

To all the residents of Arlington Woods: On November 7, 2014, the President of AWPOA received via Certified Mail a notice of a violation of Ohio EPA burning regulations (Attachment 1). On the same day (November 7, 2014) a notice of No Burning (Attachment 2) was sent to all residents of AWPOA in direct response to the EPA Notice. As you are all aware this caused quite a stir among the residents. In response to some concerns among the residents a letter (Attachment 3) was sent to the EPA explaining our assumptions that we were in compliance of the regulations and asking for clarification. The President then received a reply (Attachment 4) that basically pointed out in no uncertain terms we were in violation of the regulations and could be subject to fines. At this point it was felt it best to respond "Okay we get it, no burning" (Attachment 5). PLEASE READ ALL OF THIS DOCUMENT, INCLUDING THE ATTACHMENTS TO UNDERSTAND WHY IT IS WHAT IT IS, **THE LAW.**

## **BURNING REGULATIONS IN ARLINGTON WOODS**

**TO PUT THIS IN AS SIMPLE OF TERMS AS POSSIBLE**

**OPEN BURNING IS NOT ALLOWED  
EXCEPT FOR A RECREATIONAL CAMPFIRE  
NO MORE THAN 3 FEET WIDE BY 2 FEET HIGH  
WITH CLEAN SEASONED FIREWOOD**

**THIS IS PER THE OHIO EPA**

## **ATTACHMENT 1**

**THE ORIGINAL LETTER FROM THE EPA  
WITH ITS' ATTACHED RULES.**





John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

Re: Wood County  
Open Burning  
**Informational Letter**

November 5, 2014

CERTIFIED MAIL

Mr. Dirk Ward, Board of Trustees President  
Arlington Woods Property Owners Association  
P.O. Box 63  
Rudolph, Ohio 43462

Dear Mr. Ward:

This office has received several inquiries concerning open burning being conducted in the area of the Arlington Woods (AW) subdivision in Rudolph, Ohio. These inquiries have expressed concern over the practices of the AW residents and those of the Arlington Woods Property Owners Association (AWPOA). Further investigation shows that there may have been a historical practice to burn various wastes generated by AW residents and the AWPOA and bi-annual "clean-up" events within AW on property owned by the AWPOA. In efforts to address these inquiries and concerns the Ohio EPA is sending this informational letter, to which are attached the Ohio Administrative Code (OAC) rules for open burning in Ohio. These rules will be referenced throughout this letter and can also be found on our website at [http://epa.ohio.gov/dapc/regs/3745\\_19.aspx](http://epa.ohio.gov/dapc/regs/3745_19.aspx).

To address the concern of residents burning wastes on the property, in this case, this practice is not permitted for any AW resident. There are times when "residential wastes" (defined in OAC rule 3745-19-01(L)) are permitted to be burned, however, the criteria in OAC rule 3745-19-04(B)(3) must be met. Unfortunately, no resident in AW would be able to meet the 1000' setback requirement found in OAC rule 3745-19-04(B)(3)(c) and would not be permitted to burn any materials for disposal. Accordingly, each property owner is only permitted to have a recreational fire which complies with the requirements of OAC rule 3745-19-04(B)(2). Please note that this rule states such fires "are not used for waste disposal purposes".

To address the concern of the AWPOA burning any waste material for disposal, this practice is not allowed under any circumstance. Because the AWPOA generates neither "residential waste" nor "agricultural waste" there are no provisions in the rules which allow for such an organization to burn any materials for disposal. Also, even when wastes are permitted to be burned Comparatively, this is very similar to communities which have a community drop off point for leaves, brush, tree limbs, etc. The Ohio EPA routinely informs such organizations that similar situations have resulted in this agency taking elevated enforcement action, which may include, but is not limited to, fines in a civil action.

Mr. Dirk Ward  
November 5, 2014  
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As the leading executive officer of the AWPOA Board of Trustees, it is your responsibility to adequately disseminate this information to all Board of trustee members, representatives and/or officers. It is ultimately your responsibility, or that of any of your successors, to ensure compliance with these rules on AWPOA property.

Regarding the disposal of wastes generated in the future, either the Ohio EPA's Division Materials & Waste Management (DMWM) or the Wood County Health Department may be able to better suggest additional options for disposal of such material. Should you have any questions for them, please contact either Ms. Sue Hardy of DWMW at (419) 373-3043 or the Wood County Health Department at (419) 352-8402.

If you, any Board members or any AW residents have any questions concerning this letter or the regulations, please feel free to call me at (419) 373-3137 or e-mail at [thomas.cikotte@epa.ohio.gov](mailto:thomas.cikotte@epa.ohio.gov).

