

# Forest Protection Laws of North Carolina

## 2011



*Help Prevent Wildfires*

**North Carolina Forest Service**

## **Be Careful With Fire**

North Carolina's Forest Fire Laws were enacted in order to protect one of our most important resources - the forest. There is approximately 18.7 million acres of woodland in North Carolina. Fire is the greatest enemy to those forests.

### **Before you do any burning:**

1. Check the Law. At times any burning is unlawful.
2. Do not burn on dry, hot days.
3. Be sure winds are down.
4. Plan burning for late afternoon.
5. Clear the area around where the fire is to be.
6. Have necessary fire tools available.
7. Do not leave fire until the last ember is out.
8. Always thoroughly wet stove ashes before dumping outdoors.
9. Air Quality Rules do not allow some types of burning.

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## **SELECTED FOREST PROTECTION LAWS OF NORTH CAROLINA**

### **§14-136. Intentionally setting fire to grass and brushlands and woodlands.**

If any person shall intentionally set fire to any grassland, brushland or woodland, except it be his own property, or in that case without first giving notice to all persons owning or in charge of lands adjoining the land intended to be fired, and without also taking care to watch such fire while burning and to extinguish it before it shall reach any lands near to or adjoining the lands so fired, he shall for every such offense be guilty of a Class 2 misdemeanor for the first offense, and for a second or any subsequent similar offense shall be guilty of a Class 1 misdemeanor. If intent to damage the property of another shall be shown, said person shall be punished as a Class I felon. This section shall not prevent an action for the damages sustained by the owner of any property from such fires. For the purposes of this section, the term "woodlands" is to be taken to include all forest areas, both timber and cutover land, and all second-growth stands on areas that have at one time been cultivated. Any person who shall furnish to the State, evidence sufficient for the conviction of a violation of this section shall receive the sum of five hundred dollars (\$500.00) to be paid from the State Fire Suppression Fund.

**What It Means**

1. *It is unlawful for any person to set fire to any grassland, brushland, or woodland belonging to another.*
2. *Any person setting fire to his own land must first give notice to adjoining landowners, keep watch over fire, and extinguish the fire before it reaches the lands of another.*
3. *It is a felony for anyone to set a fire on lands of another with intent to do damage.*
4. *Any person furnishing sufficient evidence which results in a conviction under this law shall receive five hundred dollars (\$500.00) from the State Fire Suppression Fund.*

**§14-137. Willfully or negligently setting fire to woods and fields.**

If any person, firm or corporation shall willfully or negligently set on fire, or cause to be set on fire, any woods, lands or fields, whatsoever, every such offender shall be guilty of a Class 2 misdemeanor. This section shall apply only in those counties under the protection of the Department of Agriculture and Consumer Services in its work of forest fire control. It shall not apply in the case of a landowner firing, or causing to be fired, his own open, non-wooded lands, or fields in connection with farming or building operations at the time and in the manner now

provided by law: Provided, he shall have confined the fire at his own expense to said open lands or fields.

### **What It Means**

- 1. Makes it unlawful for anyone to willfully or negligently set fire or cause to be set on fire any woods, lands, or fields he does not own.*
- 2. A landowner may fire or cause to be fired, his own open non-wooded land and fields in connection with farming or building operations, but he must comply with all other burning regulations and must confine the burning to his own lands and fields at his expense.*
- 3. Applies only in the counties under the protection of the Department of Agriculture and Consumer Services.*

### **§14-138.1. Setting fire to grassland, brushland, or woodland.**

Any person, firm, corporation, or other legal entity who shall in any manner whatsoever start any fire upon any grassland, brushland, or woodland without fully extinguishing the same, shall be guilty of a Class 3 misdemeanor which may include a fine of not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00). For the purpose of this section, the term “woodland” includes timber and cutover land and all second growth stands on areas that were once cultivated.

### **What It Means**

1. *Makes it unlawful to start a fire in any manner without fully extinguishing it on any grassland, brushland or woodland.*

### **§14-140.1 Certain fire to be guarded by watchman.**

Any person, firm, corporation, or other legal entity who shall burn any brush, grass, or other material whereby any property may be endangered or destroyed, without keeping and maintaining a careful watchman in charge of the burning, shall be guilty of a Class 3 misdemeanor which may include a fine of not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00). Fire escaping from the brush, grass, or other material while burning shall be prima facie evidence of violation of this provision.

