

**OhioEPA**  
Division of Air Pollution Control

**Response to Comments  
Proposed Rule Language Comment Period**

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

**Agency Contact for this Package**

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Ohio EPA provided a 37 day comment period which ended on March 16, 2012 and held a public hearing on March 9, 2012 regarding these rules. 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:** We the undersigned do not want any more prescribed fires in Shawnee State Forest. Additionally, we don't want prescribed fires in any of our public forests, state or national.

We are neighbors to Shawnee State Forest. We experienced firsthand the harmful effects of the smoke from the 3,000 acre fire of April 24-31, 2009. Two of us went to the hospital as a result. Several of us had to move to somewhere else to escape the smoke, we, as well as our pets and livestock, had to breathe that polluted air for a week. We don't want that to ever happen again.

The Division of Forestry has demonstrated to us repeatedly that it cannot fully control its prescribed fires and that they escape. We know the 2009 fire was not arson. Forestry should not be given any more permits to burn in Shawnee.

That 2009 fire was catastrophically damaging to Shawnee Forest and our interests in the forest. It killed hundreds of acres of our public timber resource. It killed the trees that make oxygen for us, hold the soil, and provide other services for our benefit. It killed lots (tons) of live animals. It destroyed and degraded aesthetic appreciation. It put dozens of our local volunteer firefighters - we and our neighbors at risk of harm on the fire lines. Many more firefighters from all over the state also were put in harm's way.

Director, you have the authority to change your regulations. You can change them to eliminate the risk of future large and damaging forest fires and to prevent all the unacceptable smoke pollution from them. We ask that you make the appropriate changes to your regulations.

***Respectfully,  
Prepared by Save Our Shawnee Forest organization***

**Response 1: Ohio EPA appreciates the interest and concern of the Shawnee Forest group in Ohio's air quality.**

**Ohio EPA, as discussed in the response to similar comments during the draft rule segment of this five-year review, is not involved with (or has any authority over) the debate (forestry/biological) of whether the Ohio Department of Natural Resources (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. The director of Ohio EPA does not have the authority to change Ohio EPA's open burning rules for reasons of fire safety or forestry/biological concerns."**

**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. Safety concerns related to prescribed fire activities are the**

responsibility of ODNR and the local fire department officials having jurisdiction over the area where the burn is located. 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 in Scioto County, as outlined in the response to the Ohio Environmental Council's draft rule comments, Ohio EPA believes that prescribed fire does not result in or contribute to any major air quality violations.

**Comment 2:**

I see there is a five year review of the open burning rules, Chapter 19, going on. As a field inspector, it has always caused confusion to the general public when we try to explain the open burning restrictions in rural areas, when the open burning rule that covers the area is titled, "***Open burning in unrestricted areas***".

Can we use this opportunity to change how we name the different areas?

I don't know how many times I have been given strange looks and interesting comments by the public, firefighters, township trustees, law enforcement, etc... as I tried to explain how an area titled "unrestricted" actually has restrictions.

It is as silly as a non-insignificant source in air pollution source at a facility, and it is much more confusing than knowing the difference between Ohio EPA and USEPA.

SO, Pleeeeeaaaaasssse, change the titles.

Could we just define them as "urban" and "rural". Under 19-01, just use the same definition for "Restricted Area", in "(J) for "Urban"; while, the same definition that we use for "Unrestricted Area" can be used for "Rural" areas. Since the definitions in 19-01 only apply to Chapter 19, the use of "Urban" and "Rural", which may appear in other Federal and or State rules, may cause some people a head ache, but regulatory will not cause true changes in another rule and/or law.

If it is possible, it would be great for us and the public to stop having restriction to open burning in “unrestricted” areas.

**Craig Osborne**  
**Ohio EPA, SWDO, DAPC**

**Response 2:** Ohio EPA appreciates the suggested clarifications by the commenter, however we will not be making these changes at this time.

The commenter should note that a site may be located in a “rural” area, but still be considered in a restricted area as far as open burning is concerned. It could be in the buffer zone because of the proximity to the incorporation limits based on population size. Open burning in “unrestricted” areas must still meet certain conditions (not restrictions) to minimize the impacts of such burning. It would be un-realistic to eliminate these conditions in unrestricted areas as suggested by the commenter, such as the 1000 feet of stand-off for agricultural and residential waste disposal activities.

3745 Chapter 19 (various rules)

**Comment 3:** Whether the changes in the above rules become small or large, you should note that prescribed burning to promote the growth of oak and hickory trees is fatal to other aspects of the environment.  
Which ones?

A number of State and Federally-listed plant and animal varieties. I am aware that your own EPA agency keeps track of Listed Species; and supposedly has a mission to protect them. Many of these do not have the capability to outrun fire. Sloped ground burned down to the soil gives up its soil to rain, which is carried downhill burying some Species-- and burying the eggs of other aquatic Species.

Why would your section of the EPA want to go against their efforts, impeding them, and allowing these same Species to be harmed; and even sanctioning this harm by issuing official permits to let this happen? See *BABBITT v SWEET HOME CHAPTER OF COMMUNITIES* 515 US 687, 132 L. Ed. 2d 597, 115 S. Ct. 2407 (1995). On Federal lands, these sensitive Species also are entitled to having their living vitality protected, so that they are able to continue

propagation [16 USCA 1604 (g)(3)(B)]. 16 USCA S1605 offers a means so that NFMA protections can be extended to your own lands. Ohio has participated in such programs. Mutual agreements have been signed. Similar such agreements have been executed involving ESA and Clean Air Act funds.

May I inform you that State-listed Species surprisingly still enjoy the protection of the Endangered Species Act (see 61 F.R. 64481 dated 12/5/1996, 50 CFR Part 17). These State-listed Species also are protected by Federal Regulations, such as 36 CFR 219. So the above-cited OAC rule 3745-19-01 et seq. should be amended to reflect this Species protection. It needs to be there!

