

**ST. REGIS MOHAWK TRIBE
ENVIRONMENT DIVISION
Air Quality PROGRAM; TRIBAL BURN REGULATION**

Preamble

The Four Winds

We are thankful to the powers we know as the Four Winds. We hear their voices in the moving air as they refresh us and purify the air we breathe. They help to bring the change of seasons. From the four directions they come, bringing us messages and giving us strength. With one mind, we send our greetings and thanks to the Four Winds.

It is with the recognition of the Four Winds, that we call air, and their powers of purification and refreshment, that the Tribal Burn Regulations are being instituted.

Clean air is an important resource to the community of Akwesasne and like many other resources it is taken for granted until it becomes scarce. Clean air is important for healthy lives and is really appreciated by the many Tribal members suffering from asthma and other respiratory illness.

The uncontrolled burning of waste materials in backyards and lots is an activity that threatens the health and well being of us all. It produces smoke containing poisons that are immediately harmful as well as containing cancer-causing chemicals. Burning of waste materials does not eliminate waste disposal because there are ashes produced (also toxic) and because many materials, like glass and metals, do not even burn.

In an effort to preserve the air quality for our community in the wake of increased business and housing development, the regulation of open burning is necessary to preserve the enjoyment of property by all and to assure that Tribal health, safety and welfare are protected. Under this regulation, proven methods and controls will be utilized to minimize air impacts from permitted burning.

This regulation also provides the means for resolving open burning issues when education, awareness and all other reasonable means have failed.

Additionally, because open burning creates a fire safety hazard, the fire department has been partnered into the permitting process to facilitate more efficient responses to fire calls.

Sec.

- 1.1 Definitions
- 1.2 Prohibitions
- 1.3 Burning Allowed by Permit Issued by Environment Division
- 1.4 Burning Without a Permit Allowed
- 1.5 Burning Permits
- 1.6 Enforcement
- 1.7 Burn Bans
- 1.8 Penalties/Fines

1.1 Definitions.

- (a) Solid Waste. Any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded materials, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial mining, and agricultural operations, and from community activities. For the purposes of hazardous waste regulation, a solid waste is a material that is discarded by being either abandoned, inherently waste-like; a certain military munitions, or recycled.

Includes refuse, or all waste material, including but not limited to, garbage, rubbish, incinerator residue, street sweepings, dead animals and offal.

Includes rubbish, defined as, solid or liquid waste material, including but not limited to, paper and paper products; rags; furniture; cans; crockery; plastics; cartons; chemicals; paint, grease; sludge; oils and other petroleum products; chemically treated wood; demolition materials; tires; and automobiles and other vehicles and parts, for junk, salvage or disposal. Rubbish shall not include food garbage, incinerator residue, street sweepings, dead animals or offal.

- (b) Food Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (c) Open Burning. Any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outdoor atmosphere. Includes burn barrels, or any other device used to burn solid

waste, food garbage, municipal solid waste or hazardous waste.

- (d) Enclosed Burning. Any fire that takes place within the confines of an enclosed structure. Does not include combustion reactions contained in an enclosed device where controls are used to maintain efficient combustion and reduce emissions.
- (e) Open Dump. Any management facility or site on Mohawk land where Municipal Solid Waste, solid waste, and/or hazardous waste has been disposed of, which is not a sanitary landfill authorized under this Tribal Solid Waste Code. This term does not include any part of a farm on which only animal or vegetable wastes resulting from the operation of such farm are deposited.
- (f) Municipal Solid Waste. A subset of solid waste that is defined as durable goods (e.g. appliances, tires, batteries), non-durable goods (e.g. newspapers, books, magazines) containers and packaging, food wastes, yard trimmings, and miscellaneous organic wastes from residential, commercial, and industrial non-process sources.
- (g) Hazardous Waste. Any solid waste that:
 - (1) Because of its quantity, concentration, or physical, chemical, or infectious characteristics, may either cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health, living organisms, or the environment when improperly handled, treated, stored, transported, or disposed of; or
 - (2) Is specifically defined to be hazardous or toxic, including but not limited to any substance, material, smoke, gas, particulate matter, or combination thereof containing asbestos, petroleum or its byproducts, or Polychlorinated Biphenyls (PCBs); or
 - (3) Is hazardous, toxic, ignitable, reactive, or corrosive, and that is defined and regulated as

such by the Tribe.