Sincerely,



Thomas C. Cikotte  
Division of Air Pollution Control

/cg

Enclosure

pc: Wood County Health Department  
Thomas C. Cikotte, DAPC – NWDO  
Certified Mail Receipt Number 70091410000118351339

ec: Tom Sattler, DAPC – NWDO  
Thomas C. Cikotte, DAPC – NWDO  
Wendy Licht, DAPC – NWDO  
Sue Hardy, DMWM – NWDO



3745-19-01

**Definitions.**

As used in this chapter:

(A) "Agricultural waste" means any waste material generated by crop, horticultural, or livestock production practices, and includes such items as woody debris and plant matter from stream flooding, bags, cartons, structural materials, and landscape wastes that are generated in agricultural activities, but does not include land clearing waste; buildings (including dismantled/fallen barns); garbage; dead animals; animal waste; motor vehicles and parts thereof; nor economic poisons and containers thereof, unless the manufacturer has identified open burning as a safe disposal procedure.

(B) "Air curtain burner" means an engineered apparatus consisting of a motorized high-velocity fan and an air distribution system designed to aid in the efficient combustion of materials placed in a manufactured steel structure and for which a permit-to-install has been obtained as required in Chapter 3745-31 of the Administrative Code and a permit-to-operate has been obtained as required in Chapter 3745-77 of the Administrative Code.

(C) "Air curtain destructor" means an engineered apparatus consisting of a motorized high-velocity fan and an air distribution system designed to aid in the efficient combustion of materials placed in an adjacent pit. An air curtain burner may be used in place of an air curtain destructor, but an air curtain destructor may not be used in place of an air curtain burner.

~~(B)~~(D) "Economic poisons" include but are not restricted to pesticides such as insecticides, fungicides, rodenticides, miticides, nematocides and fumigants; herbicides; seed disinfectants; and defoliant.

~~(C)~~(E) "Emergency burning" means the burning of clean wood waste or deceased animals caused by a natural disaster or an uncontrolled event such as the following:

- (1) A tornado.
- (2) High winds.
- (3) An earthquake.
- (4) An explosion.
- (5) A flood.
- (6) A hail storm, a rain storm, or an ice storm.

~~(D)~~(F) "Garbage" means any waste material resulting from the handling, processing, preparation, cooking and consumption of food or food products.

~~(E)~~(G) "Inhabited building" means any inhabited private dwelling house and any public structure which may be used as a place of resort, assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic, or occupancy by the public. Examples would include, but are not limited to, highway rest stops, restaurants, motels, hotels and gas stations.

~~(F)~~(H) "Landscape waste" means any plant waste material, except garbage, including trees, tree trimmings, branches, stumps, brush, weeds, leaves, grass, shrubbery, yard trimmings, and crop residues.

~~(G)~~(I) "Land clearing waste" means plant waste material which is removed from land, including plant waste material removed from stream banks during projects involving more than one property owner, for the purpose of rendering the land useful for residential, commercial, or industrial development. Land clearing waste also includes the plant waste material generated during the clearing of land for new agricultural development.

~~(H)~~(J) "Ohio EPA" means the Ohio environmental protection agency director or agencies delegated authority by the director of the Ohio environmental protection agency pursuant to section 3704.03 of the Revised Code or the chief of any Ohio environmental protection agency district office.

~~(I)~~(K) "Open burning" means the burning of any materials wherein air contaminants resulting from combustion are emitted directly into the ambient air without passing through a stack or chimney. Open burning includes the burning of any refuse or salvageable material in any device not subject to or designed specifically to comply with the requirements of rule 3745-17-09 or 3745-17-10 of the Administrative Code.

~~(J)~~(L) "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.

~~(K)~~(M) "Restricted area" means the following:

- (1) Except as provided in paragraph (K)(2) of this rule, the area within the boundary of any municipal corporation established in accordance with the provisions of Title 7 of the Revised Code, plus a zone extending one thousand



feet beyond the boundaries of any such municipal corporation having a population of one thousand to ten thousand persons and a zone extending one mile beyond any such municipal corporation having a population of ten thousand persons or more according to the latest federal census.

- (2) "Restricted area" shall not include any municipal corporation the territory of which is located on an island in Lake Erie except that, during the yearly period between Memorial Day and Labor Day, any such municipal corporation shall be required to comply with the requirements of rule 3745-19-03 of the Administrative Code.

~~(L)~~(N) "Unrestricted area" means all areas outside the boundaries of a restricted area as defined in paragraph ~~(K)~~ (M) of this rule.

~~(M)~~(O) Referenced materials. This chapter includes references to certain matter or materials. The text of the referenced materials is not included in the rules contained in this chapter. Information on the availability of the referenced materials as well as the date of, and/or the particular edition or version of the material is included in this rule. For materials subject to change, only the specific versions specified in this rule are referenced. Material is referenced as it exists on the effective date of this rule. Except for subsequent annual publication of existing (unmodified) Code of Federal Regulation compilations, any amendment or revision to a referenced document is not applicable unless and until this rule has been amended to specify the new dates.