The U.S. Forest Service has some Research Stations that have been studying whether Prescribed Burning actually succeeds in promoting the growth of oak and hickory, even with repeated burnings. These scientific studies have not produced consistent results, at all. Upon request, I'm willing to send you some of their studies concluding that Prescribed Burning just does not work; others state that if the fires don't out rightly kill oaks and other trees, burn scars will leave them open to insects or pathogens that will eventually kill them. That's not healthy.

The generation of black carbon and greenhouse gases into the atmosphere is now producing global warming and, in turn, extreme weather events around the world. These violent storms, extended days of high temperature, and serious flooding are causing great property damage, plus a number of deaths and personal injuries, here and around the world. These are things that your agency was created to prevent. The Intergovernmental Panel on Climate Change has issued several descriptive studies/reports about all this in 2011. I have their press releases.

The role that soot (black carbon) plays in producing bad weather is that it causes rain patterns to shift, increasing droughts elsewhere. The American Lung Association, an excellent organization, has addressed the role that black carbon plays in creating health problems, when it's inhaled. These soot particles stay in the air for a few weeks, as they travel around the world.

A scientific report in the January 13, 2012 issue of SCIENCE (Pp.156, 183) recommends cutting the amounts of black

carbon and methane that are generated, as a remedy for reducing global warming.

Again, your agency should play a significant role in reducing air pollution.

***William Montgomery, Cincinnati, Ohio***

**Response 3:** Ohio EPA appreciates the commenters interest in Ohio's improving air quality. As discussed in comment one, the commenter should direct his concerns for affected animal species to ODNR. Ohio EPA Division of Air Pollution Control (DAPC) has demonstrated via continuous air monitoring requirements by U.S. EPA that this infrequent open burning activity has not contributed to any regression in the National Ambient Air Quality Standards set forth by U.S. EPA, as the standard for small particulate matter in Scioto County has reached attainment and has continuously improved for the past 14 years. Though any open burning activities would add to carbon emissions as mentioned by the commenter, they would very insignificant compared to the amounts emitted by industrial sources burning fossil fuels such as power plants.

**Comment 4:** (The) Following are my comments;

1. 3745-19-02 (B) - No provisions of this chapter, permitting open burning, and no permission to open burn granted by the **Environmental Protection Agency**, shall exempt any person, **company, state or federal agency** from compliance with any section of the Revised Code, or any regulation of any state department, or any local ordinance or regulation dealing with open burning.

I believe the Environmental Protection Agency should always spell out their name to remind themselves who they are and what their purpose is, and that is, to protect the environment. Second I want to make it crystal clear that this regulation applies to all entities not just persons.

2. 3745-19-03 (D)(3) - In an emergency the Director shall have the power to authorize open burning by oral approval with issuance of written permission within seven working days of oral approval.

I have no problem giving authority to the Director to do whatever is necessary in an emergency to save lives and property. However I find this extraordinary circumstances and any purpose determined to be necessary much too subjective and open to interpretation which could lead to an over reaching of authority.

3. 3745-19-03(D)(4), - Horticultural, forestry or wildlife management practices: and

Again "recognized" is too subjective, recognized by whom? Eliminate silviculture just say forestry this is easier for people understand. My computer doesn't even recognize silviculture as a word. Eliminate "range" I have no idea and probably most people would have no idea what range would mean in this sentence.

4. 3745-19-04(C)(3) - Same as number two above.

5. 3745-19-04(C)(5) - Same as number three above.

6. 3745-19-03 Appendix - re-write first paragraph as follows;

Appendix

Open Burning of Storm Debris

Approvals issued to communities demonstrating a severe economic hardship for the disposal of storm debris under rules 3745-19 -03(D)(3) or 3745-19-04(C)(3) of the Administrative Code.

Again I believe the term "extraordinary Circumstances" is too subjective and could be confusing to the public.

7. 3745-19-03 Appendix (1)

The material burned must be limited to vegetative material, trees and bee limbs resulting from a natural disaster that are an immediate hazard to the community.

We need to stop all unnecessary burning. There are now seven billion people on the earth and will be nine billion by 2045 so each one of us need to be more mindful of how we live and try to not pollute if at all possible. Another reason to not burn tree and limbs is that they are valuable and the community could probably sell them to raise money.

Summary:

There is no such thing as "beneficial burning" all burning adds to air pollution therefore all burning is bad. Whenever you here "beneficial burn" the benefit is usually a monetary gain for someone. Here in southern Ohio the Division of Forestry has wore out the term "beneficial burning". They are still saying they need to burn because of the ice storm of 2003. If you took away the *grant* money they get for burning we would probably, never heard that term again.

Some burning has to be tolerated like coal in power plants, gasoline in automobiles and others if we want to have the electricity and other necessities. Burning should be the very last alternative to ever situation. The dirty air standard of 2.5 ppm is not good and the Environmental Protection Agency should never look at it that way. We must all do our part!

I am requesting a written response to my comments,  
Thank you,

***William J. Tipton, member of the Save Our Shawnee Forest Organization***

**Response 4:**

**Ohio EPA appreciates the suggestions and opinions of the commenter and the following are the responses to each numbered comment by the commenter:**

- 1. Ohio EPA does not feel that the commenter's suggested language changes are necessary. For the purposes of the rules of the Ohio EPA, the term "person" as defined in OAC rule 3745-15-01(V) means "the state or any agency thereof, any political subdivision, or any agency thereof, public or private corporation, individual, partnership, or other entity." It is not necessary to make this substitution.**
- 2. The use of the emergency or extraordinary approval provision by the Director for open burning is very infrequent and is normally used only for an open burning activity that would not normally be permitted by the rules, but which, under the circumstances, the Director determines is the only practical, safe or economically feasible method available. This provision is only implemented, as the name implies, in extraordinary circumstances such as in the aftermath of a natural disaster such as a flood or**

tornado, and then only after all other possibilities have been determined to be infeasible.

