.
M. DISMANTLE: The destruction of a structure by means of hand tools such as hammers, crowbars, cutting torches, with the loading of debris by hand.
N. EL PASO COUNTY PUBLIC HEALTH: The public health agency for El Paso County Colorado, under authority of the El Paso County Board of Health.
O. EMISSION: The discharge or release into the ambient air of one or more air pollutants.
P. FUGITIVE PARTICULATES: Solid air borne particulate matter emitted from any source other than an opening which channels the flow of air pollutants directly into the atmosphere (ambient air) by natural forces or by mechanical processes such as crushing, grinding, milling, drilling, demolishing, shoveling, conveying, covering, bagging, or sweeping.
Q. NESHAP: The National Emission Standards for Hazardous Air Pollutants [40 CFR Part 61 (EPA), Subpart A (General Provision) and Subpart M (National Emission Standards for Asbestos)]
R. NUISANCE: A condition that causes unreasonable interference with another person's use and enjoyment of his property, which is "substantial" in its nature as measured by a standard that would be of definite offensiveness, inconvenience, or annoyance to a normal person in the community.
S. OPACITY: The degree to which an air pollutant obscures the view of an observer, expressed in percent; the degree to which transmittance of light is reduced by the air pollutant.

T. OPEN BURNING: Burning any material or substance in the ambient air or in a receptacle other than a properly designed furnace such as an incinerator or other equipment connected to a stack or chimney. Cutting and welding torches are exempted.

U. OWNER OR OCCUPANT: Any person, who owns, leases, operates, controls, or supervises any construction, demolition, sandblasting, or open burning activity.

V. OVERLOTTING: Earthmoving activity used in land development prior to the construction of structures.

W. PARTICULATE MATTER: Any material, except uncombined water, that exists in finely divided form as a liquid or solid.

X. PERSON: Any individual, public or private corporation, partnership, association, firm, trust, estate, the State or any department, institution, or agency thereof, any municipal corporation, County, City and County, or other political subdivision of the State, federal government, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Y. PILE BURNING: Burning of vegetative material that has been concentrated by manual or mechanical methods.

Z. PRESCRIBED BURN: Fire that is intentionally used for grassland or pest management, including vegetative, habitat or fuel management, regardless of whether the fire is ignited by natural or human means. Prescribed fire does not include open burning in the course of agricultural operations and does not include open burning for the purpose of maintaining water conveyance structures.

AA. SASEM MODEL: A federally approved model of estimated smoke production from prescribed burning based upon fuel amount and weather conditions.

BB. SLASH PILES: The accumulation of tree limbs, tree tops, and miscellaneous natural vegetation residue left by forest management activities, such as thinning, pruning, and timber harvesting and clearing.

CC. THINNING: The selective removal of trees and shrubs based on a management prescription as determined by a professional forester or someone with fuel mitigation expertise.

DD. TRAINING FIRE: An El Paso County Public Health approved fire conducted by a fire department or military operation used for educating/preparing personnel for skills and duties necessary to support their mission(s).

EE. TRAINING FIRE PLAN: A document that outlines the methods, dates, times, and benefits received by conducting a training fire.

FF. WILDFIRE MITIGATION: The actions taken to reduce the occurrence of or reduce the damage from wildfire.

SECTION 5.3: EMISSION LIMITATION STANDARDS

A. No person shall conduct demolition activities, which will cause emissions in excess of 20% opacity, as specified by Appendix A of 5 CCR 1001-3, Air Quality Control Commission, Regulation No. 1, Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides.

B. No person shall conduct construction, or demolition activities on any property, which will allow off-property transport of visible emissions as measured by the methods specified by Appendix B of 5 CCR 1001-3, Air Quality Control Commission, Regulation No. 1, Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides.

C. No person shall conduct any construction, demolition, or open burning activity, which will constitute a nuisance as determined by the standards set forth in Appendix A of 5 CCR 1001-3, Air Quality Control Commission, Regulation No. 1, Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides.

SECTION 5.4: EMISSION CONTROL PLANS

A. Abatement and preventive measures shall be selected and applied to an emission control plan designed to achieve compliance with Section 5.3 of this Chapter.