- (1) Availability. The referenced materials are available as follows:

~~National fire protection association. Information on the national protection association codes may be obtained by contacting the association at 1 Batterymarch park, Quincy, Massachusetts 02169-7471, 617-770-3000. Codes may be ordered [www.nfpa.org/catalog/home/index.asp](http://www.nfpa.org/catalog/home/index.asp). Copies of the code exist or are available at most public libraries and "The State Library of Ohio."~~

(a) Clean Air Act. Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the act as amended in 1990 is also available in electronic format at [www.epa.gov/oar/caa/](http://www.epa.gov/oar/caa/). A copy of the act is also available for inspection and use at most public libraries and "The State Library of Ohio."

(b) Code of Federal Regulations (CFR). Information and copies may be obtained by writing to: "Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954." The full text of the CFR is also available in electronic format at <http://www.ecfr.gov>.

The CFR compilations are also available for inspection and use at most public libraries and "The State Library of Ohio."

(c) National fire protection association. Information on the national protection association codes may be obtained by contacting the association at 1 Batterymarch park, Quincy, Massachusetts 02169-7471, 617-770-3000. Codes may be ordered [www.nfpa.org/catalog/home/index.asp](http://www.nfpa.org/catalog/home/index.asp). Copies of the code exist or are available at most public libraries and "The State Library of Ohio."

(2) Referenced materials.

NFPA publication 1403; "Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures;" published April 30, 2007.

(a) 40 CFR 60.2974; "Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?;" as published in the July 1, 2012 Code of Federal Regulations.

(b) 40 CFR 60.3069; "Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?;" as published in the July 1, 2012 Code of Federal Regulations.

(c) NFPA publication 1403; "Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures;" published April 30, 2007.

(d) Section 129 of the Clean Air Act; contained in 42 USC 7429; "Solid waste combustion;" published January 2, 2006 in Supplement V of the 2000 Edition of the United States Code.



- (A) Notwithstanding any provision in this chapter, no open burning shall be conducted in an area where an air alert, warning, or emergency under Chapter 3745-25 of the Administrative Code is in effect.
- (B) No provisions of this chapter, permitting open burning, and no permission to open burn granted by the Ohio EPA, shall exempt any person 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.

**Open burning in restricted areas.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph (M) of rule 3745-19-01 of the Administrative Code titled "Referenced materials."]

- (A) No person or property owner shall cause or allow open burning in a restricted area except as provided in paragraphs (B) to (D) of this rule or in section 3704.11 of the Revised Code.
- (B) Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA:
  - (1) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots and similar occupational needs.
  - (2) Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:
    - (a) They are 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;
    - (b) They are not used for waste disposal purposes; and
    - (c) They shall have a total fuel area of three feet or less in diameter and two feet or less in height.
  - (3) Disposal of hazardous explosive materials, military munitions or explosive devices that require immediate action to prevent endangerment of human health, public safety, property or the environment and that are excluded from the requirement to obtain a hazardous waste permit pursuant to paragraph (D)(1)(d) of rule 3745-50-45 of the Administrative Code.
  - (4) Recognized training in the use of fire extinguishers for commercial or industrial fire prevention.
  - (5) Fires set at the direction of federal, state, and local law enforcement officials for the purpose of destruction of cannabis sativa (marijuana) plant vegetation, processed marijuana material and/or other drugs seized by federal, state, or local law enforcement officials.



Fires allowed by paragraphs (B)(1), (B)(2) and (B)(4) of this rule shall not be used for waste disposal purposes and shall be of minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.

(C) Open burning shall be allowed for the following purposes with prior notification to the Ohio EPA in accordance with paragraph (B) of rule 3745-19-05 of the Administrative Code:

- (1) Prevention or control of disease or pests, with written or oral verification to the Ohio EPA from the Ohio department of health or local health department, the centers for disease control and prevention, cooperative extension service, Ohio department of agriculture, or United States department of agriculture, that open burning is the only appropriate disposal method.
- (2) Bonfires or campfires used for ceremonial purposes that do not meet the requirements of paragraph (B)(2) of this rule, provided the following conditions are met:
  - (a) They have a total fuel area no greater than five feet in diameter by five feet in height and burn no longer than three hours;
  - (b) They are not used for waste disposal purposes; and
  - (c) They are 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.
- (3) Disposal of agricultural waste generated on the premises if the following conditions are observed:
  - (a) The fire is set only when atmospheric conditions will readily dissipate contaminants;
  - (b) The fire does not create a visibility hazard on the roadways, railroad tracks, or air fields;
  - (c) The fire is located at a point on the premises no less than one thousand feet from any inhabited building not located on said premises;
  - (d) The wastes are stacked and dried to provide the best practicable condition for efficient burning; and
  - (e) No materials are burned which contain rubber, grease, asphalt, liquid petroleum products, plastics or building materials.

