

# OhioEPA

## Division of Air Pollution Control

### Response to Comments Draft Rule Language Comment Period

**Rule: OAC Chapter 3745-19, Ohio's Open Burning Regulations**

**Agency Contact for this Package**

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Ohio EPA provided a 30 day comment period which ended on August 19, 2011. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

#### **General/Overall Concerns**

**Comment 1:** OEC believes that the Open Burning rules have generally been, and will continue to be an effective way of controlling potential air pollution from small scale open burning. However, the current process and procedure for Open Burning Permissions are inappropriate as they concern prescribed burns in Ohio State Forests. The size of these burns, potential impacts to air quality, and risk to human health and safety are beyond the scope of the Open Burn program. It is important to recognize the reasons why Open Burning Rules are required in the first place to truly understand why we believe that large scale forest burns require a greater degree of analysis, monitoring, and public involvement. The Agency's very informative guide to open burning states this intent and rationale for the need for oversight of burning best:

"Why is open burning a problem?"

Open burning can release many kinds of toxic fumes. Leaves and plant materials send aloft millions of spores

when they catch fire, causing many people with allergies to have difficulty breathing. The pollutants released by open burning also make it more difficult to meet health-based air quality standards, especially in or near large cities. The gases released by open burning can also corrode metal siding and damage paint on buildings.

#### Health Concerns

Burning household waste produces many toxic chemicals and is one of the largest known sources of dioxin in the nation. Other air pollutants from open burning include particulate matter, sulfur dioxide, lead and mercury. These pollutants have been linked to several health problems, including asthma, respiratory illnesses, nervous system damage, kidney and liver damage, and reproductive or developmental disorders". (Ohio EPA Website at: <http://www.epa.ohio.gov/dapc/general/openburning.aspx>)

It is our understanding that the vast majority of the Open Burning applications that are approved are very small scale and concentrated and result in de minimus contributions to air pollution. However, the Open Burning permission for Shawnee and other state forests under ODNR's prescribed burning regime encompass hundreds of acres, per burn. The air pollutants, spores, and resultant health hazards are exasperated when permissions are given to burns of hundreds of acres of dense forest. These forests burns, when conducted pursuant to even the strictest of prescriptions, have the potential to emit significant amounts of particulate matter and other pollutants and burn outside of the desired acreage. This is due in part, mainly because open burn regulations meant for small scale burns are utilized for these larger burns. While we recognize that Portsmouth Local Air Agency and the Agency have monitored near the Shawnee burn sites, we have not seen any publicly available studies, reports, or air monitoring data from the large scale forest burns that show that air pollution standards are not being impacted by the practice. If such reports/studies/data exist from these particular burns, OEC would be interested in reviewing those materials.

Previous ODNR burns permitted by Ohio EPA for Shawnee Forest have not only forever impacted the forests which the State of Ohio holds as trustee for the benefit of its citizens, but raised concerns from citizens about the contribution of these burns to the PM 2.5 non-attainment of Scioto County

and negative human health impacts from emissions on nearby residents. Further, the ODNR has been cited by Ohio EPA during previous burns for burning outside of their prescription areas. Nevertheless, Ohio EPA continues to grant permissions to ODNR through this process.

We do not wish debate whether ODNR has the discretion to use prescribed burns as a method of its active management of Ohio's forests – they do. Nor do we wish to debate whether ODNR's stated goals for these prescribed burns have or are being met – that is for ODNR and its Division of Forestry to provide. However, we staunchly believe that these types of burns deserve a regulatory structure to monitor and control potential air pollutant emissions that provides for full analysis of the potential air emissions. The vast majority of Open Burn permissions are small scale burns and agricultural burns; this is not the case with forest burns. Such forest burns of the hundreds of acre scale, even when conducted perfectly to prescription have the potential to burn more than the quantity and material described in the Open Burn application. Further, similar large scale burns of private forest land, or even grassland or prairie burns, may have similar potential air quality impacts that should be further evaluated. Our lack of focus in these comments on these types of burns does not foreclose our desire to see similar process created to control potential pollution from these sources. (Trent A. Dougherty, Esq., Director of Legal Affairs, Ohio Environmental Council)

**Response 1:** Ohio EPA appreciates the comments submitted by the Ohio Environmental Council (OEC) and its continued interest in Ohio's air quality. Ohio EPA also understands OEC's concern for these types of larger than normal open burning activity and their potential impact to air quality, primarily with PM 2.5.

Ohio EPA's Division of Air Pollution Control's (DAPC) primary responsibility is to maintain and attain the National Ambient Air Quality Standards (NAAQS) as set forth and outlined in the Federal Clean Air Act (CAA). U.S. EPA has determined that beneficial open burning activities such as prescribed fire, that are isolated events of short duration, do not significantly affect the health based standards of the CAA or the plans that Ohio is implementing to attain those standards.

The following data are the results from an actual monitoring event that was conducted for an original designed burn of 233 acres that began at approximately 10:30 AM on April 24, 2009. They are from a monitor that was placed on Mackletree Road in Shawnee State Forest during the East Fork prescribed burn.

April 22, 2009	3.3 ug/m <sup>3</sup>
April 24, 2009	7.4 ug/m <sup>3</sup>
April 25, 2009	7.3 ug/m <sup>3</sup>
April 26, 2009	3.7 ug/m <sup>3</sup>
April 27, 2009	9.8 ug/m <sup>3</sup>
April 28, 2009	19.7 ug/m <sup>3</sup>

The burn for the controlled fire of 233 acres was concluded around 5:30 PM on April 24, 2009. According to law enforcement officials, a wildfire caused by arson began a few hours after the prescribed fire and that wildfire was finally contained on April 29, 2009. The designed burn and the arson event resulted in the burn of 2,964 acres.

During the dates above, the monitor did not show concentrations of concern and the levels did not exceed the 24-hour NAAQS for PM 2.5 (35 ug/m<sup>3</sup>). The 24-hour standard was also maintained during the burn of the additional acres as a result of the arson.

In addition, the permanent PM 2.5 air monitor in Scioto County that is used to measure against the national ambient air quality standard read the following concentrations (where mean is a monthly average and max is the highest 24-hour value during that month) for the months before, during and after this burn as follows (in ug/m<sup>3</sup>):

March 2009; max = 19.7 and a mean = 10.83

April 2009; max = 15.1 and a mean = 9.76

May 2009; max = 21.0 and a mean = 11.22

Ohio EPA relies on air monitoring to assure that outdoor air quality standards are met. Air monitoring is effective for determining compliance with PM 2.5 standards considering all types of pollution sources (e.g.,

factories, mobile, air, rail, open burning, non-road vehicles, etc.). Over the past 14 years, Ohio EPA has made significant progress in reducing particle pollution in the Huntington-Ashland area (Adams, Gallia, Lawrence and Scioto Counties) and has now attained the federal air quality standard. This is documented (as above) by actual PM 2.5 monitoring data in the area.

