

LIST OF APPLICABLE LAWS

Authority for Prescribed Burns

Prescribed burns are open burns allowed pursuant to 567 Iowa Administrative Code (IAC) paragraph 23.2(3)“d”. Burns that involve cleared materials may not occur closer than ¼ mile from any building inhabited by other than the landowner or tenant conducting the burn. Additional disaster declarations may allow for additional burning if an emergency condition exists.

The air quality rules for open burning are set forth under 567 IAC chapter 23 (rule 567-23.2). Copies of the current rule provisions and definitions applicable to open burning are available on the DNR Air Quality Bureau (AQB) website at www.iowacleanair.gov (click on “open burning” on the left-side menu). DNR AQB does not issue burn permits.

Currently, prescribed natural resource burning is allowed under the “landscape waste” exemption (paragraph 23.2(3)“d”) in most areas of the state, unless prohibited as noted below or unless prohibited under local ordinances or regulations.

General Prohibitions

Locations

Prescribed burns are generally prohibited in the cities of:

- Cedar Rapids
- Marion
- Hiawatha
- Council Bluffs
- Carter Lake
- Des Moines
- West Des Moines
- Clive
- Windsor Heights
- Urbandale
- Pleasant Hill

If planning a burn within one of these cities, the Burn Leader must contact the city fire department and the following offices:

- Polk County Public Works (Air Quality Division): For burning in Polk County and within the city limits of Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, or Pleasant Hill.
- DNR Air Quality Bureau: For burning in Council Bluffs, Carter Lake, and in all areas outside of Polk County and within the city limits of Des Moines, West Des Moines, and Urbandale.
- Linn County Health Department (Air Quality Division): For burning within the city limits of Cedar Rapids, Marion or Hiawatha.

In addition, any local government entity, such as a municipality or a county, may enact local open burning regulations that are more stringent than state open burning rules. Local governments are not required to notify DNR of any such local ordinances. In particular, Linn County and Polk County have their own state-approved air quality programs and require permits for most open burning activities. Council Bluffs also has a burn permit program. DNR staff who are writing and approving burn plans should check with local governments regarding local open burning ordinances and regulations. The Burn Leader is responsible for overseeing compliance with local ordinances and regulations related to prescribed burning.

Materials

Prescribed burns may not include the burning of asbestos, rubber tires or other hazardous materials. If asbestos is found in any structure that is part of a prescribed burn, the Burn Leader must contact DNR’s Realty Services Bureau, who will then work with the AQB to safely remove the asbestos prior to the prescribed burn. No prescribed burn shall occur until the asbestos has been removed and properly mitigated.

Deleterious Impacts to Water Quality

Prescribed burning activities are intended to promote a healthy environment and should not create or contribute to water quality defects in the state. While the DNR is not required to obtain NPDES permits for prescribed burns (unless

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the burning is part of a construction project, in which case the project may require a permit), the DNR is prohibited from undertaking activities that would cause pollutants to enter into waters of the state. Information about pollution prevention and best management plans is available by contacting the Environmental Services Division field office in your area.

Threatened and Endangered Species

Iowa law prohibits the taking of a listed species. <http://www.iowadnr.gov/Conservation/Threatened-Endangered>
Burn plans should minimize possible negative effects to listed species. During the development of a burn plan, and prior to the initiation of any prescribed burn, the Burn Leader shall check the Iowa Natural Areas Inventory (INAI) database, and review other local observation data, to determine whether threatened or endangered species may be present. If a threatened or endangered species is present or has the potential to be present, the burn plan requires consultation. Contact the DNR Threatened and Endangered Species Coordinator for consultation.

Required Permits

The DNR, the United States Fish and Wildlife Service, and the State Historical Preservation Office (SHPO) have a programmatic agreement that addresses our compliance with Section 106 of the National Historical Preservation Act. Under this agreement prescribed burn activities using accepted prescribed burn techniques do not require SHPO review.

Linn and Polk counties and the City of Council Bluffs have air quality programs that require air permits for prescribed burns. The Burn Leader must contact those permitting entities to obtain all necessary permits prior to conducting a burn in Council Bluffs or in Linn or Polk County.

Burn Bans Require a Permit

The Iowa Department of Public Safety - State Fire Marshal Division is the issuing authority for burn bans in the State of Iowa. Prescribed burning activities may not be conducted by DNR staff, volunteers, or contractors participating on state-owned and/or managed lands, private, or other public lands unless they have been issued a permit by the local fire chief. When conducting day of the burn notifications, advise the contact that a permit has been issued by the local fire chief to conduct the prescribed fire.

To access a list of Iowa counties under an active burn ban go to: <http://www.dps.state.ia.us/fm/main/burnbans/>

Building Disposal

Building disposal by burning is not considered to be a component of prescribed burning and is not addressed in the DNR Burn Policy. Refer to 567 IAC chapter 23 (rule 567-23.2), or contact the AQB for more information.

List of Applicable Laws

(As of the date of this policy revision)

City:

- City of Council Bluffs Open Burning Ordinance – Council Bluffs Municipal Code section 4.02.020

County:

- Linn County Open Burning Ordinance – Linn County Ordinances section 10.10
- Polk County Open Burning Rules – Polk County Board of Health Rules and Regulations section 5-7

State:

- Air Quality Duties of the Environmental Protection Commission – Iowa Code section 455B.133
- Liability of Landowners Allowing Public Use of Private Property – Iowa Code section 461C.3
- Liability of State Employees under the State Tort Claims Act – Iowa Code sections 669.21 and 669.23
- Liability of State Volunteers under the State Tort Claims Act – Iowa Code section 669.24
- Open Burning, including building disposal – 567 Iowa Administrative Code rule 23.2
- State Threatened and Endangered Species Act – Iowa Code chapter 481B and 571 Iowa Administrative Code chapter 77

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- Requirements for Traffic Control Signs and Flagging along Smoke Impacted Roads – 761 Iowa Administrative Code chapter 130 and the Manual on Uniform Traffic Control Devices (MUTCD) located at:
<http://mutcd.fhwa.dot.gov/>

Federal:

- Clean Air Act (CAA) – 42 U.S.C. chapter 85
- National Emission Standards for Hazardous Air Pollutants (NESHAP) – 40 C.F.R. part 61
- National Environmental Policy Act (NEPA) – 42 U.S.C. chapter 55
- National Primary and Secondary Ambient Air Quality Standards (NAAQS) – 40 C.F.R. part 50
- Protection of Historic Properties – 16 U.S.C. 470 and 36 C.F.R. Part 800