(D) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA, in accordance with paragraph (A) of rule 3745-19-05 of the Administrative Code, provided that any conditions specified in the permission are followed:

- (1) Disposal of ignitable or explosive materials where the Ohio EPA determines that there is no practical alternate method of disposal, excluding those materials identified in paragraph (B)(3) of this rule;
- (2) Instruction in methods of fire fighting or for research in the control of fire as recognized by the state fire marshal division of the Ohio department of commerce and the guidelines set forth in the national fire protection association's (NFPA) publication 1403: "Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures," provided that the application required in paragraph (A)(1) of rule 3745-19-05 of the Administrative Code is submitted by the commercial or public entity responsible for the instruction;
- (3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the director and, if required, performed as identified in the appendix to this rule. If deemed necessary, the open burning may be authorized with prior oral approval by the director followed by the issuance of a written permission to open burn within seven working days of the oral approval;
- (4) Recognized horticultural, silvicultural (forestry), range, or wildlife management practices; and
- (5) Fires and/or pyrotechnic effects, for purposes other than waste disposal, set as part of commercial film-making or video production activities for motion pictures and television.



## Appendix

### Open Burning of Storm Debris Conditions for "Extraordinary Circumstances" 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

If a community is located in an area that was declared a state of emergency by the governor for a natural disaster, such as an ice storm, tornado or flood, and the community has demonstrated a severe economic hardship in accordance with the community hardship table below, that would prevent disposal techniques such as chipping or the use of an air curtain destructor, Ohio EPA under paragraph (D)(3) of rule 3745-19-03 or paragraph (C)(3) of rule 3745-19-04 of the Administrative Code, may allow for the open burning of trees and vegetative wastes provided the local community meets the following guidelines. The local community must request and receive an Ohio EPA open burning permit from the director and the community must follow the following guidelines for open burning of the vegetative material, trees and tree limbs.

1. The material burned must be limited to vegetative material, trees and tree limbs resulting from a natural disaster.
2. All material to be burned shall be dry and in a state to sustain good combustion.
3. No burning shall take place within:
  - a. one hundred feet of any uninhabited structure or powerline;
  - b. three hundred feet of a frequently traveled municipal or township road;
  - c. five hundred feet of any state highway;
  - d. one thousand feet of any interstate highway;
  - e. one-half mile from any school or day care;
  - f. one mile from any hospital, nursing home or any other type of health care facility;
  - g. one thousand feet from any inhabited building;
  - h. one thousand feet from any fuel storage facility with three or less tanks or above ground petroleum or natural gas pipeline; or
  - i. one-half mile from any fuel storage facility with three or more tanks.
4. All fires must be attended at all times during burning until completely extinguished.
5. Burning may not be conducted during unfavorable meteorological conditions such as:
  - a. high winds;
  - b. temperature inversions;
  - c. air stagnation; or

## Appendix (cont)

- a. when a pollution alert or ozone action day has been declared.
6. If at any time a fire creates:
  - a. a threat to public health;
  - b. a nuisance; or
  - c. a fire hazard;the burning shall be extinguished.
7. All burning shall comply with other federal, state, and local laws, rules, and ordinances.
8. Adequate firefighting equipment shall be on-site for extinguishing purposes during burning times.
9. Burning shall be conducted during daylight hours only, and all fires shall be extinguished prior to sunset.
10. The pile to be burned shall be less than or equal to five thousand cubic yards and only one pile may be burned at a time.
11. The district office of Ohio EPA or the local air agency along with the local fire department and health department must be notified at least twenty-four hours in advance of the date and time of the burning.
12. The open burning permit shall be made available at the burning site to state and local officials upon request.
13. The open burning permit shall be valid for no longer than three months from the date of issuance.
14. Any change in the plan must receive an additional approval from the Ohio EPA district office or local air agency, unless the change is to reduce open burning.
15. The Director may add conditions to an approval letter, as necessary, to prevent a public nuisance or protect the public health or the environment. Such conditions may be based on local air quality conditions, including whether the area is a nonattainment county or has been redesignated from nonattainment to attainment status.

Ohio Environmental Protection Agency  
Permit Requirements for Air Curtain Destructors Employed for Landscape Waste

The accumulation and open burning with air curtain destructors (ACDs) of storm debris shall be allowed by municipalities upon receipt of written permission from Ohio EPA or the appropriate local air agency, provided the following conditions are met:

1. The material to be burned shall be limited to vegetative material, trees and tree limbs.
2. The ACD shall be at least 0.5 mile from any hospital, day care, nursing home or any other type of health care facility.
3. The ACD shall be at least five hundred feet from any inhabited building not located on said premises.
4. All material to be burned shall be dry and in a state to sustain good combustion.