For the monitor located in Scioto County, monitoring data for the 24-hour PM 2.5 NAAQS has shown a decrease in PM 2.5 from 43.2 ug/m<sup>3</sup> in 1999 to 24.4 ug/m<sup>3</sup> in 2010. Similarly, monitoring data for the annual PM 2.5 NAAQS (15.0 ug/m<sup>3</sup>) has shown a decrease in PM 2.5 from 24.7 ug/m<sup>3</sup> in 1999 to 11.8 ug/m<sup>3</sup> in 2010. This area has always attained the 24-hour PM 2.5 NAAQS; however it has been non-attainment for the annual PM 2.5 NAAQS, but now continues to measure attainment. As a result, Ohio EPA has recently requested in a submittal to US EPA, that Scioto County be designated back to attainment for the annual PM 2.5 NAAQS.

As indicated by the monitor data, the impact of PM 2.5 emissions, even during the 2009 burn, which ultimately resulted in a total of close to 3000 acres burned, would not be a factor in the attainment or maintenance of the standards for PM 2.5. Ohio EPA understands that ODNR generally burns units of around 200 to 300 acres per burn for these projects. The excessively larger area that resulted in the burn that was monitored back in 2009 would not be typical of the burns acreage in the future, but even with that amount of acreage burned the level of short term air emissions that resulted still did not exceed the NAAQS. In addition to your comments, other commenters indicated that most of these burns have resulted in larger areas being burned (out of control) than planned in the design by ODNR and therefore have violated their written permission form Ohio EPA. The instance of the excessive acreage burned described above and monitored was an extreme case and the comments that many of the prescribed fires by ODNR have been out of control and burned more acres than planned is not entirely factual and has been addressed multiple times in investigations and reviews conducted by Ohio EPA, ODNR and other outside natural resource agencies. Ohio EPA has the ability to use enforcement for these burns as referenced by the commenter

("ODNR has been cited by Ohio EPA during previous burns for burning outside of their prescription areas"); one of the earlier burns in the program by ODNR resulted in a Notice of Violation (NOV) for some small spot fires that occurred outside of the boundaries of a prescribed fire. As a result ODNR developed contingency plans with a buffer zone around the actual boundary using men and equipment necessary to prevent/contain such spot fires and lingering fires after the primary burn has been completed. Ohio EPA would initiate an investigation on any individuals if a burn took place without first obtaining written permission from Ohio EPA regardless of the acreage of burn. ODNR would also have the ability to initiate enforcement on the certified burn managers that must seek the burn waiver from ODNR to conduct such burns, should the requirements of such waivers not be met or major problems occur with the burns (i.e., excessive burning outside the designed area).

In summary, Ohio EPA believes the use of prescribed fire as a management tool in the larger areas such as Shawnee Forest and in the smaller prairie management areas of the state, does not result in any major air emissions impacts that would compromise the maintenance or attainment of the air quality standards of the criteria pollutants such as PM 2.5, as set forth in the National Ambient Air Quality standards. U.S. EPA's policy/guidance also recognized the use of open burning activities such as prescribed fire ("Interim Air Quality Policy on Wild land and Prescribed Fires"). U.S. EPA indicated state management agencies (as ODNR) to develop, require and implement at least basic smoke management programs (SMP's) when conditions indicate that such fires will adversely impact the public. These SMP's established the procedures and requirements for minimizing emissions and managing smoke dispersion. The goals of SMP's are to mitigate the nuisance and public safety hazards (e.g., on roadways and at airports) posed by smoke intrusions into populated areas; to prevent deterioration of air quality and NAAQS violations; and to address visibility impacts in mandatory Class I Federal areas. In exchange for states pro-actively implementing SMP's, U.S EPA decided to exercise its discretion not to re-designate an area as nonattainment if the evidence is

convincing that fires managed for resource benefits caused or significantly contributed to violations of the daily or annual PM 2.5 or PM 10 standards. Rather, U.S. EPA would call on the state to review the adequacy of the SMP in collaboration with wildland owners/managers and make appropriate improvements to mitigate future air quality impacts. By incorporating and requiring a properly designed and executed smoke management/burn plan, along with the infrequent and of short duration of these type of burns by ODNR, the monitoring data has indicated no impact or violations of the standards discussed above.

To note, most of the states that border Ohio have planned and actually performed much larger burn acreages for forest management over the past couple years. Ohio's (forest) burns have been limited primarily only in the southeastern area of the state. In 2010, West Virginia conducted a prescribed burn in Monongahela National Forest of 1016 acres out of a planned total of close to 3000 acres. Also in 2010, Indiana conducted 36 prescribed fires managing 3,389 acres, which was 3% short of the established goal due to bad weather conditions. In recent years, Pennsylvania and Kentucky plan and burn approximately 8000 and 20,000 acres per year respectively, but like West Virginia have much larger areas of forest to manage than Ohio does.

As mentioned in your comments, Ohio EPA is not involved with the debate (forestry/biological) of whether ODNR's management of the forest via prescribed fire is the best method to achieve its desired goals or a necessary program. The issues concerning fire safety and the use of fire as a method of forest management should be directed to the appropriate staff at ODNR and those elected officials responsible for the development of the policies that have resulted in the use of prescribed fire as a tool for that agency's forestry/horticultural management.

**Comment 2:**

Thank you for the opportunity to comment on the open burning standards. The American Lung Association supports the changes made to eliminate construction waste from allowable open burning. We appreciate that you are working to ensure that certain chemicals, compounds, plastics and

building materials are not burned. However, the code does not provide enough protection to public health for Ohioans.

In the nearly 40 years since the Open Burning Rule was first written, we have learned much more about the harm to our health from open burning. We have learned that particulate matter can be harmful at levels once thought safe, even over short exposures, including a few hours to a few days a year. Because of this, the American Lung Association does not support open burning for waste, including agricultural wastes. We urge the use of safe non-combustion alternatives to dispose of all waste.

Open burning, including burning residential and agricultural wastes, contributes to high levels of particulate matter and other dangerous pollutants. Particulate matter increases the risk of asthma attacks, heart attacks, strokes, and premature death. It poses higher risks for children, senior citizens, people who have lung diseases such as asthma, cardiovascular disease, and diabetes, as well as for healthy adults who work outdoors, including farmers and agricultural workers. When multiple farms are burning agricultural waste at the same time in rural areas, it raises the likelihood of multiple days of smoke that can threaten the health and the lives of many Ohioans.

Smoke from these fires can spread across the state and contribute to problems in other areas. Several metro areas in Ohio are in nonattainment because of violations to the 24-hour PM 2.5 standard including: Canton-Massillon; Cleveland-Akron-Lorain; and Steubenville-Weirton. Agricultural burning in other parts of Ohio will contribute to the challenges those communities face in meeting the 2006 standard and protecting the health of their residents.

