

**Comments on Section 2 (Open Burning Regulations) and Section 4 (Smoke Management Regulations).**



Prometheus gave man fire and the Wyoming Department of Environmental Quality has now decided to take fire away from mankind. The new Open Burning Regulations establish no minimum level of burning that is not regulated by WDEQ. A citizen must now contact the state government for approval to light a campfire, which then can only be burned during daylight hours. As these regulations are written, that same campfire may not be ignited with a match as the regulations prohibit the burning of processed wood that is chemically treated. I am certain that the response by the WDEQ will be to say that the this prohibition was not the intent of the proposed regulations. If that is the case than the regulations should be revised to establish the true intent so that citizens who risk the penalties imposed do not have to guess at the true intent of the regulations. If these regulations are adopted as written they will prohibit all campfires after dark, bonfires, all burning for political expression, and fireworks displays.

One of the most onerous sections of these regulations establish that by asking ~~permission to burn that the burner then surrenders his right to privacy; and that the~~ WDEQ can then come on his property to inspect the burn. This concept would be analogous to requiring drivers to give up their protection from unlawful search and seizure in order to receive a driver's license. The Wyoming Constitution requires that no person shall loose life, liberty, or property, without due process of law. Furthermore the constitution prohibits the taking or damage of property for a public or private use without just compensation. I see no provision in the regulations that would compensate a landowner for the use of his property in order for the WDEQ to make such inspections, no provision that places any limit on the time of day of inspections, the number of inspections, or the length of time from when a burn takes place to when an inspection could occur. If the inspections come without prior notice to the landowner then WDEQ may be forced to cut fences or remove locks to gain access to the burned area. The simple act of burning something one time allows WDEQ to come on private property many years later. The right to exclude the public from one's property is a well established property right. WDEQ removes that right without providing for due process or just compensation. The WDEQ should have to show probable cause of a violation in order to enter private property without permission .

The cumulative effect of the Open Burning Regulations and the Smoke Management Regulations taken together will be to discourage the use of prescribed fire. In most cases, only government agencies will have the time and resources to comply with the regulations. My company has utilized fire as a tool to enhance and improve rangeland

throughout its 115 year history. The typical vegetation burns were small in size, conducted during the early spring or very late fall and resulted in minor impacts to the air quality. There is a very narrow window of opportunity for a prescribed fire to be successful. Safety, and favorable weather are the primary limiting factors to burning.

The imposition of another regulatory layer over that already imposed by fire authorities will make the use of fire very limited. While the benefit of controlling smoke and burning can be readily imagined what is harder for the public to see is the degradation to rangeland habitat from the exclusion of fire in the ecosystem. The result will be increasing fuel loads and higher intensity wildland fires which will have a great impact on air quality. Agricultural burning below ten acres per day should be excluded from regulation on rangeland sites that are more than a half mile from a population. It should also be possible to burn at night if that time of day is safest for the particular project.

The requirement for burners to publish public notices is another example of an exercise that will do little to provide any real benefit except to the employees of the newspaper paid to publish such worthless information. A notice published in the Wall Street Journal would satisfy the regulatory requirement but would rarely warn those that could be effected by smoke in Wyoming. The public notice could even be published in a foreign language newspaper and still meet the requirements. It would seem more logical to have the WDEQ establish on their website a place where all proposed burning could be entered so that individuals with respiratory problems could have a single place to look in order to determine if they might be effected by smoke in their area. This type of service has worked well with road and travel information and would be accessible even to people from out of state planning to visit Wyoming.

Another short-coming in the regulations is that no exemption exists to provide for the use of fire for firefighting training. Burn houses and burn towers, such as maintained by the City of Casper for training, are not exempted from the regulations. The fires set in such training buildings are deliberately designed to create smoke and simulate structural fires. Training in such facilities should not be limited to just daylight hours. Other facilities in Wyoming use propane fired devices to simulate oilfield fires and such burning would be prohibited by these regulations as propane and waste oil are prohibited articles for open burning. The aircraft crash and rescue training conducted at Natrona County International Airport would be effected in a similar manner. There is also no exemption to allow public health officials to burn in cases where structures are a threat to human health or to stop the spread of contagious diseases in animals.

I would predict, with a high degree of accuracy, that if these regulations are adopted as written that they will be enforced only in cases where businesses are involved. Individuals probably have little to worry about because the WDEQ will simply ignore them in order to concentrate enforcement actions on agriculture and industry. Urban residents no longer have a need for, or an understanding of fire, but the impact of these regulations to agriculture will be burdensome. The jurisdictional fire authorities will stress safety while the WDEQ will stress smoke dispersal; two goals that are often at odds with each other. Implied in the permit by rule concept is the ability of the department to

delay or deny burn projects. Much of the regulation seems to be providing a framework for further regulation in the future; as in the requirement for people burning household refuse to note the direction and dispersal of the smoke. The real solution is that WDEQ should not try to regulate the burning of natural materials unless they truly contribute to measurable air quality problems. I urge you not to adopt the proposed open burning regulations and instead create a reasonable threshold where burning can take place without the involvement of multiple layers of government.

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