3. The proposed rules use the language; ...”silvicultural (forestry), range, or wildlife... “. The additional word for clarification is forestry which was added to clarify the existing language that has been in the open burning regulations for this activity since this provision was added. Ohio EPA understands that “silvicultural” and forestry are basically synonymous. In Ohio the “prairie” would be more appropriate than range. Ohio EPA may consider these changes in future rulemaking as time allows but at this point in time does not consider this a critical change that would justify delaying the adoption of this rule package.
4. Same as response 2.
5. Same as response 3.
6. and 7. and Summary

The Appendix to OAC rule 3745-19-03 is applied only when the “emergency or other extraordinary circumstances” is the result of a natural disaster, such as a storm event, which also must be declared a natural disaster by the governor. This is (hopefully) a very infrequent situation and is needed in these extreme situations where open burning may be the only method of disposal based on economic hardship.

Open burning is considered to be the very last alternative per the requirements found in this Appendix. As discussed in response 2 above, an “extraordinary” circumstance would normally be one of these natural disasters, though Ohio EPA agrees on rare occasion it could be something else (for example, a livestock epidemic). The Appendix when applied does require that only vegetative material be burned. Even if some circumstance resulted outside a natural disaster (non-Appendix) the material to be disposed could only consist of materials not prohibited in the standards.

**Ohio EPA recommends the commenter direct his concerns regarding ODNR's burn plans for forest management to ODNR. The standards set forth by U.S. EPA for PM 2.5 attainment are stringent and Ohio EPA does not agree with the commenter that they are not good. The standards in the area of Shawnee Forest continue to improve and are meeting these standards.**

**Comment 5:**

In regard to proposed 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)."

I do not see any need or benefit for advance notice to Ohio EPA for such disposal activities and recommend against this change. If Ohio EPA is determined to make this change and the intent is to prevent large fires that might get out of control, I suggest that the term waste pile be changed to burn pile. That way material accumulated in a large waste pile can be added to a burn pile as previously fed material is consumed.

***Paul F. Munn, P.E.  
Project Manager/Project Engineer  
The Mannik & Smith Group, Inc.***

**Response 5:**

**Ohio EPA appreciates the suggestion by the commenter. By adding the requirement of notification (before burning) to the local EPA office for any waste pile exceeding these limits, a representative from Ohio EPA would likely inspect the site and suggest, if necessary, that the pile be reduced and then burned in a smaller pile as a requirement for the burning. Ohio may consider the term burn pile in future rulemaking but at this point in the process it is not a critical change that would be needed to be added and delay the final rule.**

**Comment 6: Ohio Administrative Code 3745-19-01(C) has a definition of "Emergency burning."**

In the Appendix which gives the conditions for such burning, the title is given as "Extraordinary Circumstances." This is an inconsistency.

The same terminology should be used throughout when referring to the same issue.

The phrase "emergency burning" does not appear in any regulation. The phrase "extraordinary circumstances" does occur twice, in OAC 3745-19-03(D)(3) and in OAC 3745-19-04(C)( 3 ) .

Suggestion: provide a definition of "extraordinary circumstances" rather than "emergency burning". Or else, reword everything of emergency circumstances and extraordinary circumstances to emergency burning only.

**Ohio Administrative Code 3745-19-01(C). Definition of "Emergency burning"** means ". . .the burning of clean wood waste or deceased animals.. . "

The Appendix which lists conditions for "Extraordinary Circumstances" dealing with "a state of emergency" says in condition number one, "The material burned must be limited to vegetative material, trees and tree limbs resulting from natural disaster."

The wording is inconsistent and contradictory between the definition and the Appendix condition. The regulations should say what they mean and mean what they say.

One part of the regulations says "deceased animals" can be burned in emergencies. Another part prohibits animal burning by saying that burning in emergencies is "limited to vegetative material".

Suggestion: Eliminate the words "or deceased animals" from the definition.

**Ohio Administrative Code 3745-19-01(E). Definition of "Inhabited building".**

This definition lists twelve categories of structures and their uses which qualify. It then gives five examples. Four of those examples illustrate one category, trade. This exemplifies the Ohio Environmental Protection Agency bias toward commercial and special interests rather than public well-being.

Suggestion: Use as examples schools, hospitals and nursing homes where larger numbers of people more vulnerable to smoke from fire may be, people like children, the sick, and the elderly. This would enhance the public image of the Ohio Environmental Protection Agency.

**Ohio Administrative Code 3745-19-01 (proposed H). Definition of "Ohio EPA".**

The definition includes just about everything except the agency itself, an organization and institution with many employees, functions, responsibilities and operations.

Delegated agencies like Portsmouth Local Air Agency for my region are "Ohio EPA". District office chiefs but not the rest of their offices, apparently, are "Ohio EPA." The state head of the state agency is "Ohio EPA." This is rather like corporations being considered as persons.

This is misleading for the public which tends to identify an organization name with the organization as a whole, not just with one individual. When people have dealings with Ohio Environmental Protection Agency, it is not the director, only and personally, who is usually involved.

Suggestion: Add to the definition words which mean the entire organization - Ohio Environmental Protection Agency organization and director, division chiefs and their offices, and delegated agencies.

**Ohio Administrative Code 3745-19-01(proposed J). Definition of "Residential waste."**

Residential waste differs from landscape waste and land clearing waste, the latter two involving only naturally produced plant waste material.

Residential waste, similar to agricultural waste, can include man-made materials. But, some categories of man-made materials are prohibited, specifically excluded.

This definition is incomplete, inconsistent, unclear and misleading because it does not include some prohibited materials proposed in another regulation about residential waste, building materials as given in 3745-19-04(B)(3)(e). It also does not include some materials prohibited for agricultural waste which should also be prohibited from residential waste, namely dead animals; animal waste; motor vehicles and parts thereof; economic poisons and their containers in OAC 3745-19-01(A).