The rule needs to explicitly prohibit open burning, in either restricted or unrestricted areas, any building or construction materials, including lumber, used for residential, commercial, industrial, agricultural or other construction purposes.  
**(Shelly Kiser, Director of Advocacy, American Lung Association in Ohio)**

**Response 2:**

**Ohio EPA thanks the commenter for their general comments on Ohio' open burning standards. Ohio EPA acknowledges the contribution of open burning to emissions of PM 2.5, but in actuality, from an air emissions inventory standpoint, it is a very small**

portion of the total emissions compared to other sectors such as the burning of fossil fuels from industry and the power generation industry. It would be very difficult for Ohio EPA to further limit or ban open burning from residential or agricultural activities without support from the state legislature and recommends the commenter's organization to contact those appropriate elected officials as a mechanism to further promote the disposal of these wastes by methods other than open burning.

**Comment 3:**

My concern is that there should be pre-permit hearings for large prescribed fires. The public needs to have input before the burns. As it is now, there doesn't seem to be any requirement to inform the public. It's a guessing game. The public has 30 days to appeal, but it is imperative that there is transparency from the beginning. The type and amount of things to be burned should be made public prior to the burns. I am especially concerned about prescribed burns in Shawnee State Forest. A burn like the out-of-control burn in April 2009 must not happen again. We don't need to be putting unnecessary CO2 into the atmosphere. Why not have a five-year moratorium on prescribed burns? Our eastern deciduous forests will be just fine without prescribed burns. It appears that all these management plans are make-work programs to keep the various Divisions busy.  
(Jan Kennedy, Mansfield, OH 44904)

**Response 3:**

The Environmental Review Appeals Commission (ERAC) has reviewed many appeals regarding prescribed burns and permissions to burn from Ohio EPA and has ruled to uphold the Agency's approval for these types of prescribed burns. Ohio EPA does not anticipate that any future burn requests permissions would be denied unless it was discovered that the requirements for such burns (certified burn manager and smoke management plan) did not exist or were not followed during conduction of the actual burn. A pre-permission hearing, as requested by other commenters, if held, would basically have no effect on Ohio EPA's decision. It would only act to make the process to approve or disapprove such a burn more lengthy, as Ohio EPA's decisions can only be based on meeting the open burning standards in the rules. Please see the emissions data from the monitors in Scioto County in the response to comment 1. Ohio EPA, as discussed in that response, is not involved with the debate of whether ODNR's management of the forest via

**prescribed fire is the best method to achieve its desired goals or a necessary program.**

**It appears that many of your concerns deal with the activities of the ODNR, such as the planning (timing), design and performance of the burns, including the budgetary concerns and Ohio EPA suggests these concerns be directed to their agency as Ohio EPA has no involvement or authority in those areas of concern. You may also want to voice your concern/issues with the activities of ODNR (i.e., "make-work" programs) by contacting your local state representative.**

**Comment 4:** The commenter submitted hand written comments dealing primarily with concerns over the use of prescribed fire as forest management in the Shawnee State Forest and they are summarized below:

One concern is the burning of small animals/ insects and amphibians that cannot escape the fire. Secondly, there is a concern for the emissions from prescribed fire and its effect on the nonattainment status of certain air contaminants in Scioto County. Lastly the commenter stated that there were issues of non-compliance with previous permits for burns during which the area of the burn that was originally permitted was larger because of an "arson fire". Since the permit was violated there should be no additional permits issued. **(Robert Klouman, Blue Creek, Ohio)**

**Response 4:** Ohio EPA thanks the commenter for his comments and would like to answer them by referring the commenter to our response to Comment 1, primarily the results of air monitoring in Scioto County and its proposed attainment status for small particulates (PM 2.5). Ohio EPA suggests that the commenter's forest ecology/biological concerns of prescribed fire should be directed to ODNR.

**Comment 5:**

General comments: In my opinion:

1. Ohio Environmental Protection Agency (OEPA) does not take some aspects of open burning very seriously.
2. OEPA favors special, agency and industry interests at the expense of the general public and environmental interests.
3. OEPA has chosen to be more of a pollution permitting agency and less of an environmental protection one.
4. OEPA is in denial about air pollution effects on global warming and climate change, doing little when drastic actions are called for.
5. OEPA doesn't seem to care about the low regard with which it is held by many Ohio citizens.

Issuing an air pollution permit is issuing a license to hurt, harm, sicken, even kill humans and all other respiratory organisms, plants as well as animals. There is statistical risk with any level of pollution; every permit allows harm. Less harm is still no good.

I seriously believe that a five year moratorium on most open burning is needed as one way to help save the world. Most open burning is discretionary and not absolutely necessary - but rather harmful, to public and environmental well-being.

OEPA has proposed minor revisions to Ohio Administrative Code (OAC) chapter 3745-19 when major ones are needed.

New Rule Proposal: Somewhere there should be regulatory language requiring OEPA pre-permit hearings for larger, more polluting and more dangerous open burn fires. Prescribed forest fires is the category most in need of this procedural change. Open and flatter land fires seldom have violations to their boundaries. Terrain that is heavily wooded or forested and hilly or steep has repeatedly demonstrated to have boundary escape fires. If the best experts in the state cannot fully control prescribed forest fires, then OEPA is negligent in permitting them. The public needs a voice.

**(Barbara Lund, Save Our Shawnee Forest, Lynx, Ohio)**

**Response 5:** Ohio EPA appreciates your concerns. Ohio EPA will continue to work towards our goal of attaining and maintaining the national ambient air quality standards. Please see the response to comments 1 and 3 concerning "pre-permit hearings" as referenced in the last section of this comment "New Rules Proposal".

**Comment 6:** Herein, to the best of my ability, I will attempt to suggest additions or changes to OAC Chapter 3745-19, specifically 3745-19-04 and 3745-19-05. These comments are a direct result of situations that have previously occurred with open burning permissions granted to ODNR Division of Forestry, pursuant to 3745-19-04 and 3745-19-05. I hope the suggested revisions are appropriately placed within OAC 3745-19.

Previously, applications have been submitted by ONDR Division of Forestry which referenced V-smoke modeling studies to be completed prior to the prescribed burn. However V-smoke studies are not submitted prior to a burn or with the application. Also, references have been made to burn plans and/or contingency burn plans in permissions and/or applications. Again, in my experience, these burn plans are never submitted prior to a burn. Without burn plans submitted in advance of a burn, the OEPA has no knowledge if ODNR is within the guidelines of the permissions or the OAC. In 2008, A Notice of Violation was issued and subsequently withdrawn. If a prior burn plan had been submitted prior the Notice of Violation likely would not have been issued.

