

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

RULE IMPACT STATEMENT

**SUBCHAPTER 13. OPEN BURNING**

**252:100-13-2. [AMENDED]**

**252:100-13-5. [AMENDED]**

**252:100-13-7. [AMENDED]**

**252:100-13-8. [AMENDED]**

**252:100-13-9. [AMENDED]**

**252:100-13-10. [AMENDED]**

Before the Air Quality Advisory Council, October 17, 2012

Before the Environmental Quality Board, November 7, 2012

1. **DESCRIPTION:** The Department is proposing to amend OAC 252:100-13, Open Burning, to clarify the requirements for "air curtain destructors" also known as "air curtain incinerators" and "open-pit incinerators." The proposed rulemaking would primarily affect the owners and operators of Air Curtain Incinerators (ACIs) used on a temporary basis to burn trees, brush, and similar materials from land clearing, public health and safety, and disaster response activities. The affected entities include private as well as state, county, and municipal governmental entities. The proposal would extend the existing rule requirement that land clearing operations in current and former nonattainment areas (Oklahoma and Tulsa Counties) use ACIs to all counties in the Oklahoma City and Tulsa Metropolitan Statistical Areas (MSAs). The Department is proposing changes to add flexibility in the operation of these units including an extension of the allowed hours of operation. Additionally, the Department proposes to modify the rule to allow, under certain conditions, the transport of materials from the site where they are generated to the site where they would be burned. To ensure adequate protection of public health by reducing air pollution on days that ozone or particulate matter (PM) concentrations are expected to exceed National Ambient Air Quality Standards, the Department proposes to prohibit open burning in areas under an Ozone or PM Watch.
2. **CLASSES OF PERSONS AFFECTED:** The proposed rulemaking would primarily affect the owners and operators of ACIs used on a temporary basis to burn trees, brush, and similar materials from land clearing, public health and safety, and disaster response activities. The affected entities include private as well as state, county, and municipal governmental entities.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Costs will be borne by persons wishing to conduct open burning in areas that are or have been designated nonattainment, or in MSAs with a population of greater than nine hundred thousand (Oklahoma City and Tulsa MSAs).
4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities.

5. **CLASSES OF PERSONS BENEFITTED:** The citizens of the State of Oklahoma will benefit from the rule. The owners and operators of ACIs will benefit from the proposed changes, which add flexibility in the operation of ACIs.
6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The existing rule requires land clearing operations in current and former nonattainment areas (Tulsa and Oklahoma Counties) to use ACIs. The proposal would expand this requirement to all counties in the Oklahoma City and Tulsa MSAs. DEQ estimates that an ACI can be rented for \$500 per day or \$5,000 per month, or purchased for \$17,500.
7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Political subdivisions will be required to use an ACI for certain open burning activities in nonattainment areas and the Oklahoma City and Tulsa MSAs and would incur any expense associated with their use. However, the improvement in burn efficiency (shortened burn time) and safety (fewer escaped embers and reduced smoke and other emissions) and reduction in potential liability would offset some of these costs.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** Small businesses engaged in land clearing in certain areas would be required to use ACIs and would incur expenses associated with their use. However, the improvement in burn efficiency (shortened burn time) and safety (fewer escaped embers and reduced smoke and other emissions) and reduction in potential liability would offset some of these costs.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** There are no fee changes proposed in these rules.
10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department anticipates no increased cost to implement and enforce the proposed rule changes.
11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing these rules.
12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and fees will continue to be used to implement and enforce these rules.
13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The Department expects no net loss or gain in revenues from these amendments.
14. **COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** No cooperation of political subdivisions is required. The Department will be responsible for all aspects of implementation and enforcement of these rules.

15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The DEQ minimized compliance costs by requiring the use of ACIs only in air quality problem areas, i.e., current and former nonattainment areas and areas where pollutant concentrations exceed National Ambient Air Quality Standards. The proposal would add flexibility for the operation of the ACIs by extending the allowed hours of operation and allowing operators to transport wood waste and clean lumber to the ACI site.
16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** The Department has determined that there are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule.
17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The Department has determined that the proposed rule changes will have a beneficial impact on the public health, safety, and environment by reducing emissions.
18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** This rule will reduce the emissions from open burning by a factor of ten (about 90%) in the Oklahoma City and Tulsa MSAs. Using ACIs instead of burn piles would reduce the risk to public safety from escaped fires and embers.
19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** Without this rule change, there will be a greater amount of emissions from open burning conducted in the Oklahoma City and Tulsa MSAs. Also, the benefits to public safety attributable to the expansion of the requirement to use ACIs would not be achieved.
20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** The probable impact of having to rent or purchase an ACI, will be counter-balanced by the ability to perform the burns much faster. Business engaged in land clearing in specific areas will be required to use an ACI, which they will need to rent or purchase. However, reduced labor requirements and the improvement in burn efficiency and safety, and reduction in potential liability should offset some of these costs.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** September 17, 2012  
**MODIFIED ON:**