

**REGULATIONS OF THE EL PASO  
COUNTY BOARD OF HEALTH**

**EL PASO COUNTY, COLORADO**

**Chapter 5**

**Air Quality Regulations**

**El Paso County Public Health**

## **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. BOARD OF HEALTH: The El Paso County Board of Health.
- E. BONFIRE: A large open fire primarily used for recreation and ceremonial purposes.
- F. CAMPFIRE: A small open fire primarily used for recreation purposes and cooking food.
- G. 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.
- H. EL PASO COUNTY PUBLIC HEALTH: The public health agency for El Paso County Colorado, under authority of the El Paso County Board of Health.
- I. EMISSION: The discharge or release into the ambient air of one or more air pollutants.
- J. 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.
- K. NFPA Standard 1403: A standard of the National Fire Protection Association, titled "Live Fire Training Evolutions", which specifies minimum requirements for training fire suppression personnel engaged in firefighting operations under live fire conditions.
- L. 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.
- M. 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.
- N. 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.
- O. OVERLOTTING: Earthmoving activity used in land development prior to the construction of structures.
- P. PARTICULATE MATTER: Any material, except uncombined water, that exists in finely divided form as a liquid or solid.
- Q. 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.
- R. PILE BURNING: Burning of vegetative material that has been concentrated by manual or mechanical methods.
- S. 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.

- T. **PROPERTY OWNER, OWNER, OR OCCUPANT:** Any person who owns, leases, operates, or supervises any construction, wrecking, or open burning activity.
- U. **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.
- V. **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.
- W. **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).
- X. **WILDFIRE MITIGATION:** The actions taken to reduce the occurrence of or reduce the damage from wildfire.
- Y. **WRECKING:** The destruction or dismantling of an entire structure by means of mechanical equipment such as bulldozers, front-end loaders, or cranes, with the loading of debris primarily by mechanical equipment.

### **SECTION 5.3: EMISSION LIMITATION STANDARDS**

- A. No person shall conduct wrecking, construction, or open burning 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 wrecking 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, wrecking, 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. An approved emission control plan shall become a condition of any Permit issued under Chapter 5.
- B. An emission control plan shall include abatement and preventive measures designed to achieve compliance with Section 5.3 of this Chapter.
- C. Emission control plans are 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.
- D. An approved emission control plan shall effectively control fugitive particulate matter at all times, including weekends, holidays, and when construction activities are suspended.
- E. A property owner who is required to submit an emission control plan may request a conference with El Paso County Public Health to discuss the types of control measures and/or operating procedures that are likely to achieve compliance with the requirements of this Section.
- F. Permits for wrecking are issued by the Pikes Peak Regional Building Department and an emission control plan is not required; however, property owners conducting wrecking activities are required to comply with section 5.3.

### **SECTION 5.5: GENERAL REQUIREMENTS**

- A. Any property owner who conducts construction, wrecking or open burning activities that will or may create a source of fugitive particulates is subject to the requirements of this Chapter.
- B. The Board of Health may establish reasonable permit fees, and 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 pursuant to the requirements of Chapter 5 is conditional upon the permit holder maintaining compliance with these regulations and all state laws and regulations regarding air quality and air pollution control.
- D. Permits issued by El Paso County Public Health pursuant to the requirements of Chapter 5 are for compliance with air pollution requirements only, and do not constitute approval to violate other laws, rules, regulations or ordinances.
- E. Permit applicants are responsible for obtaining any additional permits and/or clearances, which may be required by law, from any appropriate fire control office, local agency, or other official.

### **SECTION 5.6: CONSTRUCTION ACTIVITY PERMITS**

- A. Any property owner 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/or;
    - 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: OPEN BURNING ACTIVITY PERMITS**

- A. Except as provided by Part.F. 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 Marshal;
  - 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;
  - 4. Without approval of the local fire authority having jurisdiction.
- C. Prior to approval, Open Burning Activity Permit applications may be subject to a site evaluation to assess public health impacts. 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.
- 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 may prohibit open burning based on air quality concerns, including the existent air quality levels, weather conditions, and weather forecast. In no event will permission to burn be granted more than three days prior to a proposed burn.
- E. Prior to a proposed burn, the permit holder shall also notify:
  - 1. Adjacent landowners, including those separated by a road or right of way, and;
  - 2. The local fire authority having jurisdiction. F. 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.
- F. The following are exempt from the requirements of this section:
  - 1. training fires conducted according to NFPA Standard 1403, under the authority of an organized fire department or other fire protection agency.
  - 2. Prescribed burns permitted by the Air Quality Control Division of the Colorado Department of Public Health and Environment, and conducted in accordance with 5 CCR 1001-11Regulation Number 9, Open Burning, Prescribed Fire and Permitting.

3. Fires used for non-commercial cooking of food for human consumption;
4. Emergency flares used to indicate danger;
5. The use of cutting torches, welding devices and any other device used to heat, shape, cut, and repair metals.
6. Recreational fires, including bonfires and campfires that do not utilize materials prohibited by Part B.3 of this Section;
7. Agricultural open burning.

#### **SECTION 5.8: 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.
- B. 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.
- C. 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.
- D. 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;
  3. Identify the requirement(s) to achieve compliance with these regulations;
  4. Set a reasonable time period for the property owner or owners to achieve compliance;
  5. 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.
- E. El Paso County Public Health shall serve a notice and order by first class or certified 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.
- F. 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.
- G. Any owner 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 is 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.
- H. 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.
- I. Any owner 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).
- J. Each day any violation of these regulations is committed or permitted to continue shall constitute a separate violation.
- K. 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.

- L. In addition to any penalties imposed by a court of competent jurisdiction, any owner violating a 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.
- M. In the event that any owner 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.
- N. 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 5.9: 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 5.10: VARIANCES**

Variations 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.