Burn plans and/or applications should include any contingency lines/zones in order for OEPA to know if the OAC is being followed or if permissions restrictions are being adhered to. For example, contingency lines could allow burning within the 1,000 feet of an inhabited structure. And it is impossible to ascertain if an agency is outside the perimeters without prior knowledge of them.

I am suggesting that the following be added to 3745-19-05(A)(2) or preferably that woodland prescribed burns (silviculture, forestry) by any agency (ODNR, US Forest Service, Nature Conservancy, etc) have a separate section in 3745-19 addressing these distinctly different open burns. Additionally, these changes would add uniformity to the permission process throughout OEPA air agencies.

(d) The location of the burning sites, including a map showing any contingency lines, areas or zones, as well as distance to residences, populated areas, roadways, airfields, and other pertinent landmarks;

(f) Burn Plans for silviculture, forestry prescribed burns and:

(g) Smoke modelings for silviculture, forestry prescribed burns, such as but not limited to, V-smoke modelings.

(Cheryl Carpenter, Voices for the Forest)

**Response 6:**

**Ohio EPA does not require a burn plan to be submitted with the open burning request application as that plan is required by ODNR for their agency to approve the waiver to allow the applicant/certified prescribed fire manager to conduct the burn as per their regulations. ODNR reviews and approves these plans and the smoke modeling used in the design of the burn plan when necessary for the larger forest prescribed fires. Ohio EPA does not review the smoke management plan and or the V-smoke modeling as it not a good model for predicting air emissions from an air quality standpoint. The actual monitoring data, which is much more accurate in representing the effect of actual emissions from these large prescribed fires conducted in forest settings, indicated no impacts above the standard even with fires approaching 3000 acres (see response to**

comment 1). Therefore any air quality modeling that could be reviewed or performed by Ohio EPA would serve no real purpose or likely indicate any long term impacts with the standards for PM 2.5.

Currently the 1000 feet buffer from an inhabited structure does not apply to prescribed fire activities but would be indicated on the open burning application submitted to Ohio EPA. The application requests in (1) to; "Provide a sketch of the burn location below or on an attached sheet. Include the location of the site and burn location within the site, nearest road intersection(s) and distance to/placement of nearest off-site structures including a map showing distances to residences, populated areas, roadways, air fields, and other pertinent landmarks". Ohio EPA's Division of Air Pollution Control's (DAPC) primary responsibility is to maintain and attain the National Ambient Air Quality standards as set forth and outlined in the Federal Clean Air Act (CAA). These are health based standards, and though related to safety, deal with air emissions and not the fire itself as having potential for harm. The direct safety concerns of prescribed fire activities are the responsibility of ODNR and the local fire department officials. Ohio EPA understands that various procedures are in place to address this as part of the approved burn plan that ODNR must incorporate for each burn, and if a residence existed anywhere near a burn site, no matter what the distance, the burn plan would consider the safety implications of that residence.

In summary, as a result of the monitoring data and improving air quality described in the response to comment 1, Ohio EPA believes that the open burning activity of Prescribed fire, even with the larger though infrequent burns in Shawnee Forest, does not result in or contribute to any major air quality violations. Therefore the language suggested by the commenter to include additional conditions to be submitted with the application request to open burn for the activity of prescribed fire in forest areas is not necessary and will not be added to the proposed rule language.

**Comment 7:** Here are my comments on changes needed to the Code;

1. Pre-permit hearings on prescribed burns in forests. The Forestry wants to burn 2,300 acres of forest 700

acres in Shawnee forest alone. If private individuals are held accountable to the Ohio EPA Open Burn Regulations so should the division of forestry.

2. Pre-burn plans need to be submitted with their contingency plans well in advance of the burn. How else can you know the OAC is being followed?
3. No permits to burn should be issued to any individual or group who has not been able to control the burns in the past. First thing the Forestry does before setting the forest on fire is to get all our emergency fire equipment in place because they know from past experience they can't control the fire.
4. The reason for the burn should accompany the permit. This should include the amount of revenue generated by the burn. For example the Forestry gets federal money for burning our forest. I have been told that the Forestry would not do the burns if it wasn't for the federal grants.

**(William J. Tipton, Member of Save Our Shawnee Forest Committee)**

**Response 7:**

The comment made in paragraph 1 by this commenter is similar to comment 3 concerning pre-permit hearings for these open burns. Please see the entire response to comment 3, but as stated in that response; "A pre-permission hearing, as requested by other commenters, if held, would basically have no effect on Ohio EPA's decision. It would only act to make the process to approve or dis-approve such a burn more lengthy, as Ohio EPA's decisions can only be based on meeting the open burning standards in the rules".

The comment made in paragraph 2 by this commenter is similar to comment 6 concerning the submittal of a burn plan to Ohio EPA from ODNR as part of the application process. Please see the response to comment 6 for the reasons why Ohio EPA does not require or sees the necessity of the burn plan to be submitted with the request for written permission to open burn for prescribed fires.

The comment made in paragraph 3 by this commenter is similar to previous commenters inferring that all burns

conducted by ODNR have extended outside the designed burn area and became out-of control; therefore no future written permissions should be granted by Ohio EPA to ODNR. As discussed in Ohio EPA's response to comment 1, Ohio EPA can initiate enforcement actions on those individuals responsible for violations of the open burning standards. ODNR has the ability to seek action against individuals (e.g. certified burn managers) not following approved burn plans that result in un-controlled burn situations.

The commenter should direct his concerns (in paragraph 4) of how the burns are financed (federally or otherwise) to ODNR directly as Ohio EPA has no knowledge or would require that information as part of the application to open burn. Many state agencies (including Ohio EPA) are funded or partially funded for certain programs by US EPA.

**Rule 3745-19-03, "Open burning in restricted areas"**

**Comment 8:** We support the Agency in adding language (B)(5) that allows open burning of confiscated marijuana by law enforcement officials. Additionally, we support the inclusion of "plastics or building materials" in section 3745-19-03(C)(3)(e). (David R. Celebrezze, Ohio Environmental Council)

**Response 8:** Ohio EPA appreciates the commenters support of the proposed revisions and interest in Ohio's continuing air quality improvement.