## Appendix (cont)

1. Burning may not be conducted during unfavorable meteorological conditions such as high winds, temperature inversions, air stagnation, when a pollution alert or ozone action day has been declared. The open burning shall not create a nuisance. The emission of smoke, ashes, dust, dirt, odors or any other substance in such a matter or amount as to endanger the health, safety or welfare of the public or cause unreasonable injury or damage to property, is a public nuisance and is prohibited.
1. All material shall be burned in an open pit which shall be constructed as follows:
  - a. The pit shall be rectangular in shape with four vertical walls.
  - b. The maximum length shall be no longer than the blower manifold.
  - c. The maximum width shall be less than ten feet. A width of six to eight feet is recommended.
  - d. The nozzles are to be directed down into the pit at a twenty-five to thirty degree angle from the horizontal.
2. The ACD may be shut off during start-up for a maximum of twenty-five minutes. Otherwise, the ACD must remain in operation until the fire has been completely extinguished. Smoldering will not be allowed.
3. The burn pit is not to be loaded above two-thirds of its total depth.
4. The loading of the pit shall be done in such a way as to minimize the amount of soil entering the pit.
5. The community must have personnel present at all times when open burning is taking place.
6. The Ohio EPA or local air agency inspector shall be notified when open burning will take place and shall be allowed complete access to the site before, during and after the operation of the ACD.

## Appendix (cont)

## Community Hardship Table

Village/Township/City Size	Population	Controlled Burning Option	Open Burning Option*
Small Community	Population of less than 5,000	Open burning of storm debris allowed using air curtain destructor if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$5,000.	Open burning of storm debris if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$5,000
Medium Community	Population of greater than 5,000, but less than 25,000	Open burning of storm debris allowed using air curtain destructor if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$10,000.	Open burning of storm debris allowed if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$10,000.
Large Community	Population greater than 25,000	Open burning of storm debris allowed using air curtain destructor if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$20,000.	Open burning of storm debris allowed if the following conditions apply: (1) area was declared a state of emergency by the governor and (2) disposal of storm debris using other disposal methods exceeds \$20,000.

\*Allowed only if specifically approved by the director in response to community's demonstration of severe economic hardship.



3745-19-04

**Open burning in unrestricted areas.**

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see paragraph ~~(M)~~ (O) of rule 3745-19-01 of the Administrative Code titled "Referenced materials."]

(A) No person or property owner shall cause or allow open burning in an unrestricted area except as provided in paragraphs (B) to (D) of this rule or in section 3704.11 of the Revised Code.

(B) Open burning shall be allowed for the following purposes without notification to or permission from the Ohio EPA, except as required in paragraph (B)(3)(f) of this rule:

(1) Heating tar, welding, acetylene torches, highway safety flares, heating for warmth of outdoor workers and strikers, smudge pots, and similar occupational needs.

(2) Bonfires, campfires and outdoor fireplace equipment, whether for cooking food for human consumption, pleasure, religious, ceremonial, warmth, recreational, or similar purposes, if the following conditions are met:

(a) They are 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;

(b) They are not used for waste disposal purposes; and

(c) They shall have a total fuel area of three feet or less in diameter and two feet or less in height except when such fire is used for ceremonial purposes it may have a total fuel area no greater than five feet in diameter and five feet in height, if the ceremonial fire burns no longer than three hours.

(3) Disposal of residential waste or agricultural waste generated on the premises if the following conditions are observed:

(a) The fire is set only when atmospheric conditions will readily dissipate contaminants;

(b) The fire does not create a visibility hazard on the roadways, railroad tracks, or air fields;

- (c) The fire is located at a point on the premises no less than one thousand feet from any inhabited building not located on said premises;
  - (d) The wastes are stacked and dried to provide the best practicable condition for efficient burning; and
  - (e) No materials are burned which contain rubber, grease, asphalt, liquid petroleum products, plastics or building materials.
  - (f) 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 twenty feet in diameter by ten feet in height (or four thousand cubic feet) and for residential waste if the size of the waste pile exceeds ten feet by ten feet by ten feet (or one thousand cubic feet).
- (4) Disposal of hazardous explosive materials, military munitions or explosive devices that require immediate action to prevent endangerment of human health, public safety, property or the environment and that are excluded from the requirement to obtain a hazardous waste permit pursuant to paragraph (D)(1)(d) of rule 3745-50-45 of the Administrative Code.
- (5) Recognized training in the use of fire extinguishers for commercial or industrial fire prevention.
- (6) Fires set at the direction of federal, state, and local law enforcement officials for the purpose of destruction of cannabis sativa (marijuana) plant vegetation, processed marijuana material and/or other drugs seized by federal, state, or local law enforcement officials.

