

## **RESOLUTION NO. 2005-04**

### **RESOLUTION REGARDING OPEN BURNING AND CREATING A PERMITTING SYTEM FOR SUCH BURNING AND REPEALING RESOLUTION 2004-05, SAME, ADOPTED JANUARY 26, 2004**

**WHEREAS**, the Board of County Commissioners of Barton County, Kansas, have determined that uncontrolled and unauthorized open fires may present a danger to property and persons within the County; and

**WHEREAS**, the County Commissioners have determined that a formal policy that details the allowance, notification and permitting requirements that will reduce such danger.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Barton County, Kansas, pursuant to K.S.A. 19-101, et seq., that the following regulations be adopted in an effort to control burning within Barton County:

1. That this Resolution shall apply to the whole of Barton County, Kansas, except for any areas within the limits of any incorporated cities located in the County.
2. For the purpose of this Resolution, that no person, business, corporation or other entity shall cause or permit the open burning of any wastes, structures, vegetation or any other materials on any premises except as authorized by K.A.R. 28-19-648 and this Resolution. Further, that:
  - A) As authorized by the Kansas Administrative Regulations, the following shall be allowed, provided that all regulations as established within this Resolution are met:
    - (1) open burning carried out on private lands, unless prohibited by any local authority with jurisdiction; and
    - (2) open burning for the purpose of crop, range, pasture, wildlife or watershed management in accordance with K.A.R. 28-19-648 and as further described in Paragraph 3; or
  - B) A person, business, corporation or other entity may obtain approval if it is demonstrated that the open burning is:
    - (1) necessary, which in this case shall mean that there is no other practical means of disposal;
    - (2) in the public interest; and
    - (3) is not prohibited by any local government or local fire authority; and
  - C) Other open burning operations which are deemed to be necessary and in the public interest shall include the following:
    - (1) the use of safety flares for disposal of flammable gases;
    - (2) fires related to the training of government or industrial personnel in fire fighting procedures;
    - (3) fires set for the removal of dangerous or hazardous liquid materials;
    - (4) open burning of trees and brush from nonagricultural land clearing operations; and
    - (5) open burning of clean wood waste from construction projects carried out at the construction site.
  - D) As used throughout this Resolution, person shall be any responsible person being of the age of majority.

3. For the purpose of this Resolution, as prescribed by K.A.R. 28-19-648, and any amendments thereto, open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be allowed, provided that the person conducting the burn shall notify the fire department with jurisdiction to obtain a permit.
4. That any person, business, corporation or other entity conducting open burning operations exempted by K.A.R. 28-19-648 must first obtain a permit to conduct such open burning operations from the Fire Chief having jurisdiction within Barton County. A copy of said "Application for Open Burning" is attached hereto as Exhibit A. That burn permits once issued hereunder shall remain valid unless revoked by the appropriate fire chief for good cause shown.

Said Fire Chief, or his or her designee, shall have exclusive authority to determine the location of the burning, the type and amount of materials to be burned, the dates for which the burn permit is valid and the time for which said materials may be burned. Said permits shall be subject to all applicable laws and administrative regulations, as included herein. Additionally, said Fire Chief shall determine the conditions under which burning shall be allowed. Such conditions may include the location, exposures, time of day, weather conditions, fire apparatus and staffing availability.

5. Any Fire Chief issuing a burn permit may revoke said permit at any time for good cause shown.
6. That open burning operations conducted under the herein provided burn permit shall take place only after notification is made, by the permit holder, to the Barton County Communications Department. Such notification shall be made within four hours of the anticipated time that the burning will begin. Further, that the burn permit number as issued by the designated Fire Chief shall be provided to Barton County Communications, along with the proposed location(s) of the open burning and the estimated time that the burning will conclude. If weather conditions or fire apparatus availability are not favorable, Barton County Communications is hereby authorized to deny permission for the open burning on each specific request. Location, time of day, weather conditions and fire apparatus availability will be considered before permission is denied by the Communications Department.
7. That all open burning operations conducted hereunder shall be supervised at all times by a responsible individual of majority age until such fire is extinguished. The burn permit shall be in the possession of this individual at all times during the duration of the burning operation. The Barton County Communications Department shall be notified when said burn is extinguished.
8. All burning operations conducted in accordance with this Resolution shall be completed with the permission of the landowner or tenant of the property upon which the burning operations are conducted. It is the responsibility of the permit holder to obtain the required permission as it shall be prima facie evidence that the person who owns or controls property on which open burning occurs has caused or permitted the open burning.
9. That permits issued under this Resolution shall be invalid in the event that the Board of County Commissioners of Barton County, Kansas, enacts a burn ban, as is prescribed per Kansas statutes for local disaster emergencies, at any time during the term of the burn permit. Burning operations, during burn bans, shall be conducted only under a special permit as issued by the Fire Chief having jurisdiction in the area where the burning operations are to be conducted.