### **What It Means**

1. *A person burning any material that endangers the property of others must keep a careful watchman in charge of the fire until it is extinguished.*

### **§77-13. Obstructing streams a misdemeanor.**

If any person, firm, or corporation shall fell any tree, or put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, creek, stream, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, or whereby the navigation of such stream may be impeded, delayed, or prevented, the person, firm, or corporation so offending shall be guilty of a Class 2 misdemeanor. In

addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. Nothing in this section shall prevent the erection of fish dams or hedges across any stream which do not extend across more than two thirds of its width at the point of obstruction. If the fish dams or hedges extend more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the bounds of any county or municipality this section may also be enforced by any law enforcement officer having territorial jurisdiction or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forested areas, including swamp and timberlands, cutover lands, and second-growth stands in previously cultivated sites.

**What It Means**

1. *It is unlawful to fell any tree or put any obstruction in any branch, creek, stream or other natural passage for water causing the natural flow of water to be reduced or stopped, or navigation of the stream is impeded, delayed or prevented.*
2. *Fish dams or hedges may be built if they do not extend over two thirds the width of the stream.*

**§77-14. Obstructions in streams and drainage ditches.** If any person, firm, or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a Class 2 misdemeanor: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and

restoration shall be paid to the enforcing agency by the offending party. This section may be enforced by marine fisheries inspectors and wildlife protectors. Within the boundaries of any county or municipality this section may be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by specially commissioned forest law-enforcement officers of the Department of Agriculture and Consumer Services for offenses occurring in woodlands. For purposes of this section, the term "woodlands" means all forest areas, including swamp and timber lands, cutover lands and second-growth stands on previously cultivated sites.

### **What It Means**

- 1. It is unlawful to fell any tree, or put any substance in any creek, stream, river, or natural or artificial drainage ravine or ditch or other outlet whereby the natural and normal drainage of land is impeded, stopped or delayed.*

### **§106-863. Duties of forest ranger; payment of expenses by State and Counties.**

Forest rangers shall have charge of measures for controlling forest fires, protection of forest from pests and diseases, and the development and improvement of the forest for maximum production of forest products; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the Commissioner; shall patrol and

man lookout towers and other points during dry and dangerous seasons under the direction of the Commissioner; and shall perform such other acts and duties as shall be considered necessary by the Commissioner in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the Commissioner; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the Commissioner shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasure for the payment of the county's share of such expenditures, said payment to be made within one month after receipt of such statement from the Commissioner. Appropriations made by a county for the purposes set out in Articles 72, 73, 75 and 79 of the Chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the Commissioner for the work in said county, but are to serve as a supplement thereto. Funds appropriated to the Department for a fiscal year for the purposes set out in Articles 72, 73, 75 and 79

of this Chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program.

### **What It Means**

*Spells out the responsibilities of Forest Rangers;*

1. *to control forest fires,*
2. *to protect forest from insects and disease, and*
3. *to perform any other duties considered necessary by the Commissioner of Agriculture and Consumer Services.*

*This statute also sets standards for payment of expenses by the county and the State for protection, development and improvement of forested areas.*

### **§106-864. Powers of forest rangers to prevent and extinguish fires; authority to issue citations and warning tickets.**

(a) Forest rangers shall prevent and extinguish forest fires and shall have control and direction of all persons and equipment while engaged in the extinguishing of forest fires. During a season of drought, the Commissioner or his designate may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland, the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or deputy forest ranger may summon any resident between the ages of 18 and 45 years, inclusive, to assist in extinguishing fires and may require the use of crawler tractors and other property needed for such purposes; any

person so summoned and who is physically able who refuses or neglects to assist or to allow the use of equipment and such other property required shall be guilty of a Class 3 misdemeanor and upon conviction shall only be subject to a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00). No action for trespass shall lie against any forest ranger, deputy forest ranger, or person summoned by him for crossing lands, backfiring, burning out or performing his duties as a forest ranger or deputy forest ranger.

(b) Forest rangers are authorized to issue and serve citations under the terms of G.S. 15A-302 and warning tickets under the terms of G.S. 106-866 for offenses under the forest laws. This subsection may not be interpreted to confer the power of arrest on forest rangers, and does not make them criminal justice officers within the meaning of G.S. 17C-2.