It shouldn't be left open in the regulations that dead pet animals can be burned in a residential bonfire but not with agricultural materials generated on the same property if the residence is a farm house on a farm.

Suggestion: Make a clear and complete listing of prohibited materials in the definition. Then other regulations in the Code would not have to give partial, incomplete, inconsistent or duplicate listings.

**Ohio Administrative Code 3745-19-04(C)(3) in unrestricted areas.**

Suggestion: delete the words ". . . rule 3745-19-03 of the Administrative Code" and substitute the words "this rule" to be the same as otherwise identical wording in 3745-19-03(D)(3) for restricted areas.

***Barbara Lund, Save our Shawnee Forest (March 6, 2012 submittal)***

**Response 6:** Ohio EPA appreciates the suggestion of the commenter. This comment and response is similar to that made in comment 4 concerning emergency or extraordinary circumstances. As stated, the appendix to OAC rule 3745-19-03 only applies if a request by a community is necessary to perform open burning for the disposal of vegetative material as a result of a natural disaster as described in the definition of "emergency burning". The proposed rules have added the clarification of "if required", if the emergency or extraordinary circumstance is a natural disaster where the community requires assistance. There could be other

circumstances (likely rare) that a request for approval to open burn from the Director could be made that was not a result of a natural disaster.

The potential disposal of “deceased animals” that resulted from a natural disaster or extraordinary circumstance does not apply to the requirements of the Appendix and only deals with a community’s disposal of vegetative material discussed above. Though rare, a natural disaster such as a flood/tornado could destroy a large number of cattle and could create the potential that open burning may be the only safe/practical method of disposal. The Appendix for OAC rule 3745-19-03 does not apply in this case as it only applies when vegetative material must be disposed of. OAC rules 3745-19-03(C)(1) and 19-04(D) also provides for the disposal of diseased animals via open burning notification if deemed necessary by a health/agricultural department agency. Farmers cannot dispose of deceased animals as a result of daily operations via open burning as they are not considered agricultural waste. Ohio EPA does not agree with the commenter that the words “or deceased animals” be removed from the definition of “emergency burning”.

Ohio EPA does not agree with the need to add additional examples of structure types in the definition of “inhabited building”. The definition found in OAC rule 3745-19-01(E) already covers the potential for any inhabited building not mentioned in the rule (such as schools). The examples listed are those that would likely be associated with agricultural or residential open burning in an un-restricted area located well outside any city or community limits where such burning is prohibited. These burns would therefore only be located in very low population density area where no hospitals, schools or nursing homes are likely to be located. If the building is located near the farm or residence, the burn site is located, the building would still need to be located at least 1000 feet away from the structure.

Ohio EPA does not agree with the suggested change to the definition of “Ohio EPA” found in OAC 3745-19-01(H). When taken in context with how the term Ohio EPA is used within OAC chapter 3745-19, the definition is appropriate. The use of “Ohio EPA” in this chapter specifically refers to those individuals within the agency

who can approve permissions for open burning and the definition groups them under a single term. Where permission is specifically required from the director of Ohio EPA, the rule is written as such.

Ohio EPA does not agree with the commenter that additional prohibitive materials be added to the definition of residential waste. Landscape waste is part of the general classification of waste that is generated as part of residential waste. The rule lists the general make up of waste that cannot be burned as part of residential or agricultural waste; rubber, grease, asphalt, or liquid petroleum products, plastics or building materials. It would be difficult and make the rules very cumbersome to list every specific material in the rules that cannot be burned. "Dead animals", as used in the open burning standards, are generally assumed to include agricultural livestock, such as individual cattle, that have died of natural causes. Pets are not actually listed in the rules as waste that should not be burned as residential waste. Ohio EPA assumes that burning of pets would not be a normal occurrence in most households located out in the country as well as the burning of human bodies which are also not listed as prohibitive for open burning.

Ohio EPA does not agree with the suggestion to revise the language in OAC rule 3745-19-04(C)(3). Though the Appendix for community hardship requests could also apply in an un-restricted area, the Appendix is part of OAC rule 3745-19-03 only (restricted areas) so that referral must be indicated in the paragraph 19-04 (C)(3) if the appendix applies.

**Comment 7:**

Comments, open burning regulations

Thank you for allowing me to comment on the second round of proposals for revisions to Ohio Administrative Code 3745-19, open burning regulations, for the upcoming JCARR hearing. I'd really like to see Ohio Environmental Protection Agency give a credible presentation to JCARR. My comments are those of a citizen watchdog who wants to see her state government do better for the public well-being, all citizens, and the living land-base environment of the state.

I submitted comments about the Draft of proposed changes in August 2011. One of my suggestions, on English usage, was addressed, properly in my opinion. But, in my opinion, all my other comments were either ignored or responded to with false information and misleading explanations.

Before the extended comment deadline of March 16, 2012, I will try to formulate my comments and suggestions differently. For now I request the Ohio Environmental Protection Agency please revisit my comments from the first Draft comment period. Please comment without using conclusions based on the air pollution monitoring conducted during the April 24-31, 2009 fire in Shawnee State Forest.

Please address the following issues: pre-permit hearings; what reduction of air emissions means scientifically; the issue of burning live and dead animals in prescribed fires; the issue of smoke (not fire) within 1,000 feet of an inhabited building

during prescribed fires; allowing the substitution of acres for the quantity and type of materials to be burned.

Additionally, Ohio Environmental Protection Agency, in my opinion, needs to do a serious reevaluation of the entire open burning code based on 2012 conditions which have changed from ones in the 1970s when the code was first written.

In the existing code, the greatest need is to address the burning on living landscapes which now are the largest fires, producing the most smoke, the ones most at risk for escaping and doing unintended harm and damage, the ones that put those conducting the fires at greatest risk of harm, yet the fires with virtually no conditions written into the law regulating them.