Fires allowed by paragraphs (B)(1), (B)(2) and (B)(5) of this rule shall not be used for waste disposal purposes, and shall be of the minimum size sufficient for their intended purpose; the fuel shall be chosen to minimize the generation and emission of air contaminants.

- (C) Open burning shall be allowed for the following purposes upon receipt of written permission from the Ohio EPA, in accordance with paragraph (A) of rule 3745-19-05 of the Administrative Code, provided that any conditions specified in the permission are followed:
- (1) Disposal of ignitable or explosive materials where the Ohio EPA determines that there is no practical alternate method of disposal, excluding those



materials identified in paragraph (B)(4) of this rule;

- (2) Instruction in methods of fire fighting or for research in the control of fire as recognized by the state fire marshal division of the Ohio department of commerce and the guidelines set forth in the national fire protection association's (NFPA) publication 1403: "Standard on Live Fire Training Evolutions, Chapter 4, Acquired Structures," provided that the application required in paragraph (A)(1) of rule 3745-19-05 of the Administrative Code is submitted by the commercial or public entity responsible for the instruction;
- (3) In emergency or other extraordinary circumstances for any purpose determined to be necessary by the director and, if required, performed as identified in the appendix to rule 3745-19-03 of the Administrative Code. If deemed necessary, the open burning may be authorized with prior oral approval by the director followed by the issuance of a written permission to open burn within seven working days of the oral approval;
- (4) Disposal of land clearing waste generated on the premises if the following conditions are observed:
  - (a) The fire is set only when atmospheric conditions will readily dissipate contaminants;
  - (b) The fire does not create a visibility hazard on roadways, railroad tracks, or air fields;
  - (c) The fire is located at a point on the premises no less than one thousand feet from any inhabited building not located on said premises; and
  - (d) An air curtain destructor or other device or method determined by the director to be at least as effective is used to curtail release of air contaminants;
- (5) Recognized horticultural, silvicultural (forestry), range, or wildlife management practices; and
- (6) Fires and/or pyrotechnic effects, for purposes other than waste disposal, set as part of commercial film-making or video production activities for motion pictures and television.
- (7) Disposal of land clearing waste utilizing an air curtain burner if the following

conditions are met:

- (a) The owner or operator shall apply for a permit-to-install as required in Chapter 3745-31 of the Administrative Code and a title V permit as required in Chapter 3745-77 of the Administrative Code.

[Comment: Pursuant to Section 129 of the Clean Air Act and 40 CFR 60.2974 and 40 CFR 60.3069, air curtain burners are subject to and must fulfill the requirements of the Title V permitting program and must apply for and obtain a title V air permit.]

- (b) The siting of the air curtain burner shall be at a point on the premises no less than one thousand feet from any inhabited building not located on said premises.

- (c) No materials may be charged to the burner less than thirty minutes after sunrise and shall be completed not less than sixty minutes prior to sunset. A log shall be maintained on site, and available upon request, that documents daily beginning and ending times of charging.

- (d) The air curtain burner shall be attended at all times while burning is occurring and until flames are no longer visible.

- (e) The air curtain shall be maintained until all material within the air curtain burner has been reduced to coals, and flames are no longer visible.

- (f) At no time shall material be loaded into the air curtain burner such that the material extends into and above the air curtain, except for brief moments during loading.

- (g) The air curtain burner shall be used only for the disposal of land clearing wastes as defined in paragraph (I) of rule 3745-19-01 of the Administrative Code.

- (D) Open burning shall be allowed, with prior notification to the Ohio EPA in accordance with paragraph (B) of rule 3745-19-05 of the Administrative Code; for the purpose of prevention or control of disease or pests, with written or oral verification to the Ohio EPA from the Ohio department of health or local health department, the centers for disease control and prevention, cooperative extension service, Ohio department of agriculture, or United States department of agriculture, that open burning is the only appropriate disposal method.



**(A) Permission:**

- (1) An application for permission to open burn shall be submitted in writing to Ohio EPA. The applicant shall allow Ohio EPA at least ten working days to review the permit. Applicant may proceed with burn upon receipt of written permission from Ohio EPA. Saturday, Sunday, and legal holidays shall not be considered working days. The application shall be in such form and contain such information as required by the Ohio EPA.
- (2) Except as provided in paragraphs (A)(6) and (A)(7) of this rule, such applications shall contain, a minimum, information regarding:
  - (a) The purpose of the proposed burning;
  - (b) The quantity or acreage and the nature of the materials to be burned;
  - (c) The date or dates when such burning will take place;
  - (d) The location of the burning site, including a map showing distances to residences, populated areas, roadways, air fields, and other pertinent landmarks; and
  - (e) The methods or actions which will be taken to reduce the emissions of air contaminants.
- (3) Permission to open burn shall not be granted unless the applicant demonstrates to the satisfaction of the Ohio EPA that open burning is necessary to the public interest; will be conducted in a time, place, and manner as to minimize the emission of air contaminants, when atmospheric conditions are appropriate; and will have no serious detrimental effect upon adjacent properties or the occupants thereof. The Ohio EPA may impose such conditions as may be necessary to accomplish the purpose of this chapter.
- (4) Except as provided in paragraph (A)(6) of this rule, permission to open burn must be obtained for each specific project. In emergencies where public health or environmental quality will be seriously threatened by delay while written permission is sought, the fire may be set with oral permission of the Ohio EPA.
- (5) Violations of any of the conditions set forth by the Ohio EPA in granting permission to open burn shall be grounds for revocation of such permission and refusal to grant future permission, as well as for the imposition of other sanctions provided by law.