B. The emission control plan shall be subject to approval by El Paso County Public Health, which shall have authority to modify the abatement and preventive measures to be applied, including the frequency, duration, and method of application.

C. An approved emission control plan shall become a condition of the Permit.
D. An approved emission control plan shall effectively control fugitive particulate matter at all times, including weekends, holidays, and during any other time periods when construction activities are suspended.

E. Any person required to submit an emission control plan may request a “Control Plan Conference” with an authorized representative of El Paso County Public Health. Control Plan Conferences will be held to provide advice on the types of control measures and/or operating procedures which are are likely to achieve compliance with the requirements of this Section.

SECTION 5.5: GENERAL REQUIREMENTS
A. No person subject to the provisions of this Chapter shall commence any activity that will or may create a source of fugitive particulates, without an approved Emission Control Plan and a permit from El Paso County Public Health.

B. The Board of Health may establish reasonable permit fees. Any requested modification to a permit issued by El Paso County Public Health is subject to applicable fee(s) as approved by the Board of Health.

C. Any permit issued by El Paso County Public Health is conditional upon the permit holder maintaining compliance with these regulations and all state laws and regulations regarding air quality and air pollution control.

SECTION 5.6: CONSTRUCTION ACTIVITY PERMITS
A. Any person engaged in overlotting, excavating, grading, filling, or other construction activities equal to or greater than one (1) acre is required to comply with the requirements of Sections 5.3, 5.4, and 5.5, and shall obtain a Construction Activity Permit from El Paso County Public Health.

1. Application for the Construction Activity Permit shall be made to El Paso County Public Health when:
   a. Construction activities will not exceed six (6) months in duration, and;
   b. Land development is equal to or greater than one (1) acre, but less than twenty-five (25) acres.

2. Application for the Construction Activity Permit shall be made to the Colorado Department of Public Health and Environment, Air Pollution Control Division when:
   a. Construction activities may exceed six (6) months in duration, and;
   b. Land development is equal to or greater than twenty-five (25) acres.

B. Control measures and operating procedures required for Construction Activity Permits issued by El Paso County Public Health may include, but are not limited to:

1. chemical stabilization,
2. compacting,
3. furrows,
4. minimizing disturbed area,
5. on-site vehicle speed control,
6. project phasing,
7. vegetative cover,
8. synthetic cover,
9. straw-crimping,
10. watering,
11. wind breaks,
12. Solid wood fencing adjacent to developed areas.

SECTION 5.7: DEMOLITION, DISMANTLING, OR RENOVATION ACTIVITIES PERMITS
A. Any person engaged in any demolition, dismantling, or renovation activity is required to comply with the requirements of Sections 5.3, 5.4, and 5.5, and shall obtain a Demolition Activity Permit from El Paso County Public Health.

B. Control measures or operational procedures may include, but are not limited to:

1. Wetting down, including pre-watering of work surfaces;
2. Removal of dirt and mud deposited on improved streets and roads, and/or;
3. Wetting down, washing, or covering equipment used for hauling when necessary to minimize particulate emissions during loading and transit.
C. Any demolition, dismantling, or renovation activity involving a structure that has friable asbestos material is subject to the Colorado Air Pollution Control and NESHAP regulations regarding asbestos removal. No demolition, dismantling, or renovation permit for projects containing asbestos will be issued until conditions of those regulations have been satisfied.

SECTION 5.8: OPEN BURNING PERMITS

A. Except as provided by Part E of this section, no person may burn any flammable material on any open premises or on any public street, alley, or other land adjacent to such premises, unless the requirements of Sections 5.3, 5.4, and 5.5 are met, and an Open Burning Activity Permit is obtained from El Paso County Public Health.

B. Open Burning Activity Permits will not be issued, and previously issued permits shall not be valid:
1. During high pollution events as identified by the Colorado Department of Health and Environment, Air Pollution Control Division;
2. When open burning is banned by the El Paso County Fire Marshall;
3. For the purpose of disposing of trash, garbage, treated wood, construction material, demolition debris, or any substance which, if ignited, may release toxic materials;

C. The burning of trees, shrubs, or other plant materials suspected of disease or pest infestation, may require approval from the El Paso County Community Services Department, Environmental Division.