### **What It Means**

*This statute gives Forest Rangers the authority to:*

- 1. Prevent and extinguish forest fires;*
- 2. Take control of all persons and equipment while engaged in extinguishing fires;*
- 3. Man fire patrols, cross lands, backfire, burn out or perform his duties as a Forest Ranger without liability for trespass action;*

4. *Summon any physically able North Carolina resident between the ages of 18 and 45, inclusive, to assist in extinguishing fires;*
5. *Require the use of crawler tractors and other property for the purpose of extinguishing fires; and*
6. *Authorizes the Forest Ranger to issue citations and write warning tickets.*

**§106-865.Powers of forest law-enforcement officers.** The Commissioner is authorized to appoint as many forest law enforcement officers as he deems necessary to carry out the forest law-enforcement responsibilities of the Department. Forest law enforcement officers shall have all the powers and duties of a forest ranger enumerated in G.S. 106-863 and 106-864. Forest law enforcement officers shall, in addition to their other duties, have the powers of peace officers to enforce the forest laws. Any forest law enforcement officer may arrest, without warrant, any person or persons committing any crime in his presence or whom such officer has probable cause for believing has committed a crime in his presence and bring such person or persons forthwith before a district court or other officer having jurisdiction. Forest law-enforcement officers shall also have authority to obtain and serve warrants including warrants for violation of any duly promulgated rule of the Department.

**What It Means**

1. *Authorizes Forest Law Enforcement Officers to enforce all statutes of this State enacted for the protection of forests and woodlands from fire, insects or disease and for obstruction of streams and drainage ditches in forests and woodlands.*
2. *Authorizes the Forest Law Enforcement Officer to arrest without warrant any person committing any crime in his presence.*
3. *Forest Law Enforcement Officers may obtain and serve warrants for violations of regulations of the Department of Agriculture and Consumer Services.*

**§106-866.Warning tickets for violations of the forest laws.**

(a) To encourage the cooperation of the public in achieving the objectives of the forest laws, the Commissioner may provide for the issuance of warning tickets instead of the initiation of criminal prosecution by forest rangers and forest law-enforcement officers. Issuance of the warning tickets shall be in accordance with criteria administratively promulgated by the Commissioner within the requirements of this section. These criteria are exempt from Articles 2 of Chapter 150B of the General Statutes but shall be filed in accordance with Article 5 of that Chapter.

(b) No warning ticket may be issued unless all of the following conditions are met:

(1) The forest ranger or the forest law-enforcement officer must be convinced that the offense was not committed intentionally.

(2) The offense is not one, or a type of offense, for which the Commissioner has prohibited the issuance of warning tickets.

(3) At the time of the violation it was not reasonably foreseeable that the conduct of the offender could result in any significant destruction of forests or woodlands or constitute a hazard to the public.

(c) A warning ticket may not be issued if the offender has previously been charged with, or issued a warning ticket for, the same or a similar offense within the preceding three years. A list of persons who have been issued warning tickets under this section within the preceding three years shall be maintained and periodically updated by the Commissioner.

(d) This section does not entitle any person who has committed an offense to the right to be issued a warning ticket, and the issuance of a warning ticket does not prohibit the later initiation of criminal prosecution for the same offense for which the warning ticket was issued.

### **What It Means**

1. *Forest Rangers and Forest Law Enforcement Officers have statutory authority to write warning tickets for certain violations of forest fire laws.*

**§106-870. Misdemeanor to destroy posted forestry notice.**

Any person who shall maliciously or willfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the Commissioner, under the provisions of this Article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a Class 3 misdemeanor.

**What It Means**

1. *Makes it unlawful to willfully or maliciously destroy, deface, remove or disfigure any sign, poster or warning notice posted by order of the Commissioner of Agriculture and Consumer Services, for the purpose of protecting or developing the forests of this State.*

**§106-872. Instructions on forest preservation and development.**

(a) It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this Chapter to distribute in all the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development and forest management.

(b) It shall be the duty of the various rangers herein mentioned under the direction of the Commissioner, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do.

