

WAC 173-430-045 Alternatives to burning field or turf grasses grown for seed. (1) When is open burning of field and turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of field and turf grasses grown for seed whenever ecology has concluded, through a process spelled out in the act, that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to open burning, and that alternate is reasonably available.

(2) Has ecology certified practical alternatives to open burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed. Mechanical residue management means removing, including arranging for removal of, the residue using nonthermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques. Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

- (a) When the field is planted (establishment);
- (b) When the field is producing seed (harvest years);
- (c) When the field is prepared for replanting (tear-out).

(3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a field under specific production conditions due to slope. In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed before burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

(iii) The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

(iv) The field will remain, without replanting, in grass production at least through the next harvest season following burning;

(v) Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

(vi) Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than \$300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology or the local air authority at least thirty days before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved before processing a permit application.

[Statutory Authority: 2010 c 70, RCW 70.94.6528 and *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III. WSR 10-23-049 (Order 10-05), § 173-430-045, filed 11/10/10, effective 12/11/10. Statutory Authority: RCW 70.94.656. WSR 98-12-016 (Order 97-45), § 173-430-045, filed 5/26/98, effective 6/26/98.]