

RULE SYNOPSIS

Proposed rule language for Ohio Administrative Code (OAC) Chapter 3745-19, "Open Burning Standards"
Five- year review

The Ohio EPA Division of Air Pollution Control (DAPC) has completed proposed rule language for the incorporation of minor revisions in Ohio Administrative Code (OAC) Chapter 3745-19, "Ohio's Open Burning Standards", as required by Ohio Revised Code (ORC) Section 119.032 (Five-year review). DAPC has determined that all the rules in this chapter are still necessary and require amendments as follows.

DAPC is not recommending any changes to the scope or intent of the rules and most of the proposed amendments are minor in nature, primarily for clarification, formatting and typographical corrections. One new purpose for open burning was added to OAC rules 3745-19-03 and 3745-19-04. This addition to each rule will facilitate the disposal of confiscated marijuana by law enforcement officials. In the past, this activity could be performed via written permission under the emergency or extraordinary provisions of these two rules. As this activity is infrequent and performed only by law enforcement officials, Ohio EPA has determined that this activity would not require notification or written permission from Ohio EPA in order to expedite that open burning activity.

On July 19, 2011, Ohio EPA released a package of draft rule changes for a 30 day public review and comment period which ended on August 19, 2011. Various comments were received from interested parties and some changes were made to the draft rule language as a result of those comments. A description of these changes that will be proposed to the Joint Committee on Agency Rule Review, in addition to the original draft rule revisions that was sent out for public review on July 19, 2011, can be found at the end of this synopsis.

Detail of changes to the Interested Party Draft Rule Compared to this Proposed Rule

1. Various minor typographical and formatting changes pointed out during the draft review were noted and corrected in these proposed rules.
2. Based on a comment suggesting that a size restriction be incorporated into the rules for the disposal of agricultural and residential waste in unrestricted areas, Ohio EPA has added a notification requirement for waste piles exceeding a certain size for these types of waste disposal activities and created new paragraph (B)(3)(f) in OAC rule 3745-19-04.

"Prior notification to the Ohio EPA in accordance with paragraph (B) of rule 3745-19-05 of the Administrative Code shall be required for the disposal of agricultural waste if the size of waste pile exceeds 20 feet in diameter by 10 feet in height (or

4,000 cubic feet) and for residential waste if the size of the waste pile exceeds 10 feet by 10 feet by 10 feet (or 1,000 cubic feet)."

3. Based on a comment that two additional health/medical agencies be referenced in OAC rule 3745-19-04(D) for the open burning for the control of disease or pests via notification to Ohio EPA, Ohio EPA has added the "Ohio Department of Health" and the "Centers for Disease Control and Prevention" to the list of agricultural agencies in that paragraph. These were also added to the equivalent rule for restricted areas found in OAC rule 3745-19-03(C)(1).
4. Based on a comment, additional clarification language, compared to the draft rule, was added to paragraph (A)(1) of OAC rule 3745-19-05 concerning the submittal and approval time frame requirements for written permission to open burn.

Synopsis of Draft Changes for Interested Party Review

The following is a brief summary of the content of and/or amendments to the rules included in this chapter. A draft containing this content was sent out for public comment on July 19, 2011.

1. OAC rule 3745-19-01 (Definitions); Clarification was added in paragraph (A), "agricultural waste" to indicate that dismantled or fallen buildings/barns cannot be open burned. New definition in paragraph (E) for "inhabited building", for clarification as referenced in the open burning activity for agricultural waste and residential waste. Clarification was added to the current definition (now paragraph (J)) of "residential waste" by adding "rubber, grease, asphalt, liquid petroleum products, or plastics" as those wastes that could not be open burned as residential waste besides garbage. Amendments to paragraph (M), language updates for "incorporation by reference" changed to just "referenced materials".
2. OAC rule 3745-19-02 (Relations to other prohibitions); a minor typographical reference change was made in both paragraphs of this rule.
3. OAC rule 3745-19-03 (Open burning in restricted areas); Amendments were made to the first paragraph of the rule, "incorporation by reference" was changed to "referenced materials". New paragraph (B)(5) was added to allow the open burning of confiscated marijuana by law enforcement officials. Paragraph 19-03(C)(3)(e) was revised by adding "plastics" and "building materials" as additional materials that cannot be open burned. Clarification was added to paragraph (D)(3), which indicates the requirements described in the appendix to this rule are only necessary ("if required") for a storm debris/community hardship situation. Clarification was made by adding to the sentence in paragraph (D)(4); "forestry" (management).

4. OAC rule 3745-19-04 (Open burning in unrestricted areas); Amendments to the first paragraph of rule, language update for “incorporation by reference” changed to just “referenced materials”. Correction in paragraph (B)(5), strike-out of reference to paragraph (B)(3). Paragraph (B)(3)(e) was revised by adding “plastics” and “building materials” as additional materials that cannot be open burned. New language in (B)(6) was added to allow the open burning of confiscated marijuana by law enforcement officials. Clarification added to paragraph (C)(3), which indicates the requirements described in the appendix of rule 3745-19-03 are only necessary (“if required”) for a storm debris/community hardship situation. Clarification was made by adding to the sentence in paragraph (C)(5); “forestry” (management). Paragraph (D) was reformatted for activities that require notification.

5. OAC rule 3745-19-05 (Permission to individuals and notification to the Ohio EPA); Clarification language was added in paragraph (A)(1), “Approval for permission to open burn may be granted before that time period”. Paragraph (A)(2)(b) was revised to read; "the quantity or acreage and the nature of the materials to be burned." In paragraph (A)(3), the phrase “when atmospheric conditions are appropriate” was added for further clarification.

6. OAC rule 3745-19-06 (Open burning unilateral order); Clarification language was added in paragraph (A), to differentiate the fines that may be imposed if the waste burned is residential or not residential. As a result the sentence beginning with “Commercial property” is no longer needed and was deleted.