Ohio Environmental Protection Agency is, in my opinion, clearly avoiding addressing living landscape fires. It is clearly avoiding honest and transparent dialog with the public and that is unacceptable to me. I want Ohio Environmental Protection Agency to take more responsibility for the authority it has.

***Barbara Lund, Save our Shawnee Forest (March 9, 2012 submittal)***

**Response 7:** Ohio EPA appreciates the commenter's continued concern for Ohio's air quality but does not agree with the commenter's opinion that Ohio EPA ignored or responded with false information in the response to her draft comments. The issues of concern summarized above by the commenter are essentially the same as those made by the commenter during the draft comment period which were addressed in detail by Ohio EPA in the draft response to comments document dated December 20, 2011. These issues such as "pre-permit hearings", reduction of air emissions, burning of live and dead animals, burn-site within 1000 feet of an inhabited building and acreage verses quantity and material burned have been addressed in the response to draft comments by Ohio EPA. Response to these issues

**(such as live versus dead animals, the 1000 feet buffer, etc.) can also again be found in sections of this responsive summary in responses to this commenter and others.**

**As discussed in the reply comment 1 above (and in detail in the response to comment 1 of the draft rules), the long term air quality in Scioto county has shown continued improvement over the years and is currently attaining the national ambient air quality standards (NAAQS) defined by U.S. EPA in accordance with the Clean Air Act. Notwithstanding the temporary monitors that were in operation during the April 2009 burn that the commenter mentions; over the past 14 years, Ohio EPA has made significant progress in reducing particulate pollution in the Huntington-Ashland area (Adams, Gallia, Lawrence and Scioto Counties) and has now attained the NAAQS. This is documented by actual PM 2.5 monitoring (permanent) data in the area.**

**It should be noted that Ohio EPA has not been given authority by the state legislature to prohibit open burning for reasons other than protecting the air quality of the state of Ohio.**

**Comment 8:**

Ohio Administrative Code 3745-19-03 open burning in restricted areas.

(B) "Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA"

(B)(1) in this rule, acetylene torches, highway safety flares and smudge pots are things, tools, equipment rather than purposes.

(B)(2) outdoor fireplace equipment is a thing, not a purpose.

(C)(2) bonfires and campfires are things, not purposes.

(D)(4) practices are things, not purposes.

(D)(5) fires and pyrotechnic effects are things, not purposes.

Suggestion: rewrite all the "thing" words as "purposes".

Verbs with ing endings work.

***Barbara Lund, Save Our Shawnee Forest (March 9, 2012 submittal)***

**Response 8:**

These suggestions are similar to the suggestions for language changes (purposes versus things) made by the commenter in the rule for open burning in unrestricted areas, OAC rule 3745-19-04. Ohio EPA does not agree that this change is necessary at this time. The existing rule states that open burning shall be allowed for the following purposes; occupational needs, and cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes.

**Comment 9:**

Ohio Administrative Code 3745-19-04(B) has a proposed new regulation sentence which is unnumbered and follows proposed (B)(6). This proposal is unnecessary and should be removed.

(B)(2) is mentioned unnecessarily because all the conditions mentioned in the proposed regulation are already listed and spelled out in (B)(2).

(B)(1) is mentioned unnecessarily because the conditions don't apply except for "heating for the warmth of outdoor workers and strikers," a use which would better fit under (B)(2) which also mentioned open burning for warmth.

The occupational use of welding, flares or smudge pots doesn't allow much choice of fuel or size selection and is unlikely to be used for waste disposal, so these proposed conditions are inappropriate.

(B(5) should have the proposed conditions listed under it specifically if needed.

***Barbara Lund, Save Our Shawnee Forest (March 12, 2012 submittal)***

**Response 9:** Ohio EPA appreciates the suggestions on the conditions listed for open burning that is permitted without notification or written permission to open burn. At this point Ohio EPA will not make any of the suggested changes. This paragraph was added to reinforce and clarify that these fires, while allowable for their intended purposes, may not be used for waste disposal purposes.

**Comment 10:**

Please provide a detailed and reasoned explanation and an answer to the question: Why are there contradictions and inconsistencies in the Ohio Administrative Code 3745-19 regulations with regard to burning dead animals?

The regulations now specifically prohibit burning dead animals in agricultural waste. They fail to specifically prohibit burning dead animals in residential waste, outdoor cooking, and in the burning on the living landscapes of horticultural, silvicultural, range, and wildlife areas. Why?

Further, why hasn't Ohio Environmental Protection Agency proposed changes or revisions to the regulations to eliminate the contradictions and inconsistencies and to explain and clarify definitions so there is no ambiguity, no confusion as there now is?

Further, why does the Ohio Environmental Protection Agency public information brochure "Before You Light It... Know Ohio's Open Burning Regulations," June 2007 edition, say that dead animals may not be burned anywhere in the state at any time and that open burning <sup>of dead animals</sup> is never allowed when in fact the law, Ohio Administrative Code 3745-19, does not support those statements?

**Barbara Lund, Save Our Shawnee Forest (March 15, 2012 submittal)**

**Response 10:**

Ohio EPA appreciates the commenter's point, however Ohio EPA does not feel that there are any contradictions in the language in Ohio Administrative Code (OAC) Chapter 3745-19. As noted at the end of each rule, the rules are authorized under Ohio Revised Code (ORC) 3704.03(E), and amplify ORC 3704.03(A) and 3704.03(E). ORC 3704.03(E), which these rules amplify, gives Ohio EPA the authority to "Adopt, modify, suspend, and rescind rules for the prevention, control, and abatement of air pollution, ..., and other necessary rules for the

**purpose of achieving and maintaining compliance with ambient air quality standards...”**

**The burning of animal remains as an everyday practice for agricultural waste disposal is prohibited in the definition for agricultural waste in OAC rule 3745-19-01 and is only allowed in emergency circumstances, and then only upon approval of the director of Ohio EPA. The purpose of restricting this form of disposal is the protection of air quality under the authority granted to OEPA by the legislature.**