10. That alleged violations of this Resolution may be filed by uniform complaint and notice to appear.
11. A responding agency shall have the right to collect restitution for expenses incurred by that agency for any expense caused by the violation of a permit as held by any person, business, corporation or other entity.
12. Nothing in this act shall be construed as creating a cause of action on behalf of any person against the County, a municipality or any of their agencies, instrumentalities or employees responsible for the application or enforcement of the provisions of this Resolution act.
13. That the provisions of K.A.R. 28-19-647 are superseded upon the adoption of this Resolution, pursuant to County home-rule power.
14. This Resolution is being adopted pursuant to County home-rule power and K.S.A. 19-101d. Violations of this Resolution by any person shall be punishable as a Class B Misdemeanor with penalties for each separate offense by a term of confinement in the Barton County Detention Facility not to exceed six months and \ or a fine in an amount not to exceed One Thousand Dollars (\$1,000.00). Any person who aids, assists or abets another in violating the provisions of this Resolution will be deemed to have committed a violation of the Resolution.
15. As authorized by K.S.A. 19-101d, the County may request the court enjoin violations of this Resolution.

**FURTHER**, that Resolution 2004-05, Same, adopted January 26, 2004, is hereby repealed; and

**FURTHER**, that this Resolution shall become effective upon publication in the official County newspaper.

**ADOPTED** this 31<sup>st</sup> day of January, 2005.

**BOARD OF COUNTY COMMISSIONERS  
OF BARTON COUNTY, KANSAS**

ATTEST:

\_\_\_\_\_  
Kenny Schremmer, Chair

\_\_\_\_\_  
Donna Zimmerman  
County Clerk

\_\_\_\_\_  
Betty Chlumsky, Commissioner

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer Schartz, Commissioner

\_\_\_\_\_  
Richard A. Boeckman,  
County Counselor

\_\_\_\_\_  
Rick Scheufler, Commissioner

\_\_\_\_\_  
Joe Wilson, Commissioner



## Kansas

28-19-579 through 28-19-644. Reserved.

### **28-19-645. Open burning prohibited.**

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

### **28-19-646. Responsibility for open burning.**

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

### **28-19-647. Exceptions to prohibition on open burning.**

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

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

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

(3) open burning for the purpose of crop, range, pasture, wildlife or watershed management

in accordance with K.A.R. 28-19-648; or

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

(b) A person may obtain an approval from the department to conduct an open burning operation that is not otherwise

exempt from the prohibition imposed by K.A.R. 28-19-645 if it is demonstrated that the open burning is:

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

(2) in the public interest; and

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

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

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

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

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

(4) open burning of trees and brush from nonagricultural land clearing operations; and

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

(d) Each person seeking an approval to conduct an open burning operation pursuant to this regulation shall submit a written request to the department containing the following information:

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

(2) a description of the open burning including:

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

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

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

(D) the method of igniting the material;

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

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

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

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

(e) Each open burning operation for which the department issues an approval pursuant to paragraph

(b) shall be subject to the following conditions, except as provided in paragraph (f):

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

(2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.

(3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.

(4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.

(5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.

(6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.

(7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the highway patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the

person conducting the burn shall notify the airport authority before the burning begins.

(8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(9) The department may revoke any approval upon 30 days notice.

(10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:

(A) may be injurious to human health, animal or plant life, or property; or

(B) may unreasonably interfere with the enjoyment of life or property.

(f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:

(1) is necessary and in the public interest;

(2) can be conducted in a manner that will not result in emissions which:

(A) may be injurious to human health, animal or plant life or property; or

(B) may unreasonably interfere with the enjoyment of life or property; and

(3) will be conducted in accordance with such conditions as the department deems necessary.

(Authorized by K.S.A. 1994 Supp. 65-3005; implementing

K.S.A. 1994 Supp. 65-3005, K.S.A.

65-3010; effective March 1, 1996.)

**28-19-648. Agricultural open burning.**

(a) Open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management shall be exempt from the prohibition on the

open burning of any materials imposed by K.A.R. 28-19-645, provided that the following conditions are met:

(1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;

(2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;

(3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and

(4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

-----Original Message-----

**From:** Casey Hubbard [mailto:barton.cntyatty@greatbend.com]

**Sent:** Wednesday, June 18, 2003 3:05 PM

**To:** Diana Wilson

**Subject:** burn ban docs

K.A.R. 28-19-645

KANSAS ADMINISTRATIVE REGULATIONS  
AGENCY 28. DEPARTMENT OF HEALTH AND ENVIRONMENT  
ARTICLE 19.--AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION  
CONTROL  
OPEN BURNING RESTRICTIONS

Current with rules/regulations filed before January 1, 2001

28-19-645 Open burning prohibited.

A person shall not cause or permit the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by > K.A.R. 28-19-647 and > K.A.R. 28-19-648.

(Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. > 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

K.A.R. 28-19-647

KANSAS ADMINISTRATIVE REGULATIONS  
AGENCY 28. DEPARTMENT OF HEALTH AND ENVIRONMENT  
ARTICLE 19.--AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION  
CONTROL  
OPEN BURNING RESTRICTIONS

Current with rules/regulations filed before January 1, 2001

28-19-647 Exceptions to prohibition on open burning.

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

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

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

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

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

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

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

(2) in the public interest; and

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

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

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

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

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

(4) open burning of trees and brush from nonagricultural land clearing operations; and

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

(d) Each person seeking an approval to conduct an open burning operation pursuant to this regulation shall submit a written request to the department containing the following information:

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

(2) a description of the open burning including:

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

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

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

(D) the method of igniting the material;

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

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

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

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

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

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

(2) A person shall not burn heavy smoke-producing materials including heavy oils, tires, and tarpaper.

(3) A person shall not initiate burning during the nighttime, which for the purposes of this regulation is defined as the period from two hours before sunset until one hour after sunrise. A person shall not add material to a fire after two hours before sunset.

(4) A person shall not burn during inclement or foggy conditions or on very cloudy days, which are defined as days with more than 0.7 cloud cover and with a ceiling of less than 2,000 feet.

(5) A person shall not burn during periods when surface wind speed is less than 5 mph or more than 15 mph.

(6) A person shall not burn within 1,000 feet of any occupied dwelling, unless the occupant of that dwelling has been notified before the burn.

(7) A person shall not conduct a burn that creates a traffic or other safety hazard. If burning is to take place within 1,000 feet of a roadway, the person conducting the burn shall notify the high way patrol, sheriff's office, or other appropriate state or local traffic authority before the burning begins. If burning is to take place within one mile of an airport, the person conducting the burn shall notify the airport authority before the burning begins.

(8) The person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(9) The department may revoke any approval upon 30 days notice.

(10) A person shall conduct an open burning operation under such additional conditions as the department may deem necessary to prevent emissions which:

(A) may be injurious to human health, animal or plant life, or property; or

(B) may unreasonably interfere with the enjoyment of life or property.

(f) The department may issue an approval for an open burning operation that does not meet the conditions set forth in subsection (e) upon a clear demonstration that the proposed burning:

(1) is necessary and in the public interest;

(2) can be conducted in a manner that will not result in emissions which:

(A) may be injurious to human health, animal or plant life or property; or

(B) may unreasonably interfere with the enjoyment of life or property; and

(3) will be conducted in accordance with such conditions as the department deems necessary.

(Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. > 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

K.A.R. 28-19-648

KANSAS ADMINISTRATIVE REGULATIONS  
AGENCY 28. DEPARTMENT OF HEALTH AND ENVIRONMENT  
ARTICLE 19.--AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION  
CONTROL  
OPEN BURNING RESTRICTIONS

Current with rules/regulations filed before January 1, 2001

28-19-648 Agricultural open burning.

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

(1) the person conducting the burn shall notify the local fire control authority with jurisdiction over the area before the burning begins, unless the appropriate local governing body has established a policy that notification is not required;

(2) a person shall not conduct a burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the highway patrol, sheriff's office or other appropriate state or local traffic control authorities before burning;

(3) a person shall not conduct a burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning; and

(4) the person conducting the burn shall insure that the burning is supervised until the fire is extinguished.

(b) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations.

(Authorized by K.S.A. 1994 Supp. 65-3005; implementing K.S.A. > 1994 Supp. 65-3005, K.S.A. 65-3010; effective March 1, 1996.)

K.S. § 65-3010

KANSAS STATUTES  
CHAPTER 65.--PUBLIC HEALTH  
ARTICLE 30.--AIR QUALITY CONTROL

Current through the 2002 Regular Session

65-3010. Emission control requirements.

(a) The secretary shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of this act.

(b) Every local air quality conservation program that is established pursuant to > K.S. 65-3016, as amended, shall be in compliance with the rules and regulations set forth for that area by the secretary.

(c) Variations from the requirements of subsection (b) of this section may be included in a local air quality conservation program only after approval by the secretary, following demonstration to the satisfaction of the secretary that the proposed requirements are not less stringent than the standards and requirements established by the secretary and are otherwise consistent with the purposes of this act. Any requirement placed in force pursuant to this subsection shall be preceded by public hearing. The secretary, upon evidence that conditions have changed or that additional or other information is relevant to a decision with respect to the emission control or open burning requirements concerned may, after public hearing, withdraw any approval previously given to a local requirement pursuant to this subsection.

(d) The secretary shall establish reasonable ambient air quality standards for the state as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other requirements pursuant to this section.

History: L. 1967, ch. 347, § 10; L. 1970, ch. 261, § 10; L. 1974, ch. 352, § 142; July 1.

> Search this disc for cases citing this section.