**Comment 9:** RAPCA also recommends the addition of a requirement that any permissible fire be attended at all times until completely extinguished. This is a common sense condition and would be consistent with Indiana's open burning regulations [ref. 326 IAC 4-1-3 (a)(2)(C) and 326 IAC 4-1-4.1 (d)(10)]. (John Paul, Regional Air Pollution Control Agency)

**Response 9:** Ohio EPA's open burning standards were developed to minimize and limit open burning because of its impact on air quality and though we are concerned with fire safety, it is not the primary "driver" of the rules in this Chapter. Fire safety is a primary concern with the State Fire Marshal's regulations and the attendance issue recommended by the commenter is addressed in their

**regulations. In rule 1301:7-7-03, General precautions against fire, paragraph (G) Section 307.5 under Open burning and recreational fires, states that "open burning, bonfires or recreational fires shall be constantly attended until the fire is extinguished."**

**Comment 10:**

Ohio EPA is wise to address natural disaster debris handling, especially with our state's history of tornadoes. However, we firmly disagree with the limited approach shown in the appendix to Section 3745-19-03, including the fixed price threshold for exceptions to the guidance. The experiences of other states and local governments in response to disasters have shown better options for disposing of materials than open burning, at reasonable expenses and in ways that can protect the health of the community. Those options include sorting, recycling, composting, and where absolutely necessary, incineration in indoor facilities where maximum achievable control technology can be in place. Since Ohio is likely to be affected in the future by tornadoes, negotiating contracts for disposal of predictable disaster debris can help in reducing costs. Disasters place enough risk already on public health that open burning is not an appropriate response when so many others are available. We urge you to review the recommendations in the EPA report, Planning for Natural Disaster Debris (March 2008), which is based on the experiences of many communities. **(Shelly Kiser, Director of Advocacy, American Lung Association in Ohio)**

**Response 10:**

Ohio EPA appreciates the commenter's suggestion to reduce the use of open burning for storm debris disposal. The current economic situation and reduced local budgets is still making it very difficult to dispose of these storm related debris along with the limited facilities in the state available that could process large volumes of these storm generated wastes, without the use of open burning to some extent. At this time, Ohio EPA will maintain the current requirements.

**Comment 11:**

I reviewed the open burning regulations updates, and concur in every respect but the following.

There is a new allowance for the open burning of marijuana by law enforcement agencies. You have misspelled the scientific name of marijuana. You have it as "cannibis sativa." It is not. Properly, it is "Cannibus sativa," with the C capitalized.

Writing the Latin name of this species (or any other) without capitalizing the generic initial, the first letter of the genus name, would indicate the agency's ignorance and dismissal of accepted and recognized biological (thereby, legal) convention.

In the strictest observance of biological convention, the word should also appear in italics; but text conventions of the OAC may prevent this.

If you would, please (at the least), identify this species as "Cannibus sativa," not "cannibus sativa." The latter is very amateurish. (John A. Blakeman, Meadow Environments LLC)

**Response 11:** Ohio will make the correction to the genus name as pointed out by the commenter. The rule making software that Ohio must use for its proposal rule process has limitations in making the text into italics as also recommended. The correct spelling for the genus is "Cannibis".

**Comment 12:**

3745-19-03 open burning in restricted areas.

(C)(1) "written or verbal verification" should read written or oral verification. Both written and oral are verbal.

(D)(4) This category of open burning should contain the same special conditions as the ones for disposal of agricultural waste. Appropriate conditions include (C)(3) (a), (b), (c), and (e).

The list of types does not include everything now being burned. Horticultural, silvicultural and range are agricultural in nature. There needs to be a separate listing for artificial manipulation by fire of natural ecological systems such as prairies, grasslands, savannas, woodlands, marshes and other wetlands.

Large fires in forest ecosystems are catastrophically damaging and unnatural. They burn tons of dead animals. They produce large and unnecessary amounts of air pollution emissions. Open burn ecosystem forest fires should not be allowed.

OEPA does not know the types and amounts of pollutant emissions which result from the hundreds of types of materials which burn in a large forest fire. Unless or until it finds out, such fires should not be permitted.

**(Barbara Lund, Save Our Shawnee Forest, Lynx, Ohio)**

**Response 12:**

**Ohio EPA agrees with the clarification recommendation in the first paragraph of the above comments and will change "verbal" to "oral" in paragraph (C)(1) of OAC rule 3745-19-03 and in paragraph (D) of OAC rule 3745-19-04.**

**The special conditions for agricultural waste that the commenter suggest be added for prescribed fire do not apply as that activity involves waste disposal and requires no design (burn) plan by ODNR as does**

prescribed fire; that plan would already include, require and consider most of the conditions suggested. Please see Ohio EPA's response to comment 6 (second paragraph) concerning the 1000 feet stand-off from the nearest resident. The map submitted to Ohio EPA in the written request would indicate the location of all residences near the burn no matter what the distance and as stated in the response the direct safety concerns of prescribed fire activities are the responsibility of ODNR and the local fire department officials.

Concerning the last three paragraphs of the above comments, please see response to comment 1, which includes the results of air monitoring in Scioto County and its proposed attainment status for small particulates (PM 2.5). As stated in the last paragraph of that response; Ohio EPA believes the use of prescribed fire as a management tool in the larger areas such as Shawnee Forest and in the smaller prairie management areas of the state, does not result in any major air emissions impacts that would compromise the maintenance or attainment of the air quality standards of the criteria pollutants such as PM 2.5, as set forth in the National Ambient Air Quality standards.

In addition, Ohio EPA is not involved with the debate (forestry/biological) of whether ODNR's management of the forest via prescribed fire is the best method to achieve its desired goals or a necessary program. The issues concerning fire safety and the use of fire as a method of forest management should be directed to the appropriate staff at ODNR and those elected officials responsible for the development of the policies that have resulted in the use of prescribed fire as a tool for that agency's forestry/horticultural management.

**Rule 3745-19-04, "Open burning in unrestricted areas"**

**Comment 13:** During the pre-comment period in February 2011, RAPCA addressed the desire to establish a size restriction on residential and agricultural waste fires. The proposed rules did not include the addition of a size limitation. We realize this issue does not affect many of the counties in the more populated central areas of Ohio, however it is a definite problem in the rural counties within our jurisdiction. RAPCA respectfully requests that Ohio EPA reconsider our original

comment which is included as an attachment to this submittal.

The photo below, taken this past March, serves as an additional example. While the scale is not evident, this pile (containing agricultural waste) is approximately 100 feet in diameter, the size of a house. The local fire department contacted RAPCA in an effort to prevent the farmer from burning the pile in its current condition as he originally intended. The Fire Dept. and RAPCA agreed that burning a pile of this size should not be permissible for health, safety and air quality reasons, but the regulations were insufficient to limit the size of the proposed burn site. The existence of a size restriction would have given our agency the much needed leverage to prevent this enormous pile from being burned in the state pictured below.