- (h) Household Hazardous Waste. Any waste substance, material, smoke, gas, particulate matter or combination of that is Hazardous Waste discarded by households.
- (i) Planned burn. Burning set or supervised by a Public Official in the performance of official duties.
- (j) Director. The Director of the St. Regis Mohawk Tribe, Environment Division or his delegee.

1.2 Prohibitions.

(1) Except as may permitted by Section 1.3 and upon obtaining a burn permit, no entity shall burn, cause, suffer, allow or permit the burning in an open or enclosed fire:

- (a) of *solid waste*;
- (b) of *food garbage*;
- (c) of *municipal solid waste*;
- (d) of *hazardous waste*;
- (e) of *household hazardous waste*;
- (f) of refuse at a refuse disposal area (See Tribal Solid Waste Code);
- (g) of *rubbish for salvage*;
- (h) of *rubbish generated by residential activities as a means of on-site disposal*;
- (i) of *rubbish generated by industrial or commercial activities other than agricultural as a means of on-site disposal*;
- (j) of *rubbish generated by land clearing or demolition for the erection of any structure; for the construction or modification of any highway, railroad, power or communication line, or pipeline; or for the development or modification of a recreational area or park*;

- (k) Broadcast Fire, an area with continuous fuel cover, including but not limited to hayfields, crop-fields, grasslands, and lawns;
- (l) of refuse during an air pollution episode, in an area for which such air pollution has been designated. The Environment Division will, from time to time, inform the Community of air pollution episodes to which this section applies; or
- (m) of tires for any reason, including night-time shoreline fishing.

(2) Creation of Nuisances Not Allowed. No entity may cause the emission, from any source whatsoever, of air pollutants, contaminants or other substances that cause injury or detriment to any person, persons, property or the public, nor may any entity cause or contribute to emissions that create or constitute a nuisance.

1.3 Burning Allowed by Permit Issued by the Environment Division.

Burning in an open fire is allowed as follows only in accordance with a permit issued by the Director after written application as provided in Section 1.5 of this regulation, provided it is not contrary to other Tribal law:

(a) Land Clearing Materials. Burning of organic, non-hazardous material generated by land clearing or demolition; for the construction or modification of, including but not limited to, any highway, railroad, pipeline, or power or communication line; or for the development or modification of a recreational area or park; provided that such burning is done on-site or at an appropriate designated burning area;

(b) Community Burning Allowed by Permit. Burning of yard wastes consisting of trees, tree trimmings, leaves, and brush;

(c) Specifically Designated Burning Areas. Burning at an appropriate designated burning area serving the community, of tree trimmings, leaves, or lawn and garden debris in areas of the reservation to be designated by the Director.

(1) Residents' Request. The Director will consider whether to designate such an area only after receiving a request by residents of the area within which such burning would be conducted. The request must include a general description of the geographical boundaries of the

area, the names of all residents within ½ mile; the material to be burned; the proposed control methods; and the reasons why burning in an open fire should be allowed in such area;

(2) Such designation, if made, shall be by rule or regulation adopted in accordance with Tribal Emergency Pollution Authority Resolution # 89-34. In designating such an area, the Director will set forth any conditions deemed appropriate to protect Tribal health, safety and welfare;

(3) The Director shall, from time to time, review air pollution safeguards in each designated area to determine whether the designation should be rescinded.

(e) Burning at an appropriate designated site of toxic, explosive, or dangerous materials; provided that such burning is done only in accordance with a permit that will be issued by the Director after written application. Such permit may only issue after the Director determines that there is no other safe or economical method of disposal. Such permit will be for a specific period and shall contain such conditions as are deemed necessary in the interest of health or safety.

(f) Planned Burns. Outdoor Open Burning Permits are required for Planned Burns set or supervised by a Public Official in the performance of official duties. Such Planned Burns include those that are set:

i. For the purpose of weed abatement;

ii. For the prevention of fire hazard;

iv. For the purpose of disease and pest prevention;

vi. Fires that are necessary for the training of governmental officials in criminal-enforcement.