D. The permit holder shall notify El Paso County Public Health of each day that a proposed burn will take place. For weekend or holiday burns, notification shall be provided on the preceding business day prior to 12:00pm. El Paso County Public Health shall determine if open burning will be allowed on any proposed day based on the existent air quality levels, weather conditions, and weather forecast. In no event may permission to burn be granted more than three days prior to a proposed burn.

E. Open Burning Activity Permits will be issued for the specific time period identified in the application and shall not exceed a six (6) month period, except that Open Burning Activity Permits issued for training purposes may be issued for a twelve (12) month period.

F. The following are exempt from Open Burning Activity Permit requirements:
1. Fires used for non-commercial cooking of food for human consumption;
2. Emergency flares used to indicate danger;
3. The use of cutting torches, welding devices and any other device used to heat, shape, cut, and repair metals; Recreational fires, including bonfires and campfires that do not utilize materials prohibited by Part B.3 and B.4 of this Section;
4. Agricultural open burning.

G. Agencies that conduct training fires must submit a training fire plan and an Open Burning Activity Permit application to El Paso County Public Health prior to conducting such activities. Open Burning Activity Permits for training may be issued for a specific project or annually, as requested by the applicant.

H. Persons requesting an Open Burning Activity Permit shall complete and submit a prescribed burn plan, which specifies allowable weather conditions to minimize negative effects on air quality.
1. Prior to issuance, Open Burning Activity Permit applications may be subject to a site evaluation to assess public health impacts.
2. The prescribed burning of slash piles or broadcast burns of five (5) acres or less for the purpose of forest management or wildfire mitigation will be permitted under the following conditions:
   a. The air quality index (AQI) for Colorado Springs, Colorado is “GOOD” or “FAIR”. (The AQI is determined by the Colorado Department of Public Health and Environment, and is available at: http://www.cdphe.state.co.us/ap/index.html);
   b. Weather conditions are as specified in the approved burn plan;
   c. Ignition is initiated at least two (2) hours after sunrise and no later than two (2) hours before sunset;
   d. Ignition is initiated during periods of the day when a thermal inversion is not present;
   e. Slash piles are no more than eight (8) feet in diameter and six (6) feet in height, unless otherwise approved, according to Section 5.11, by El Paso County Public Health;
   f. No more than twenty (20) slash piles may be burned at any one time per individual lot and no more than fifty (50) slash piles per day may be burned in El Paso County;
   g. No more than five (5) acres may be burned at any one time;
   h. Slash piles and broadcast burning may not occur at the same time under the same permit;
i. A SASEM model is used for burns of more than ten (10) piles at any one location.

3. The permit holder will notify the following agencies prior to conducting open burning activities:
   a. El Paso County Public Health, Environmental Health Division;
   b. El Paso County Fire Marshall;
   c. El Paso County Sheriff’s Dispatch;
   d. Neighboring landowners, and;
   e. Local Fire Department of jurisdiction.

I. The prescribed burning of areas exceeding five (5) acres for the purpose of forest management or wildfire hazard mitigation will be required to comply with Section 5.8.H, as well as the following conditions:
   1. Fires must be completely extinguished without any residual smoke before sunset;
   2. Prescribed burns will include only natural vegetation and organic debris generated during
      hazardous wildland mitigation fuel reduction activities;
   3. A SASEM model shall be submitted and approved by El Paso County Public Health, and;
   5. A burn boss must supervise broadcast and slash pile burns.

SECTION 5.9: ENFORCEMENT

A. Authorized representatives of El Paso County Public Health may enter upon private property at
   reasonable times and upon reasonable notice for the purpose of determining compliance with the
   Colorado Air Pollution Prevention and Control Act and regulations adopted pursuant thereto, including
   these regulations, and for the purpose of evaluating compliance with the terms and conditions of any
   permit issued.

A. The owner or occupant of every property having a source of air pollution emissions shall allow El Paso
   County Public Health access to such property to conduct required tests, take samples, monitor
   compliance, and make inspections. If consent to allow El Paso County Public Health access to the
   property is not granted, the holder of any permit which may have been issued for the property is in
   noncompliance of the permit requirements, and regardless of permit status, a search may be made
   pursuant to a search warrant issued by a court of competent jurisdiction.