RAPCA recommends a maximum pile size of 20' in diameter and 10' in height (or 4,000 cubic feet) for agricultural waste and 10'X10'X10' (or 1,000 cubic feet) for residential waste. If the state wishes to add flexibility to an established size restriction, it may consider the addition of language which could allow for the burning of a larger pile size, but only with prior written approval from the Ohio EPA. **(John Paul, Regional Air Pollution Control Agency)**

**Response 13:**

**Rather than set a fixed maximum size limit for these types of waste disposal activities (predominately in unrestricted areas) as recommended by the commenter, Ohio EPA has added language in the proposed rule, indicating that a notification requirement be added if the size of the residential or agricultural is larger than the recommended limits as proposed by the commenter above. OAC rule 3745-19-03 (C)(3) already requires notification to open burn agricultural waste in restricted areas. Ohio EPA and local agencies could then decide to inspect the burn and determine if it should be allowed based on the individual circumstances of the burn such as its location or make recommendations on modifying the burn so that it could be conducted. The regulations already allow Ohio EPA and local air agencies some flexibility on how these waste disposal activities of open burning should be conducted from an enforcement standpoint. Adding a notification requirement would then allow them to be disapproved if these conditions were not met using Ohio EPA's discretion. In addition**

to having proper atmospheric conditions to dissipate the emissions, no roadway visibility issues, the 1000 feet of clearance, wastes that cannot be burned, the following condition must also be met; "The wastes are stacked and dried to provide the best practicable condition for efficient burning; and....". As an example, this could be interpreted by Ohio EPA that a pile too large would not meet this condition for efficient burning as an example.

Ohio EPA will therefore add additional conditional language to paragraph (3) of OAC rule 3745-19-04(B) that notification will be required prior to the open burning of agricultural or residential wastes when the size of the waste pile is at least 20 feet by 10 feet high or 10 feet by 10 feet by 10 feet respectively.

**Comment 14:**

During the pre-comment period, RAPCA also suggested the addition of a prohibition on the burning of any waste material containing asbestos. Ohio EPA may have decided not to include this addition to the proposed rules due to the NESHAP which regulates asbestos under Subpart M. Please consider that the asbestos NESHAP only pertains to the intentional burning (i.e. fire training) of structures/buildings (meeting the definition of "facility" contained in 40 CFR Part 61.141). Specifically, 40 CFR Part 61.145 (c)(10) of the asbestos NESHAP states, "If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning." It does, NOT, however regulate any other type of asbestos open burning such as that of a resident burning transite removed from their home or a contractor burning floor tile containing asbestos. The state asbestos regulations in OAC 3745-20 are almost identical to Subpart M of the NESHAP in reference to open burning.

The addition of a specific prohibition against the burning of any asbestos containing material will also serve to emphasize the seriousness of burning this material (thereby acting as a deterrent) and provide additional authority when pursuing formal enforcement actions in extreme cases.

Indiana's Administrative Code burning regulations contain a specific prohibition against the open burning of asbestos containing materials [ref. 326 IAC 4-1-3 (a)(2)(E) and 326

**IAC 4-1-4.1 (d)(2)]. (John Paul, Regional Air Pollution Control Agency)**

- Response 14:** Ohio EPA appreciates the commenter's suggestion but does not see the necessity at this point of incorporating it into this proposed rule. The examples that the commenter gives such as the resident burning transite removed from their home or a contractor burning floor tile would be illegal waste disposal via open burning whether it contained asbestos or not.
- Comment 15:** Burning residential waste in "unrestricted areas" should be prohibited as enforcement of any limits as to the composition, timing, or permitting is completely unrealistic. [Section 3745-19-04, Part B(3)] **(Shelly Kiser, Director of Advocacy, American Lung Association in Ohio)**
- Response 15:** This specific comment on a rule in the standards is part of the similar general comments submitted by the same commenter in comment 2. As stated in the response to comment 1; "Ohio EPA acknowledges the contribution of open burning to emissions of PM 2.5, but in actuality, from an air emissions inventory standpoint, it is a very small portion of the total emissions compared to other sectors such as the burning of fossil fuels from industry and the power generation industry. It would be very difficult for Ohio EPA to further limit or ban open burning from residential or agricultural activities without support from the state legislature and recommends the commenter's organization to contact those appropriate elected officials as a mechanism to further promote the disposal of these wastes by methods other than open burning.
- Comment 16:** The language in Section 3745-19-04, Part D, regarding burning for the possible prevention or control of disease or (more likely to be used) pest control is also of concern, particularly since the approval can come on "verbal verification" from any one of these agencies—three of which are agriculture-based, not public health or medical authorities—that burning is the only acceptable option for control. We would urge that the Ohio Department of Health and the Centers for Disease Control and Prevention be included for requirements that the pests or diseases can only be controlled by such means. We would recommend that

such verification be in writing so that the appropriate record is maintained. **(Shelly Kiser, Director of Advocacy, American Lung Association in Ohio)**

**Response 16:** Ohio EPA agrees with the commenter that the two additional medical/public health based agencies should be added along with the agricultural based agencies in this open burning activity requiring notification to Ohio EPA. Due to the sometimes emergency and time sensitive issues that may arise with these types of burn notifications, oral verification from these agencies may still be necessary for certain situations and that option will be retained in this provision.

**Comment 17:** Upon review of open burning permissions granted to the ODNR Division of Forestry, it appears that portions of 3745-19-04 and all of 3745-19-05 are used. 3745-19-04 (3)(c) reads, "A fire is located at a point on the premises no less than one thousand feet from any inhabited building on said premises;" However, ODNR has at least one burning unit (Shawnee State Forest) within 1,000 feet of a home. I am not sure where to insert suggested additions to the OAC, but I am hoping that ODNR (or any agency) will be held to this restriction with its massive and dangerous burns.

Typically, in Shawnee State Forest, ODNR ignites about 200 acres of woodland for one burn. On April 24, 2009, its burn escaped, according to ODNR, after an alleged arson occurred downwind of its burn. ODNR admittedly failed to contain its burn. Had the burn been smaller, ODNR should have been able to contain it as well as fight the alleged arson fire. Considering these facts, I am suggesting that OEPA limit woodland burns to 50 acres. This reduction in size will produce less smoke and particulate matter and the fires will be more containable therefore lessen the threat to residential areas, which surround Ohio's forests. Additionally, smaller burns are recommended by many experts and historically, Ohio wildfires are small at about twelve acres (1997 – 2007 statistics.)

The following is a summary of the above two paragraphs:

1. ODNR be held to 3745-19-04 (3)(c), "A fire is located at a point on the premises no less than one thousand feet from any inhabited building on said premises;" *If needed*

*language be inserted where appropriate within 3745-19 to address this issue.*

2. Prescribed burns be limited to 50 acres or less and language be inserted where appropriate within 3745-19 to address this issue.

**(Cheryl Carpenter, Voices for the Forest)**

**Response 17:** Ohio EPA thanks the commenter for her comments and would like to answer them by referring the commenter to our response to Comment 6, which was also submitted by the same commenter and the information contained in the response to comment 1. From an air quality standpoint it has been demonstrated that burns much larger than 50 have had no impact on the standards so it would be arbitrary for Ohio EPA to set an acreage limit in the open burning standards as suggested by the commenter. Size and location restriction limitations are issues concerning fire safety with the use of prescribed fire as a method of forest management and should be directed to the appropriate staff at ODNR.