### **What It Means**

1. *Requires all Forest Rangers to distribute forestry materials and literature in the schools of the county in which they work.*
2. *Spells out the duties of rangers and teachers to post such appropriate bulletins and posters furnished by forestry agencies and keep them constantly before their pupils.*
3. *Requires teachers and rangers to prepare and present lectures or talks to pupils on the subject of forestry.*

**§106-873. Authority of Governor to close forests and woodlands to hunting and trapping.**

During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

- (1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.
- (2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.
- (3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping.

**§106-874. Publication of proclamation; annulment thereof.**

Such proclamation shall become effective 24 hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Commissioner and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed.

**What It Means**

1. *Gives the Governor the authority to close any or all woodlands during the hazardous forest fire conditions. Closure of woodlands becomes effective 24 hours after the certified time of issue of such a proclamation.*
2. *The proclamation will be annulled when the Governor, upon the joint recommendation of the Commissioner of Agriculture and Consumer Services and the Executive Director of the North Carolina Wildlife Resources Commission, is satisfied that the emergency has passed.*

**§106-875. Violation of proclamation a misdemeanor.**

Any person, firm or corporation, who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any

woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a Class 1 misdemeanor.

### **What It Means**

1. *Makes it a misdemeanor punishable by fine or imprisonment in the discretion of the court to violate any of the provisions of the Governor's proclamation concerning emergency drought or fire conditions.*

### **§106-880. Purpose and intent.**

(a) The purpose of this Article is to place within the Department of Agriculture and Consumer Services, the authority and responsibility for investigating insect infestations and disease infections which effect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicated outbreaks of forest insect pests and tree diseases.

### **What It Means**

1. *Places the responsibility and authority within the Department of Agriculture and Consumer Services for investigating insect and disease infestations which affect forest trees, and to take measures to control, suppress, or eradicate outbreaks of forest insects and tree diseases.*

**§106-881. Authority of the Department of Agriculture and Consumer Services.**

The authority and responsibility for carrying out the purpose, intent and provisions of this Article are hereby delegated to the Department. The administration of the provisions of this Article shall be under the general supervision of the Commissioner. The provisions of this Article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture and Consumer Services under existing statutes.

**What It Means**

1. *Delegates the authority and responsibility to the Department of Agriculture and Consumer Services to carry out the provisions of this Article.*
2. *It does not change the powers and authority of the North Carolina Department of Agriculture under existing statutes.*

**§106-883. Action against insects and disease.**

Whenever the Commissioner, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber of forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the Commissioner shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries

so as to definitely describe and identify said zone of infestation or infection, and the Commissioner or his agent shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls.

### **What It Means**

1. *Gives the Commissioner of Agriculture and Consumer Services or his agent the authority to declare a zone of infection and infestation in areas of forest tree diseases and insects and recommend control measures.*

### **§106-884. Authority of Commissioner of Agriculture and Consumer Services and his agents to go upon private land within the control zone.**

The Commissioner or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the Commissioner or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the Commissioner may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the Commissioner or his agent in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection,

provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area.

### **What It Means**

1. *Authorizes the Commissioner of Agriculture and Consumer Services or his agent to enter upon any land within a zone of infestation or infection for the purpose of controlling, suppressing or eradicating forest insects or disease.*

### **§106-885. Cooperative agreements.**

In order to more effectively carry out the purposes of this Article, the Department is hereby authorized to enter into cooperative agreement with the federal government and other public and private agencies, and with the owners of forestland.

### **What It Means**

1. *Authorizes the Department of Agriculture and Consumer Services to enter into cooperative agreements with the Federal Government, other agencies, and forest landowners.*

### **§106-886. Annulment of control zone.**

Whenever the Commissioner determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the Commissioner shall

declare the zone of infestation or infection no longer pertinent to the purposes of this Article and such zone will then no longer be recognized.

### **What It Means**

- 1. When the Commissioner of Agriculture and Consumer Services determines that a designated infection or infestation control zone is no longer necessary, he shall declare the zone no longer pertinent and the zone will no longer be recognized.*

## **REGULATION OF OPEN FIRES**

### **§106-900. Purpose and findings.**

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land clearing operations is taking place on -these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article.

**§106-901. Definitions.**

As used in this Article:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under G.S. 106-861.
- (3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.
- (4) "Woodland" means woodland as defined in G.S. 106-869.