B. If El Paso County Public Health has inspected a property and determined that the property owner is
   in violation of these regulations, or has reasonable grounds to believe that the property owner is in
   violation of these regulations, El Paso County Public Health shall issue an appropriate notice and order
   to the property owner.

C. A notice and order issued by El Paso County Public Health shall:
   1. Describe the property where the violation has occurred, and the owner or owners of the
      property;
   2. Identify the violations(s) according to one or more sections of these regulations;
   4. Identify the requirement(s) to achieve compliance with these regulations;
   5. Set a reasonable time period for the property owner or owners to achieve compliance;
   6. Describe the procedure to appeal the notice and order in accordance with Chapter 4,
      Administrative Hearing and Procedure, of the Regulations of the El Paso County Board of Health.

D. El Paso County Public Health shall serve a notice and order by first class mail to the last
   known address of the property owner. Other methods of service, including but not limited to personal
   service, may be substituted if reasonably calculated to give actual notice to the owner of the property.

E. Within five (5) working days after a property owner has received a notice and order, he may request in
   writing an administrative hearing in accordance with the provisions of the El Paso County Board of
   Health Administrative Hearing Regulations. If El Paso County Public Health does not receive the
   written request for an administrative hearing within the five (5) working days, the notice and order is
   final and may not be appealed to any administrative entity or court.

F. Any person conducting any activity, operations, or condition in violation of these regulations, who
   after being ordered to abate, correct, or discontinue such activity, operation, or condition, continues
   in violation of the order may be prosecuted pursuant to the provisions of Section 16-13-305(1)(f), C.R.S.,
   as a Class 3 public nuisance, or otherwise as provided by law.

G. Any permit may be revoked if El Paso County Public Health has determined, or has reasonable
   grounds to believe, that the permit holder has violated the terms of the permit. A new permit may only
   be issued after the applicant has complied with any notice and order issued by El Paso County Public
Health, and a detailed compliance plan has been submitted to El Paso County Public Health. The compliance plan must address the issues that led to revocation of the permit, and shall be approved by El Paso County Public Health before a new permit may be issued.

H. Any person conducting any activity or allowing any condition in violation of these regulations, which after being ordered abated, corrected, or discontinued by a lawful order of El Paso County Public Health, continues in violation of the order shall be assessed a civil penalty of not more than ten thousand dollars ($10,000).

I. Each day any violation of these regulations is committed or permitted to continue shall constitute a separate violation.

J. El Paso County Public Health may file suit, or request criminal prosecution through the Office of the District Attorney, or otherwise as provided by law, for injunctive relief, imposition of civil or criminal sanctions, collection of fees and such other relief as is provided by law to correct any condition that exists in violation of these regulations.

K. In addition to any penalties imposed by a court of competent jurisdiction, any person violating any provision of these regulations shall be liable for all expenses incurred by El Paso County Public Health in removing or abating any nuisance condition caused by the violation, including administrative fees that the Board of Health may adopt.

L. In the event that any person fails to obtain a required permit as proved herein, or to comply with any lawful order of El Paso County Public Health or the El Paso County Board of Health, or to comply with any provision of this Chapter, El Paso County Public Health or the El Paso County Board of Health may bring suit for an injunction to prevent any further or continued violation of such order or provision.

M. A copy of all enforcement orders, administrative or judicial, and all permits shall, at the time of issuance or granting, be transmitted to the Colorado Air Pollution Control Division, if requested by the Division.

SECTION 5.10: JUDICIAL REVIEW
Any final order or determination by the Board of Health, or by El Paso County Public Health, shall be subject to judicial review in the manner and to the extent provided by Article 4 of Title 24, C.R.S. A petition for review shall be filed within thirty (30) days after the final action has been taken. Such final order may be stayed pending the decision of the Court.

SECTION 5.11: VARIANCES
Variances may be granted by El Paso County Public Health from any permit requirements contained herein if the applicant demonstrates by sufficient evidence that such a variance will not significantly adversely affect the public health.