**Comment 18**

(C)(5) This category should contain the same special conditions as in (B)(3) disposal of residential or agricultural waste, conditions (D)(3) (a), (b), (c), and (e), and as in (C)(4) disposal of land clearing waste conditions (C)(4) (a), (b), and (c).

3745-19-04(C)(5). The list of types does not include everything now being burned. Horticultural, silvicultural and range are agricultural in nature. There needs to be a separate listing for artificial manipulation by fire of natural ecological systems such as prairies, grasslands, savannas, woodlands, marshes and other wetlands.

Large fires in forest ecosystems are catastrophically damaging and unnatural. They burn tons of dead animals. They produce large and unnecessary amounts of air pollution emissions. Open burn ecosystem forest fires should not be allowed.

OEPA does not know the types and amounts of pollutant emissions which result from the hundreds of types of materials which burn in a large forest fire. Unless or until it finds out, such fires should not be permitted.

**(Barbara Lund, Save Our Shawnee Forest, Lynx, Ohio)**

**Response 18:** Ohio EPA thanks the commenter for her comments. The above comments are the same as submitted by the commenter in comment 12, except they concern open burning in restricted areas verses un-restricted areas. The rule language being commented on is essentially identical in both rules. Therefore the response to these comments can be found in the response to comment 12.

**Rule 3745-19-05, "Permission to individuals and notification to the Ohio EPA"**

**Comment 19:** We object to the inclusion of acreage to amended subsection (A)(2)(b). It is necessary to clarify that the applicant should describe both the quantity and nature of the materials burned. However, the addition of —or acreage does not provide the Agency with the important information necessary to pass judgment on the pollution potential of the activity. The question to be asked is —acreage of what? In order for Ohio EPA to justifiably determine if the requested burn will or will not have a detrimental impact on Ohio's air quality the Agency must know the quantity (and type) of the materials, not merely the area.

The applicant should be able to make approximations of the pounds or tonnage of wood waste, trees, shrubs, grasses, and other materials in large acreage burns, and should be required to provide this information to the Director. Both what is to be burned, and how much of that substance will be burned is essential, not merely the land mass. Consequently, we urge deletion of —or acreage.

In subparagraph (3), the agency adds the phrase —when atmospheric conditions are appropriate. We support this inclusion and urge the Director to make this an enforceable term of the permission. In that regard, a definition or methodology for determining appropriate atmospheric conditions will be necessary, and should be adequately communicated to the regulated party in the approval of the permission.

Now that the applicant for a burning permission can burn acreages, and not merely material, it is logical for there to be penalties to enforce that portion of the application, lest that provision is meaningless. The example of the Ohio Department of Natural Resources burning forests outside of their prescription, and presumably outside of the amount of acreage applied for under the Open Burning permission. In instances where the acreage is burned beyond what appears in the application that must be a penalty subject to penalties. Further, those instances, too should factor into the approval of future applications from that entity.

Again, we urge the Agency to reconsider future use of the Open Burning Permission process to permit prescribed burns of hundreds of acres of state owned and controlled forests. We recommend that the agency begin developing a more robust permit process for these burns that encompass full public notice and participation and comment, as well as increased and detailed demonstration of the material to be burned. Further, we encourage the agency to gather air monitoring data from these large scale burns in order to adequately inform the state's SIP as well as inform future Open Burn permit decisions.

(Trent A. Dougherty, Esq., Director of Legal Affairs,  
Ohio Environmental Council)

**Response 19:**

**Ohio EPA appreciates these additional comments submitted by the OEC. Ohio EPA's response to the same commenter in comment 1 indicated that even during the 2009 burn, which ultimately resulted in a total of close to 3000 acres burned, would not be a factor in the attainment or maintenance of the standards for PM 2.5. As ODNR would typically burn units of around 200 to 300 acres maximum, knowing the quantity and nature of the materials in the forest "acreage" would not be necessary or for that matter used for any determination of any detrimental impacts to the air quality. Grass/prairie burns that are normally well less than 300**

acres, would have even less impact on air emissions than the above forest burns. The type and amount of grass burned/ forest floor material may be something that ODNR would require for their burn plan/waivers for burn approval but not something that Ohio EPA would require or need for approval.

The appropriate atmospheric conditions, could include the provisions for any open burning ban that was declared by the state as provided in OAC rule 3745-19-02(A). This provision would be enforceable for any open burning, whether it required written permission otherwise. The burn plan submitted to ODNR by certified burn managers for waiver approval to conduct a prescribed burn contains the specific atmospheric conditions and parameters necessary for the type of burn to be conducted safely and successfully. ODNR would also design their own plan with these necessary parameters to conduct burns in state forests. There would be no specific appropriate atmospheric condition that would apply to all the different type of prescribed burns (or burn plans), that Ohio EPA would identify.

In addition, please see the response to comment 1, concerning enforcement by Ohio EPA and ODNR which was also submitted by the same commenter.

**Comment 20:** While we appreciate the effort to provide additional protection by including language to say Ohio EPA will consider limits “when atmospheric conditions are appropriate” we would urge that, at minimum, the list of “conditions that may be necessary to accomplish the purpose of this chapter” should include that composting, waste removal or other options be attempted for agricultural wastes instead of burning. [Section 3745-19-05, Part A(3)].  
**(Shelly Kiser, Director of Advocacy, American Lung Association in Ohio)**

**Response 20:** Please see the response to comment 19 above concerning “when atmospheric conditions are appropriate”. Ohio EPA agrees with the commenter that other alternatives for waste disposal, even though allowed by open burning (e.g. agricultural waste), should be encouraged and used. Public outreach is the primary avenue that Ohio EPA uses to convey this objective.

**Ohio EPA's Public Interest Center's (PIC) responsibilities involve this type of public outreach, such as the publication of the pamphlet "Before You Light It", which points out health issues and alternatives to open burning which can be utilized even though the burning may be permitted for waste disposal. Ohio EPA feels this is a more effective method of public outreach than adding this type of information to the rules.**

**Comment 21:** Buckeye Forest Council (BFC) recommends that OAC Section 3745-19-05(A)(1) be clarified to ensure that receipt of permission to open burn is a mandatory precondition for setting any applicable fire. The newly proposed language, "Approval for permission to open burn may be granted before that time period," could potentially be read to authorize post hoc permission. While such a reading may be unlikely, BFC believes clarifying language is appropriate.