**§106-902. High hazard counties; permits required; standards.**

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with G.S. 106-900.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the

area in question have been prohibited or canceled in accordance with G.S. 106-904 or 106-906.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with G.S. 106-902(b).

(1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminants from the burning.

(2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.

(3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.

(4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.

(5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.

(6) Initial burning may be commenced only between the hours of 9:00 a.m. and 3:00 p.m. and no combustible material may be added to the fire between 3:00 p.m. on one day and 9:00 a.m. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions.

**§106-903. Open burning in non-high hazard counties; permits required; standards.**

(a) The provisions of this section apply only to the counties not designated as high hazard counties in G.S. 106-902(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 p.m. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or canceled under G.S. 106-904 or 106-906.

**§106-904. Open burning prohibited statewide.**

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under G.S. 106-902 or 106-903. The Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected.

**§106-905. Permit conditions.**

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit.

**§106-906. Permit suspension and cancellation.**

Upon a determination that hazardous forest fire conditions exist the Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits.

**§106-907. Control of existing fires.**

(a) If a fire is set without a permit required by G.S. 106-902, 106-903 or 106-904 and is set in an area in which permits are prohibited or canceled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under G.S. 106-902(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under G.S. 106-902(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the

property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department.

### **§106-908. Penalties.**

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G. S. 143-215.114A or G. S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G. S. 106-907.

**§106-909. Effect on other laws.**

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under G.S. 106-902(c).

**§106-910. Exempt fires; no permit fees.**

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article.

**What It Means**

1. *Unlawful to willfully start or cause to be started any fire in or within 500 feet of woodlands without a permit in high hazard counties.*

2. *Must have a special ground clearing permit if ground clearing activities involve more than five (5) acres placed in piles or windrows regardless of distance from woodlands in high hazard counties.*
3. *Area less than five (5) acres requires a regular permit in accordance with G.S. 106-902(b).*
4. *Unlawful to start or cause to be started any fire in the woodlands or within 500 feet of woodlands during the hours of midnight and 4:00 p.m. without a permit in non high hazard counties.*
5. *During periods of hazardous forest fire conditions or air pollution episodes the Commissioner is authorized to cancel all permits and prohibit all open burning.*
6. *If a fire is set without a permit, or when permits are canceled, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire as directed by any Forest Ranger.*
7. *If the responsible person does not immediately undertake efforts to take action as directed by the Ranger to extinguish the fire, the Department may take reasonable steps to control the fire and responsible party shall reimburse the Department for the expenses.*
8. *If the burning is taking place contrary to the permit conditions, the Forest Ranger may order the permittee in writing to comply with the conditions. If permittee does not make a reasonable effort to comply, the Ranger may take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses.*

9. *This article does not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling if fire is confined within an enclosure from which material may not escape or within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.*
10. *Any person violating the provisions of this Article shall be guilty of a Class 3 misdemeanor.*
11. *Air Quality Rules make it illegal to burn*
- *Garbage, paper and cardboard*
  - *Tires and other rubber products*
  - *Building materials, including lumber*
  - *Wire, plastics and synthetic materials*
  - *Asphalt shingles and heavy oils*
  - *Paints, household land agricultural chemicals*

## **NORTH CAROLINA PRESCRIBED BURNING ACT.**

### **§106-920. Legislative findings.**

The General Assembly finds that prescribed burning of forestlands is a management tool that is beneficial to North Carolina's public safety, forest and wildlife resources, environment, and economy. The General Assembly finds that the following are benefits that result from prescribed burning of forestlands:

- (1) Prescribed burning reduces the naturally occurring buildup of vegetative fuels on forestlands, thereby reducing the risk and severity of wildfires and lessening the loss of life and property.

- (2) The State's ever-increasing population is resulting in urban development directly adjacent to fire-prone forestlands, referred to as a woodland-urban interface area. The use of prescribed burning in these woodland-urban interface areas substantially reduces the risk of wildfires that cause damage.
- (3) Many of North Carolina's natural ecosystems require periodic fire for their survival. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Prescribed burning benefits game, nongame, and endangered wildlife species by increasing the growth and yield of plants that provide forage and an area for escape and brooding and that satisfy other habitat needs.
- (4) Forestlands are economic, biological, and aesthetic resources of statewide significance. In addition to reducing the frequency and severity of wildfires, prescribed burning of forestlands helps to prepare sites for replanting and natural seeding, to control insects and diseases, and to increase productivity.
- (5) Prescribed burning enhances the resources on public use lands, such as State and national forests, wildlife refuges, nature preserves, and game lands. Prescribed burning enhances private lands that are managed for wildlife refuges, nature preserves, and game lands.