- (6) The Ohio department of commerce, division of state fire marshal, may request permission to open burn on an annual basis for the purpose of training firefighters on pre-flashover conditions using the Ohio fire academy's mobile training laboratory at either the academy or at other training sites in Ohio. The annual application required pursuant to paragraph (A)(1) of this rule shall contain information as required in paragraph (A)(2) of this rule, except the information required in paragraphs (A)(2)(c) and (A)(2)(d) of this rule need not be provided unless it is available at the time of submittal of the application. The academy shall contact the appropriate Ohio EPA district office or local air agency at least five working days before each training session of the date or dates when the training session will take place and its location. Saturday, Sunday, and legal holidays shall not be considered working days.
- (7) For open burning defined under paragraph (D)(2) of rule 3745-19-03 and paragraph (C)(2) of rule 3745-19-04 of the Administrative Code, permission to open burn shall not be granted unless the applicant provides proof of written notice of intent to demolish received by the appropriate Ohio EPA field office in accordance with rule 3745-20-03 of the Administrative Code.

(B) Notification:

- (1) Notification shall be submitted in writing at least ten working days before the fire is to be set. Saturday, Sunday, and legal holidays shall not be considered working days. It shall be in such form and contain such information as shall be required by the Ohio EPA.
- (2) Such notification shall inform the Ohio EPA regarding:
  - (a) The purpose of the proposed burning;
  - (b) The nature and quantities of materials to be burned;
  - (c) The date or dates when such burning will take place; and
  - (d) The location of the burning site.
- (3) The Ohio EPA, after receiving notification, may determine that the open burning is not allowed under this chapter and the Ohio EPA shall notify the applicant to this effect.



**Open burning unilateral order.**

- (A) 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. A separate violation is assessed for each day (twenty-four hour period) or portion of a day the violation occurs.
- (B) The director's authority under paragraph (A) of this rule is in addition to, and not in limitation of, the director's authority under section 3704.06 of the Revised Code to request the attorney general to initiate legal action to seek penalties of not more than twenty-five thousand dollars for each day of each violation for the violation of rules in this chapter.

## **ATTACHMENT 2**

### **NOTICE TO ALL AWPOA RESIDENTS**



# **NOTICE TO ALL AWPOA RESIDENTS**

AWPOA has received a notice from the Ohio EPA that we are in violation of the Ohio EPA burning regulations, both by individual residents and by the Association.

**EFFECTIVE NOVEMBER 7, 2014**

- 1. No resident is allowed to burn anything on any Common Ground.**
- 2. No resident is allowed to burn yard waste, leaves, tree trimmings, etc. on their own property.**
- 3. The only burning allowed on your own property per the EPA is a recreational fire, ie. a campfire. Per the EPA regulations the fire can be no more than 3 feet in diameter and no more than 2 feet high. Only clean seasoned firewood is allowed, no other waste as in #2 above.**

The above regulations come directly from the EPA and as such any violation can cause the EPA to take punitive action against the Association. All residents are advised that if caught violating the above rules they may be reported directly to the EPA in an effort to remove the burden of liability from the Association. Further, if the actions of any resident result in punitive proceedings to be taken against the AWPOA by the EPA or any other enforcement agency, the violating resident will be liable for and assessed all costs associated with, but not limited to; legal fees, fines, Board members time at \$100.00 per hour, and any and all assessed costs associated with defending and remedying the actions brought forth against the AWPOA by the violating resident. Further, by this above notification, the AWPOA will assume no responsibility in defending the actions of any violating resident taken by the EPA or any other enforcement agency against the violating resident.

## **ATTACHMENT 3**

### **LETTER REQUESTING CLARIFICATION**



Thomas C. Cikotte  
Division of Air Pollution Control

Arlington Woods Property Owners Association is in receipt of your certified letter, dated November 5, 2014, referencing Wood County Open Burning and its' application to AWPOA.

First and foremost, AWPOA never intended, nor does it intend to violate any OHIO EPA Regulations. In fact a number of years back, AWPOA decided to move our "burn pile" further away from any dwelling in Arlington Woods because we discovered that it violated the OHIO EPA setback rule.