In addition, ODNR, Division of Forestry internal regulations require the creation of a "burn plan" prior to the implementation of any and all prescribed burns. BFC recommends that Ohio EPA include a clause in the Open Burning Standards which would require the submission of such a plan as part of the permission application for any forestry, silvicultural, or wildlife habitat improvement purposes. **(Nathan G. Johnson, Staff Attorney, Buckeye Forest Council)**

**Response 21:** Ohio EPA's intent with the addition of the new language; "approval granted before 10 days", was to indicate that approval could be granted after an application was received by Ohio EPA in less than 10 days depending on circumstances, i.e., there is no 10 day waiting period after an application is submitted before approval can occur. Once Ohio EPA approves a burn, then that burn could be performed as per any conditions of the written permission to burn. For prescribed fire, due the time frames of the burn windows and planning involved it would be unlikely for the actual burn to occur in less than 10 days after the application was submitted. This situation is more likely with routine fire department training where burn requests are submitted and approved within a few days of submittal; that burn or any could be conducted as soon as approved by Ohio EPA. Ohio EPA will add additional clarification

language to this affect as suggested by the commenter in paragraph (A)(1) of rule 3745-19-05.

Please see the response to comment 6 which discusses why Ohio EPA does not require an ODNR burn plan to be submitted with the written request for permission to open burn.

In summary, as indicated by the monitoring data and improving air quality discussed in response 1, Ohio EPA does not see the beneficial activity of prescribed fire in Shawnee Forest as an air quality issue that would require any Ohio EPA review of the design plan that ODNR must perform for each burn to meet their objectives of a successful burn.

**Comment 22:**

(A)(1) The addition of language "approval for permission to open burn may be granted before that time period," negates the requirement for ten day applications. It is also inconsistent with notification language in (B)(1). This change should be removed.

(A)(2)(b). This should read "The nature and quantities of material to be burned." This would be consistent with the same language in (B)(2)(b) Notification. Nature and quantities give CEPA information which should help determine air pollution emissions. The word "sawage" is a measurement, does not burn, and adds no useful information about air emissions. This is a cop-out.

3745-19-05(A)(3). The regulation about minimizing emission of air contaminants is meaningless. There is only one way to minimize or reduce emissions of air contaminants and that is to burn less material. Burning under varying conditions can alter the composition of emissions or the amount of certain emissions but will not reduce the total. If the intent is to reduce a certain pollutant such as particulate matter, or smoldering smoke, then the regulation should say so and spell out how that is to be accomplished. The addition of the language "when atmospheric conditions are appropriate" only adds more meaninglessness and is thus unnecessary. That part of the paragraph needs to be rewritten to make scientific sense.

**(Barbara Lund, Save Our Shawnee Forest, Lynx, Ohio)**

**Response 22:** Ohio appreciates the comments submitted by the commenter for this rulemaking but for the comments on paragraphs (A)(1) and (A)(3) please see response to comment 21 and discussion of monitoring results for PM 2.5 in response 1.

For the comment on paragraph (A)(2)(b) the revised clarification language is consistent with the activity of prescribed fire, whether in a prairie or forest situation, in addition to the nature and quantity of materials, it would be appropriate describe the total area (i.e., acreage) of the burn site. For notifications there are no activities allowed that would involve "acreages" except for the proposed language which would require notification of agricultural and residential waste disposal exceeding certain maximum quantities in unrestricted areas.

**Rule 3745-19-06, "Open burning unilateral order"**

**Comment 23:** We caution the Agency in the proposed change in section 3745-19-06 (A). The Agency eliminates the language that specifies industrial, commercial, institutional, and municipal property. It is our understanding the Agency is closing a loophole that would otherwise allow a developer to move commercial waste to a residential property. We support the Agency in closing this loophole, but caution that a developer could burn new house construction waste due to the change

so long as someone is living in the house. (David R. Celebrezze, Ohio Environmental Council)

**Response 23:** Ohio EPA is not concerned with the comment that a developer could burn new house construction waste as long as someone is living in the house. If someone is living in the house, while a developer/owner is still completing construction, any construction waste generated would not meet the definition of "residential waste". Even if it was located in an unrestricted area and 1000 feet away from the nearest residence not on the property, it would still be a violation of the standards. Construction waste is not considered waste generated as a result of residential activities and therefore could not be burned.

**Comment: 24:** I have a question/comment on the draft Open Burning rule changes. The new definition of Residential Waste in 19-01 reads : "Residential waste" means any waste material, including landscape waste, generated on the property of a one-, two- or three-family residence as a result of residential activities, but not including garbage, rubber, grease, asphalt, liquid petroleum products, or plastics.

The new changes to 19-06 (A) reads: The director may assess and collect administrative penalties from any person who violates any of the rules in this chapter. Through unilateral orders, the director may assess a violator not more than two hundred fifty dollars per day for each separate violation of the rules in this chapter for open burning of residential waste and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning of all wastes that are not residential waste.

Ok, now for the question/comment. Are we saying that based on the new language, because garbage, rubber, grease, asphalt, liquid petroleum products, or plastics are not residential waste, they would be fined at \$1000 even if the burn took place at a residence? (Tom Sattler, Environmental Supervisor, OEPA NWDO DAPC)

**Response 24:** Yes, the fine will be based on the waste rather than the location of where it is burned. The issue of moving non-residential waste and burning it in a residential location and be fined only \$250 as occurred in earlier enforcement cases will be eliminated. As questioned, non-residential wastes even burned at a residence now could be fined up to \$1000.

**Comment 25:**

3745-19-06(A). The paragraph on penalties is written such that only open burns of waste materials are considered. No other forms of open burning are subject to penalties. This weakens CEPA's ability to regulate and deal with violations. One way to correct this falling would be to change one word in the language being added to read "... of all materials that are not residential waste...."

(Barbara Lund, Save Our Shawnee Forest,  
Lynx, Ohio)

**Response 25:** Ohio EPA believes the commenter is interpreting this rule incorrectly. The purpose of this rule is to expedite penalties for the more common occurring violations of Ohio's open burning standards dealing with the disposal of residential or non-residential (such as commercial) waste. Activities that are allowed via written permission such as fire training and prescribed fire are not concerned with waste disposal. These activities (as well as any illegal open burning activities) are still subject to penalties and escalated enforcement actions including penalty fines much higher than those outlined in OAC 3745-19-06, based on severity and frequency. As an example, an individual who conducted fire training or a prescribed fire without obtaining written permission from Ohio EPA would be in violation of the standards just as an individual who is burning landscape waste/leaves within an incorporated area (city). The difference would be in the enforcement process and potential severity of the penalties. The provisions in 3745-19-06 were developed for a more automatic and streamlined approach for enforcement actions against those individuals in violation of open burning (residential) waste disposal activities. Violations of the open burning standards dealing with written permission activities such as prescribed fire

**could be subject to penalties under the longer process of Directors Findings and Orders and without the dollar restrictions as found in this rule.**

**End of Response to Comments**