- (6) Prescribed burning enhances private lands that are managed for wildlife, recreation, and other purposes.

As North Carolina's population grows, pressures resulting from liability issues and smoke complaints discourage or limit prescribed burning so that these numerous benefits to forestlands often are not attainable. By recognizing the benefits of prescribed burning and by adopting requirements governing prescribed burning, the General Assembly helps to educate the public, avoid misunderstanding, and reduce complaints about this valuable management tool.

#### **§106-921. Definitions.**

As used in this Article:

- (1) "Certified prescribed burner" means an individual who has successfully completed a certification program approved by the Forest Service of the Department of Agriculture and Consumer Services.
- (2) "Prescribed burning" means the planned and controlled application of fire to naturally occurring vegetative fuels under safe weather and safe environmental and other conditions, while following appropriate precautionary measures that will confine the fire to a predetermined area and accomplish the intended management objectives.

- (3) “Prescription” means a written plan prepared by a certified prescribed burner for starting, controlling, and extinguishing a prescribed burning.

**§106-922. Immunity from liability.**

(a) Any prescribed burning conducted in compliance with G. S. 106-923 is in the public interest and does not constitute a public or private nuisance.

(b) A landowner or the landowner’s agent who conducts a prescribed burning in compliance with G. S. 106-923 shall not be liable in any civil action for any damage or injury caused by or resulting from smoke.

(c) Notwithstanding subsections (a) and (b), this section does not apply when a nuisance or damage results from a negligently or improperly conducted prescribed burning.

**§106-923. Prescribed burning.**

(a) Prior to conducting a prescribed burning, the landowner shall obtain a prescription for the prescribed burning prepared by a certified prescribed burner and filed with the Forest Service, Department of Agriculture and Consumer Services. A copy of the prescription shall be provided to the landowner. A copy of this prescription shall be in the possession of the responsible burner on site throughout the duration of the prescribed burning. The prescription shall include:

- (1) The landowner's name and address.
- (2) A description of the area to be burned.
- (3) A map of the area to be burned.
- (4) An estimate in tons of the fuel located on the area.
- (5) The objectives of the prescribed burning.
- (6) A list of the acceptable weather conditions and parameters for the prescribed burning sufficient to minimize the likelihood of smoke damage and fire escaping onto adjacent areas.
- (7) The name of the certified prescribed burner responsible for conducting the prescribed burning.
- (8) A summary of the methods that are adequate for the particular circumstances involved to be used to start, control, and extinguish the prescribed burning.
- (9) Provision for reasonable notice of the prescribed burning to be provided to nearby homes and businesses to avoid effects on health and property.

(b) The prescribed burning shall be conducted by a certified prescribed burner in accordance with a prescription that satisfies subsection (a) of this section. The certified prescribed burner shall be present on the site and shall be in charge of the burning throughout the period of the burning. A landowner may conduct a prescribed burning without being a certified prescribed burner if the landowner is burning a tract of forestland of 50 acres or

less owned by that landowner and is following all conditions established in a prescription prepared by a certified prescribed burner.

(c) Prior to conducting a prescribed burning, the landowner or the landowner's agent shall obtain an open-burning permit under Article 4C of this Chapter from the Forest Service, Department of Agriculture and Consumer Services. This open-burning permit must remain in effect throughout the period of the prescribed burning. The prescribed burning shall be conducted in compliance with all the following:

- (1) The terms and conditions of the open-burning permit under Article 4C of this Chapter.
- (2) The State's air pollution control statutes under Article 21 and Article 21B of Chapter 143 of the General Statutes and any rules adopted pursuant to these statutes.
- (3) Any applicable local ordinances relating to open burning.
- (4) The voluntary smoke management guidelines adopted by the Forest Service, Department of Agriculture and Consumer Services.
- (5) Any rules adopted by the Forest Service, Department of Agriculture and Consumer Services, to implement this Article.

