



# WYOMING FARM BUREAU FEDERATION

P.O. Box 1348  
Laramie, Wyoming 82073 • (307) 745-4835

January 9, 2004

Air Quality Advisory Board  
Wyoming Air Quality Division  
Herschler Building,  
122 West 25<sup>th</sup> St.  
Cheyenne, WY 82002



Dear Board Members:

The Wyoming Farm Bureau Federation represents agricultural producers throughout the State of Wyoming. Agricultural production is a significant contributor to the overall economic well being of Wyoming as well as providing significant lifestyle values for enjoyment by all citizens. We would like to provide the following comments on the proposed air quality rules.

Agriculture has a significant stake in these proposed rules and sections 2 and 4 as proposed will have a major impact on the economics of agricultural producers.

## Section 2 comments

Section 2 dealing with the Open Burning Restrictions (OBR) appear to greatly expand the regulatory impact on agricultural producers. As a member of the development team for the proposed Section 4 rules I was surprised to see that much of what was developed for SMP I in Section 4 appears to have been lifted from that section and placed in Section 2. We do not feel this is appropriate or necessary.

We believe that as proposed, Section 2 goes far beyond even what the Division intended. The definition of "open burning" proposed at Section 2 (a)(ii) covers all burning that does not take place in a furnace, incinerator or equipment connected to a stack or chimney. This is an exceptionally broad definition which in the context of the rest of Section 2 significantly increases the regulatory reach of the Division.

An example of the far reaching impact of these rules can be found in Section 2 (a)(v) defining prohibited materials. This subsection indicates that chemically treated wood is a prohibited material which cannot be burned. One of our members pointed out that kitchen matches are chemically treated wood. But this section goes further and prohibits wood wastes, or lumber. There is no definition of what constitutes wood waste, but if it encompasses old used fence posts, then a lot of agricultural operators will be burning prohibited materials. Lumber is another prohibited material, which is somewhat puzzling if it is OK to burn wood, but not lumber. Under the proposed rules, an agricultural producer who tears down an old shed and burns the boards would also be burning a prohibited material.

Subsection (vi) has some conflict with subsection (v). Subsection (vi) would classify end cuts from a shed building project both as a prohibited material which cannot be burned and a trade waste which can be burned.

Under subsection (c)(ii) the Division is given permission to enter and inspect a property, premise or place where an open burn occurred, for compliance purposes. A rancher burning

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fence posts for a branding fire will have, by virtue of this rule, given a Division employee permission to enter on his private land to see if he is complying with this subsection. And, under the definition of prohibited materials, he could be found in violation of these rules. We would hope this is not what the Division intended when they promulgated these rules, but nevertheless that is what they say.

Private property rights are very important to agricultural producers. We feel that allowing entry by a government official just because of a branding fire is an excessive reaction to open burning. Furthermore, this "permission section" contains no time limitation. Not only does this section give a Division employee the right to come visit the rancher during branding, but it gives the employee the right to come visit a rancher any time after the branding.

Subsection (d) greatly expands the authority of the Division. Burning of household wastes is an important tool for rural residents. These waste disposal units, commonly an empty 55 gallon drum, are located within walking distance of the residence and after an accumulation of household wastes they are generally burned. Under the proposed rules the Division is asking the rural resident to carry their household wastes over a distance of two football fields to the receptacle, in order to meet the "600 foot from the house" (see the definition of population) requirement of subsection (d)(i). We are unsure why 600 feet was selected and would like to have the reasons explained for that distance.

Once the waste is placed in the container and lit on fire, the rural resident must observe the burn at all times to determine the dispersion, direction and impacts of the smoke. The rules are silent on what the observer is supposed to do with this information, but presumably it will be necessary if a Division representative shows up to investigate the open burn.

Subsection (f) Restrictions on vegetative material open burn, appears to have been lifted directly from Section 4 dealing with SMP I requirements. The only requirement in this subsection which does not appear to be in Section 4 is the post fire reporting. When the Smoke Management team was developing Section 4, there was discussion about how impractical that section would be for items like burning ditches or disposal of other vegetative material and we were told that those particular activities would be covered under the OBR section. A review of that section indicated there would not be a significant disruption of this important agronomic practice. Should these rules be adopted as presented, that will not be true.

Under the previous rules the agricultural producer was able to burn the ditches when conditions were best.

Under the proposed rules, the agricultural producer will be required to notify the Division by a process which will be determined later by the Administrator of the Division (subsection (A)). The next step will be contacting the jurisdictional fire authority. The next step after that will be to determine if the wind is blowing over 3 miles per hour prior to ignition, and if there will be a population in the downwind direction closer than  $\frac{1}{2}$  mile or if there is a population within  $\frac{1}{8}$ th of a mile in any direction from the burn. Once all of those conditions are met the producer will light the ditch bank and observe the fire to determine the dispersion, direction and impacts of the smoke. Again, as with the refuse burn, it is unclear what the producer does with this information.

We are unsure if this was the intent of the Division or not, but we feel the rules as proposed would make many agricultural producers law breakers in order to maintain their ditches.

We are curious why the ½ mile downwind trajectory was put into these rules as well as the other requirements.

One of the issues addressed by the Smoke Management team was that we wanted to ensure that fire remained a viable management tool. Under these proposed rules it is doubtful that many agricultural producers will be able to utilize fire legally as a management tool for ditch maintenance.

Because of the serious problems with this section, we recommend the Board **not** adopt these rules and the Division continue to regulate open burns under the old rules.

#### **Section 4 Comments**

As mentioned earlier, I participated in the development of this section and would like to thank the Division for the opportunity to be involved in the process. While I was involved in the process, I still have some concerns with Section 4. The first concern is with the limited time both the State and the team had available to develop this section. Agricultural representatives felt very strongly that agricultural burning could be exempted from these requirements as was done in Utah and still meet the requirements of EPA under Section 309.

Wyoming harvested 85,000 acres of barley in 2001 according to the Wyoming Ag Statistics. If every producer burned all of their barley stubble this would amount to about .18% of the acres of land within the state. Most producers do not burn their barley stubble, and members have indicated to me that between 5 and 10 percent of the stubble is burned. This would be between 4,000 to 8,500 acres in Wyoming which are burned. Last year saw many times that number of acres of trees burned in Wyoming. We are aware that EPA is somewhat reluctant to take our word for this, so we look forward to coming to the Division and the Board to revisit this issue once better numbers are acquired.

Under subsection 4 (e)(i) the rules require notification by the burner prior to initiation of the burn project. In addition to the contact information and location of the burn, the Division is also requiring "other information" from the burner. We are unsure what this "other information" is exactly. The development team has not discussed this additional wording and adding it at this late date seems somewhat incongruous with the process up until now. Until this is further explained, we feel it should not be included in these rules.

Under subsection 4 (e)(ii)(B) the rules suggest that a low population density consists of an average of one dwelling per 10 acres. In the original discussion by the development team the low population density average was one dwelling per 6 acres. By changing from 6 to 10 acres we see an increase of 66% over the original density requirement. This is a significant increase. We suggest the acreage be changed back to one dwelling per 6 acres.

Section 4 is a new area both for agriculture and the Division. We hope that where problems are identified the Division will work with the agricultural community to change the

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rules where they need to be changed so that fire can continue to be an effective management tool.  
Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "KEN HAMILTON". The signature is written in a cursive style with a large initial "K".

Ken Hamilton  
Administrative Assistant

cc NER  
Board