1.4 Burning Without a Permit Allowed. Outdoor Open Burning Permits are not required for the following (Prohibited materials, Sec. 1.2, may not be used to start or fuel fires):

(a) The cooking of food;

(b) The providing of warmth for human beings;

- (c) Fires for recreational purposes;
- (d) Fires for religious or ceremonial purposes;
- (e) Orchard heaters for the purpose of frost protection in farming or nursery operations.
- (f) Fire for fire department and criminal enforcement training.
- (g) Emergency control fires.

1.5 Burning Permits. All open burning activities requiring a written permit must be obtained from the St. Regis Mohawk Tribe, Environment Division prior to burn activity. The Environment Division Offices are open from 8:00-4:00, daily, except legal holidays. There is no charge for permits issued to individual residences or agriculture. Business and commercial permits are \$50.00 U.S. dollars payable at the time of issuance.

- (1) Burning Permit Applications. An application for a burning permit shall include the reasons why such burning should be permitted and such other information as may be required by the Director to insure that such burning will be unlikely to result in the *violation* of Tribal air quality standards or to cause unreasonable air pollution. Burning Permit Application forms are available from the Environment Division, and at the Tribal Offices.
 - a. If the Director approves such application he will issue a permit which shall be for a specified period and shall contain such conditions as are deemed necessary to prevent unreasonable air pollution and the contravention of Tribal air quality standards.
- (2) Revocation of Permit. The permit may be revoked by the Director if there is:
 - (a) failure to comply with its conditions;
 - (b) a violation of Tribal law in connection with the burning;
 - (c) the burning creates a public nuisance; or

- (d) the burning is found to cause or contribute to a contravention of Tribal air quality standards.
 - (e) High fire danger as determined by the Environment Division by humidity, temperature, precipitation and other factors.
- (3) Right to a Hearing. Before revocation of a permit, the permittee shall have the right to be heard; but where, in the opinion of the Director, prompt action is necessary because of danger to the public health or safety, or to prevent serious air pollution, the permit may be suspended pending a hearing. In the event that the Director is required to revoke a permit without a hearing, he/she will explain to the permittee, in writing, the reasons supporting such immediate action;
- (4) All Burning Permits are valid for dates specified on permit.
- (5) Three (3) copies of the permit will be made:
- (a) the original will be kept by the Environment Division;
 - (b) a copy will be retained by the permittee for the duration of the permitted burn and must be made available at the burn site upon demand by appropriate officials;
 - (c) a copy will be forwarded to the Hogansburg Akwesasne Volunteer Fire Department.
- (6) All permits for burns will have conditions that must be met otherwise the burn must not be set or must be extinguished. All permitted burning activities must conform to the guidelines that are issued with the permit.

1.6 **Enforcement.** In concert with community values, efforts to educate people with regard to the many hazards associated with open burning and the benefits of proper waste disposal to the greatest extent possible will be made prior to initiating enforcement actions. It is only when education, awareness or

any other reasonable means to prevent prohibited open burning activities have failed that enforcement will be considered.

The provisions of this ordinance shall be enforceable by the St. Regis Mohawk Tribe Environment Division, the St. Regis Mohawk Tribal Police Department, and delegated Conservation Officers and/or Peacemakers in accordance with rules and regulations promulgated by the Environment Division. Such rules and regulations shall include as a last resort provisions for the imposition of civil penalties, and/or injunctive relief in the event of non-compliance with this regulation.

(1) Procedures. Procedures for bringing about a violation of this ordinance shall follow those established by the St. Regis Mohawk Tribe for investigations, summons, and appearance before the Court.

- 1.7 Burning Bans. The St. Regis Mohawk Tribe retains the authority to declare burning restrictions.
- 1.8 Penalties/Fines. Financial penalties and fines and/or other form of penalty, such as restitution, may be levied by the Tribal Court against those who violate any section of this ordinance. Penalties and fines be will assessed according to the Tribal Court.