**The burning of the remains of a household pet, while not specifically prohibited, is likely an infrequent activity and represents such a small quantity of emissions that Ohio EPA does not see it as an immediate threat to the attainment and maintenance of ambient air quality standards. Ohio EPA still discourages this practice, however, and would prefer to see pet remains disposed of in alternate methods. OEPA does, however, recognize that the “universal” statement on the prohibition of burning animal remains in the “Before you light it...” pamphlet may be a bit confusing when it comes to the disposal of pet remains. The Division of Air Pollution Control (DAPC) will work with Ohio EPA’s public involvement center (PIC) to clarify this statement in future versions of the pamphlet.**

**The practice of prescribed burning is allowed as a recognized silvicultural practice under OAC 3745-19-03(D)(4) and OAC 3745-19-04(C)(5). This practice may only be performed during appropriate weather conditions and after receipt of approval from the director of Ohio EPA. These fires are designed and carried out by trained professionals from the Ohio Division of Forestry and the United State forestry Service. Prior to each prescribed fire, these professionals prepare and submit their request for permission to open burn to Ohio EPA for approval. Ohio EPA reviews their application and then either issues or denies permission for the burn based on our authority to achieve and maintain compliance with the national ambient air quality standards.**

**In all instances, OEPA’s rules take into account our authority granted by the state legislature to protect the air quality of the state of Ohio by attaining and**

**maintaining the national ambient air quality standards. There is, in OEPA's opinion, no contradiction in the rule language.**

**Comment 11:**

Why isn't Ohio Environmental Protection Agency doing more to eliminate air pollution from open burning? Why is it still a big part of the problem instead of contributing more to the solutions for air pollution?

My world is dying. We humans, myself included, are killing it. Ohio Environmental Protection Agency, through its open burning regulations and its issuing of permits to pollute the air contributes to degradation of the natural world, our life-support system.

Most open burning is done for reasons of convenience, efficiency or economics. Those are not necessary or essential reasons to burn when protection of our land base, the living biosphere, and a habitable planet are more important.

Suggestion: Totally rewrite the open burning regulations with the goal of eliminating most open burning. The state should do more than the federal. If the federal laws allow a certain amount of air pollution, the state should require even less, or none at all, if possible. Less bad is still not good if we're talking about unhealthy and harmful air pollution which is killing us and the planet, which we are. No bad is good.

Pollution is a sign of design failure. Regulate for zero air pollution to affect design change.

***Barbara Lund, Save Our Shawnee Forest (March 15, 2012 submittal)***

**Response 11: Ohio EPA thanks the commenter for her concern regarding Ohio's air quality. In the comment, the**

commenter asks why more is not being done to eliminate air pollution from open burning. Ohio EPA would like to remind the commenter that in the 40+ years since Ohio's open burning regulations have been in effect, they have been an invaluable part of Ohio's state implementation plan (SIP) for attaining and maintaining the national ambient air quality standards (NAAQS) as required by the Clean Air Act (CAA), and that they have assisted in greatly improving Ohio's ambient air quality. However, the Ohio EPA has only been given certain authorities to protect the environment by the Ohio state legislature.

As mandated by Ohio's state legislature, Ohio EPA must promulgate rules and regulations for the attainment and maintenance of the NAAQS, however, Ohio EPA is not permitted to make rules that are any more stringent than the requirements established by the federal government under the clean air act without the consent of the legislature. Ohio EPA continues to encourage the citizens of Ohio to find alternative methods and reduce emissions from open burning however, these are voluntary measures and are not binding as rules would be.

**Comment 12:**

Comment, open burning regulations. Keeping smoke 1,000 feet away from inhabited buildings. Why isn't this applied uniformly?

The four categories of open burning for waste disposal all regulate how close the fires may be to inhabited buildings, 1,000 feet.

A major category where this regulatory condition fails to be specified is for prescribed fire burning actions across living landscapes - horticultural, silvicultural, range, and wildlife areas. This is contradictory and inconsistent.

In the response to comments during the earlier - August 2011 - comment period, Ohio Environmental Protection Agency addressed the "1,000 feet stand-off from the nearest resident" by changing the discussion from an air emission smoke issue to one of a safety issue of the fire itself, something the agency claims is not its concern. This is deliberately misleading, an obfuscation. While the regulatory conditions do say only "fire" and not also smoke, clearly the intent of an air pollution regulation is about smoke from the fire, not the flames from the fire impacting nearby inhabited buildings. One thousand feet is, in most but not all instances, more than enough buffer distance to prevent flame contact with an inhabited building. That longer distance probably is to allow the smoke to dissipate or blow away, producing less impact on those closest to the fire.

Dissipating smoke exports the air pollution and fails to protect the respiratory health of everyone and everything else down wind. This is one of the flaws in the smoke management regulations - the belief that dilution is the solution to pollution when it is not. Ohio Environmental Protection Agency is being illogical and non-scientific with this belief.

Suggestion: Revise the code for consistency in applying the 1,000 feet rule to keep smoke from fires impacting inhabited buildings.

***Barbara Lund, Save Our Shawnee Forest (March 15, 2012 submittal)***

**Response 12:** Ohio's open burning regulations were originally promulgated over 40 years ago. At the time, it was recognized that open burning was necessary in some circumstances, however, frequent burning caused repeated exposure to smoke for neighbors the residences where the burning was occurring. The 1,000

foot buffer for open burning in mainly non-restricted and to a lesser extent restricted areas, is intended to give the smoke a chance to rise and dissipate so that it lessens the effect on the surrounding populace during frequent and repeated burning instances.