**§106-924. Adoption of rules.**

The Forest Service, Department of Agriculture and Consumer Services, may adopt rules that govern prescribed burning under this Article.

**§106-925. Exemption.**

This Article does not apply when the Commissioner of Agriculture and Consumer Services has canceled burning permits pursuant to G. S. 106-906 or prohibited all open burning pursuant to G. S. 106-904.

**What It Means**

- 1. The Forest Service will certify prescribed burners after the person has completed a certification program approved by the Forest Service.*
- 2. When a landowner has a prescribed fire on 50 acres or less of his/her own land, and following a plan by a certified burner, he/she shall not be liable in civil action for damage or injury caused by or resulting from smoke.*
- 3. A certified prescribed burner can prescribe burn following a burning plan filed with the Forest Service and following the other requirements of G.S. 106-920 through G.S. 106-925, shall not be liable in civil action for damages or injury caused by or resulting from smoke.*

**IN CASE OF VIOLATIONS OF THE FOREST  
PROTECTION LAWS NOTIFY YOUR LOCAL NORTH  
CAROLINA FOREST SERVICE OFFICIAL.**

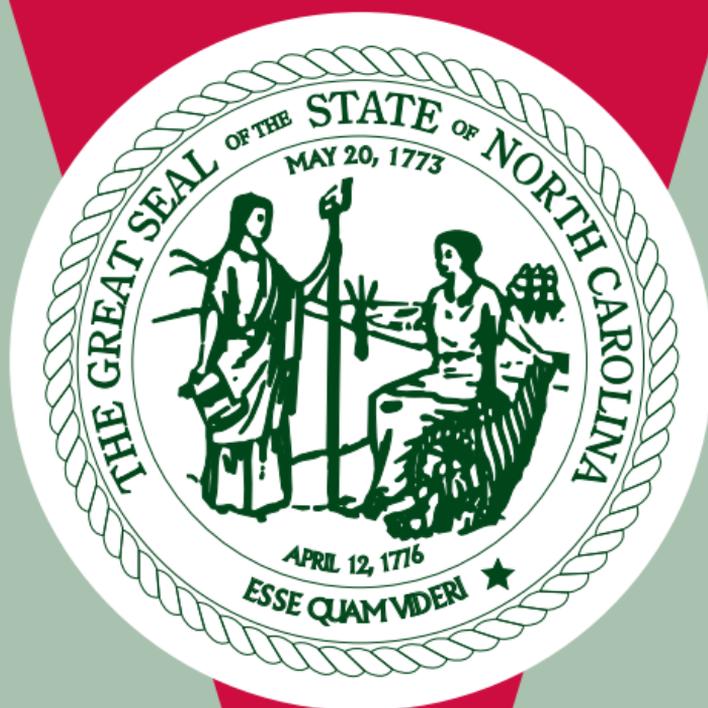
**N.C. FOREST SERVICE DISTRICT OFFICES:**

**Asheville (828) 667-5211**  
**Elizabeth City (252) 331-4781**  
**Fairfield (252) 926-3041**  
**Fayetteville (910) 437-2620**  
**Hillsborough (919) 732-8105**  
**Lenoir (828) 757-5611**  
**Lexington (336) 956-2111**  
**Mt. Holly (704) 827-7576**  
**New Bern (252) 514-4764**  
**Rockingham (910) 997-9220**  
**Rocky Mount (252) 442-1626**  
**Sylva (828) 586-4007**  
**Whiteville (910) 642-5093**

**N.C. DIVISION OF AIR QUALITY REGIONAL  
OFFICES:**

**Asheville (828)296-4500**  
**Western NC (828)250-6777**  
**Winston-Salem (336)771-5000**  
**Forsyth County (336)703-2440**  
**Raleigh (919)791-4200**  
**Washington (252)946-6481**  
**Wilmington (910)796-7215**  
**Fayetteville (910)433-3300**  
**Mecklenburg Co (704)336-5500**  
 **Mooresville (704)663-1699**

**In case of Forest Protection  
Law Violations, notify  
local North Carolina  
Forest Service**



**TELEPHONE**

**North Carolina Department of  
Agriculture and Consumer Services**