The reason that a 1,000 foot buffer is not required for prescribed fires is that, unlike residential fires, a) these fires are infrequent, b) the fires are performed with advanced notice under professional supervision, and c) these fires are required to be performed under optimal conditions which will, in theory, reduce smoke and prevent or reduce smoldering after the burn is completed. Prescribed fire activities whether in grasslands or forest are not considered waste disposal and do not occur on a regular basis

As a recognized silvicultural practice, it would be difficult for Ohio EPA to set an additional 1,000 foot limit on prescribed fires at this time. Monitoring data from recent fires have shown that emissions from these fires are not causing exceedances of the national ambient air quality standards (NAAQS) and since monitoring data are also showing that Ohio is moving into attainment for particulate matter standards throughout the state, the addition of the 1,000 foot buffer requirement for prescribed fires could be seen as an unnecessary additional restriction. As noted in previous responses in this document, it is difficult for state agencies to impose unnecessary restrictions without the consent of the Ohio legislature.

**Comment 13:**

Ohio Administrative Codes 3745-19-03(D)94) and 3745-19-04(C)(5).

These two rules involve categories of open burning that are both undefined and essentially unregulated by law. Yet, they include open burning prescribed fires that are the largest and which produce the greatest amount of air pollution, spores in addition to smoke. They are the most harmful to the respiratory health of humans and other organisms. They have the highest risk of getting out of control and doing unintended damage, harm and producing additional smoke. They put the most firefighters at risk of harm while on a fireline.

These are catchall fire categories for open burning which is done across living landscapes. They don't fit the descriptions for waste materials that are stacked and dried before burning. They involve materials that are alive, wet and rotting. They involve animal material as well as plant material. They impact living soil, creating conditions which allow soil erosion.

My suggestion: eliminate these two rules. Instead, create a new category for agricultural production.

1. define agricultural production and list the allowable categories such as: horticultural including orchards, Christmas tree farms, tree plantations; silviculturally-managed forests or tree areas, woodlands and wood lots; livestock pastures (Ohio has no open range laws); prairie wildflower gardens; yards; fencerows; roadside banks; wildlife areas which while managed for recreation have a secondary purpose to harvesting wild game for food which is an agricultural activity.

2. List conditions for burns, such as prohibited materials, smoke hazards on roadways, distance from inhabited buildings. The failure to have specific conditions for living landscape burns is evasive, inconsistent, contradictory and non-regulatory.
3. Prohibit open burning across natural area living landscapes. Define natural areas as native ecological areas preserved and protected without human management activities.
4. Create a new category for burning of invasive species in open habitats such as savannas, grasslands, glades and wetlands, but excluding forests.

Summary: Define and regulate with conditions the open burns conducted across living landscapes.

***Barbara Lund, Save Our Shawnee Forest (March 16, 2012 submittal)***

**Response 13:** As discussed in previous responses to the same commenter, Ohio EPA disagrees that OAC rules 3745-19-03(D)(4) and 3745-19-04(C)(5) are both undefined and unregulated by law. These activities do not produce the greatest amount of pollution and risk to human health compared to other sources in the state; which is supported by continuous air monitoring and continuous improvement in this area's air quality status.

It appears the commenter's suggestion ultimately is to revise these two rules so that the use of prescribed fire in areas such as Shawnee State Forest (i.e., natural area living landscapes) is prohibited as a management tool by ODNR.

**Comment 14:**

Ohio Administrative Code 3745-19-05(A)(2)(b)

Permission application information, acreage of materials  
to be burned.

Will Ohio Environmental Protection Agency please explain why  
it is avoiding having to know about or regulate the quantity of  
material to be burned during the open burns across large areas  
of living landscapes? Adding the option of using acreage instead  
of quantity for the amount of material to be burned allows Ohio  
Environmental Protection Agency this avoidance.

It is entirely possible to provide a good estimate of material  
amounts in orchards, pastures, prairies, grasslands, wetlands,  
forests or other such areas where burn permissions may be  
requested. As a regulatory agency, Ohio Environmental Protection  
Agency should know as precisely as possible what it is regulating.

My suggestion: remove the proposed words "or acreage" from  
this rule.

***Barbara Lund, Save Our Shawnee Forest (March 16,  
2012 submittal)***

**Response 14:**

For open burning requiring written permission (such as  
prescribed fire), the entity performing the burn must  
provide Ohio EPA with information as outlined in OAC  
rule 3745-19-05. The required information can be  
provided using the "Open Burning Request Form"  
which is available on Ohio EPA's website at:

[http://www.epa.ohio.gov/portals/27/general/NewPermissi  
onRequestv10.pdf](http://www.epa.ohio.gov/portals/27/general/NewPermissi<br/>onRequestv10.pdf)

Question #3 on the form reflects the requirements of  
paragraph (A)(2) of OAC rule 3745-19-05, requesting the  
person/entity notifying Ohio EPA of their burn to  
"Describe the material to be burned and the quantity of  
the material to be burned..."

Regarding the use of the word “quantity” on Ohio EPA’s form, for instances of prescribed burning, it is more beneficial for Ohio EPA to know the acreage of the burn site than the actual quantity (i.e. mass or volume) of materials to be burned since it can vary and is typically an estimated quantity anyway. For tracking the burn units and schedules of the burns it is also desirable for Ohio EPA to know the acreages of each unit. That information has always been submitted with the application which includes a map of the burn units and acreage of each if multiple units are involved.

If a person/entity is requesting permission for different reason, such as disposal of agricultural waste or a training fire, it is more useful for OEPA to be provided with the anticipated quantity (i.e. mass or volume) of materials to be burned as this is a more reasonable number at smaller sizes and more accurately characterizes the burn. It is not necessary for an entity requesting permission to provide both quantities, hence the use of the word “or” in the amended language for paragraph (A)(2) of OAC rule 3745-19-05.

For example, a fire department holding a training fire would not estimate the fire size at 0.001 acres, they would provide the dimensions of the house they were burning. At the same time, the forestry service would provide the acreage for a prescribed fire as it is not reasonable or particularly useful to Ohio EPA to determine the exact amount of fuel in a large prescribed fire.

It should also be noted that Ohio EPA is only requesting these quantities for informational knowledge to assist in our determination of whether the fire is permissible under the requirements of OAC Chapter 3745-19, and not if the area should or should not be burned for other reasons. Ohio EPA always reserves the right to request additional information if necessary, and can deny the request if Ohio EPA does not feel that accurate or relevant information was provided.

**Comment 15:**

Ohio Administrative Code 3745-19-05(A)(2)(e) and  
Ohio Administrative Code 3745-19-05(A)(3)  
Application for permission: reduced or minimized emission  
of air contaminants.

Will Ohio Environmental Protection Agency please give me an  
explanation of how the emissions of air contaminants can be  
reduced or minimized during an open burn? Please provide some  
examples. Please define an air "contaminant."

My suggestion. Ohio Environmental Protection Agency should say  
what it means and mean what it says. I don't think it does so  
in the case of reducing or minimizing emissions of air contaminants.

***Barbara Lund, Save Our Shawnee Forest (March 16,  
2012 submittal)***

**Response 15:**

To begin, air contaminants, which would predominately be small particulate matter (PM 2.5) are reduced greatly by the simple fact that open burning, in general, is prohibited by the open burning standards (zero emissions). Where open burning is allowed geographically and for certain activities, conditions such as the following found in the standards will reduce or minimize emissions of air contaminants:

Fueled with clean seasoned firewood, natural gas or equivalent, or any clean burning fuel with emissions that are equivalent to or lower than those created from the burning of seasoned firewood;

The wastes are stacked and dried to provide the best practicable condition for efficient burning; and

No materials are burned which contain rubber, grease, asphalt, or liquid petroleum products, plastics or building materials.

The rules require the use of an air curtain destructor for minimizing emissions for the disposal of land clearing

**debris and burning of land clearing wastes can only be performed in un-restricted areas (zero emissions).**

**For activities that are allowed but that require written permission to open burn, the request form described in response 14 above also requires conditions which would reduce emissions of air contaminants such as open burning for fire training:**

**Asphalt shingles should be removed prior to burning;**

**Vinyl siding should be removed prior to burning; and**

**Asbestos containing material may need to be removed prior to burning. Friable asbestos must be removed by a licensed asbestos abatement contractor.**

**Question 8 on the form asks "What methods or actions will be taken to reduce the emission of air contaminants? In most cases the conditions required in the standards described above would be acknowledged to be followed in this section. The burn/smoke management plan required by ODNR would also be acknowledged as being completed.**

**Comment 16:**

Ohio Administrative Codes 3745-19-03(C)(3)(a), 3745-19-04(B)(3)(a),  
and 3745-19-04(C)(4)(a). dissipating contaminants

These three rule conditions say "The fire is set only when  
atmospheric conditions will readily dissipate contaminants."

Will the Ohio Environmental Protection Agency please give me a  
reasoned explanation as to why it mandates the export of air  
contaminants away from the burn site?

If the air contaminants from an open burn are harmful to those at the burn site, they are also harmful anywhere they go. Using atmospheric conditions to dissipate just spreads the contaminants and their harm to more people over a larger area.

My suggestion: Prohibit open burning when atmospheric conditions will most readily dissipate contaminants. If those doing the open burns have to deal with the greater impact of the emissions (smoke) perhaps they will find better ways to accomplish what is intended by the burn. (similarly, if the U.S. Environmental Protection Agency were to mandate that the exhaust pipe of motor vehicles terminated inside the driver space of the vehicle, engineers would soon find ways to reduce or eliminate harmful tailpipe emissions.)

***Barbara Lund, Save Our Shawnee Forest (March 16, 2012 submittal)***

**Response 16:**

Ohio EPA appreciates the comments concerning the dispersion of air contaminants based on atmospheric conditions. The commenter appears to be confusing dispersion of air pollution contaminants with the concentration of those contaminants from the source. It is desirable that the concentration of the contaminant be reduced as it moves away from the source. This occurs naturally through dispersion and mixing with the ambient air. If this did not occur it would be impossible to be near a common campfire as the smoke would build to such high concentrations that anyone near the fire would be choked, as if a glass enclosure was built around the fire with no place for the smoke to go. The commenter's similar example of terminating an exhaust pipe inside a car would also not be desirable.

The burn plan in the case of prescribed fire, considers the optimum atmospheric conditions that enhances the desired effect of the quick dispersion of the smoke generated. As with a smoke stack from a combusted fuel source, the smoke first rises well above ground level and then is carried downwind and mixes with the ambient air so that the concentration of smoke (particulates) is reduced to very small levels that will not

**impact health and the air quality standards. It would not be desirable to encourage fires when dispersion is minimal.**

**Comment 17:** Ohio EPA appreciates the comments and opinions submitted by Mr Robert Klouman dealing with the open burning standards as they relate primarily to the prescribed fire provisions of the rules. Unfortunately, the commenter submitted only a faxed hard copy of the entire open burning standards with comments/opinions handwritten throughout the rules and margins of the rules. These handwritten notes were very difficult to read and or interpret and Ohio EPA was unable to obtain a clearer version prior to generating our responses. In addition, many were opinions of the commenter directed to the Division of Forestry that would not necessitate a response by Ohio EPA based on this rulemaking.

Many of the comments/concerns were similar to those made by Ms. Lund in the earlier comments of this responsive summary dealing with prescribed fire in the forest areas. Comments/opinions concerning live/dead animals, acreage verses quantity of materials, 1000 feet of stand-off, permitting requirements, the Appendix for storm debris disposal, etc. were also found throughout these comments.

***Robert Klouman, Save Our Shawnee Forest***

**Response 17:** **Most if not all of the comments (not the opinions) of the commenter have already been responded to in the similar comments of Ms. Lund throughout this responsive summary.**

**Previous commenters of the Shawnee Forest group(s) including Ms. Lund have indicated that the use of prescribed fire in areas such as Shawnee State Forest (i.e., natural area living landscapes) should be prohibited by Ohio EPA via rule amendments.**

**End of Comments**