AWPOA feels it has been abiding by the OHIO EPA Open Burning Regulations under the following assumptions:

AWPOA does not fall within the definition "Restricted area" as defined in (M)(1) or (M)(2) of the list of definitions supplied in the Informational Letter, therefore AWPOA is in an "Unrestricted area". Also, AWPOA is a Nonprofit Corporation with 37 properties, not a Municipal Corporation.

AWPOA is as the name implies an association/group of property owners with a combined ownership of approximately 120 acres. Each owner has a deeded lot within this 120 acres and a one-thirty-seventh ownership in the remaining acreage or their common ground. There are rules governing what each owner may do on their deeded lot and on their common ground and the owners set the rules via a Board of Trustees. Each property was assessed an amount to purchase their common ground and each property pays the real estate taxes on their one-thirty-seventh ownership of their common ground. AWPOA has set its' own regulations that do not allow any open burning of any waste on the deeded lot or their common ground within the acreage containing the cluster of dwellings in Arlington Woods. The exception is for "campfires". One of the AWPOA regulations is that any waste (brush, limbs, etc., NO leaves, NO construction debris, etc.) had to be placed on the "burn pile". Then on a bi-annual basis or more often if the size of the pile exceeded the approximate area in the OHIO EPA Regulations, several owners would join together to burn the pile. As an added precaution the local Fire Department was advised of our intention to burn. The fire was constantly monitored until completely burned. As such AWPOA assumed that we were in compliance, because the owner was moving the waste on his property to a location to be burned on his property at the proper distance from any dwelling on their 120 acres or any neighboring structures and AWPOA performed a safe, controlled burn.

As stated at the beginning, AWPOA has no intention of violating any OHIO EPA Regulations. AWPOA would however like a clearer understanding of why the OHIO EPA feels AWPOA is in non-compliance of the Open Burning Regulations.

Thank you.

Sincerely,  
Dirk Ward  
President, AWPOA Board of Trustees



## **ATTACHMENT 4**

### **EPA LETTER RESPONDING TO REQUEST FOR CLARIFICATION**

**THE RULES AND REGULATIONS MENTIONED  
IN THIS LETTER ARE THE SAME AS IN THE INITIAL  
LETTER FROM THE EPA, THEY ARE NOT RECOPIED  
HERE.**





John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

Re: Wood County  
Open Burning Complaint  
**Notice of Violation (NOV) &  
Return to Compliance (RTC)**

November 18, 2014

CERTIFIED MAIL

Mr. Dirk Ward, President  
Board of Trustees  
Arlington Woods Property Owners Association  
P.O. Box 63  
Rudolph, Ohio 43462

Dear Mr. Ward:

This office had received several inquiries concerning open burning being conducted in the Arlington Woods (AW) area. As a result, this office sent you, on behalf of the Arlington Woods Property Owners Association (AWPOA), an informational letter regarding the open burning rules in Ohio and how they pertain to AWPOA property, as a proactive measure to help you avoid violation of the rules.

In your response you confirmed that AW property owners take material from their property to a community burn pile and burn the material on a property that is equally owned by 37 parties in the AWPOA. This occurs two, or more, times a year. Based on these statements, there is sufficient evidence to determine that illegal open burning did occur. This is a violation of both Ohio Administrative Code (OAC) rule 3745-19-04(A) and Ohio Revised Code (ORC) 3704.05. Because the fire has been extinguished, you are no longer in violation and the property is considered to have returned to compliance with the above cited violations.

To be clear, you are now being cited for a violation, however, no additional action is being taken at this time. Be aware that future violations may result in this agency taking elevated enforcement action, which may include, but is not limited to, fines in a civil action.

A copy of the OAC rules pertaining to open burning has been enclosed for your review. Please provide a written response acknowledging your receipt of this letter and your understanding of the rules. If you do not understand the rules please contact this office for additional explanation before responding. Your response is requested no later than December 5, 2014.

In your response to the informational letter, you stated "AWPOA would however like a clearer understanding of why the OHIO EPA feels AWPOA is in non-compliance of the Open Burning Regulations." There are several reasons why AWPOA is in violation. Please refer to the regulation citations when reading the explanation below.

All property owned by the AWPOA and the AW residents is in an "unrestricted area", as defined in OAC rule 3745-19-01(N), therefore, the rules in OAC 3745-19-04 apply. Any wastes generated by AW residents may be considered a "residential waste", as defined in OAC rule 3745-19-01(L). To be able to burn a residential waste one must abide with the restrictions in OAC rule 3745-19-04(B)(3). Please also note that OAC rule 3745-19-04(B)(3) allows for the disposal of wastes "generated on the premises" which means that Ohio residents can only burn their wastes on the property on which it was generated. As soon as the wastes are taken off the property they were generated on they cannot longer be burned for disposal. No property owner in AW would be able to meet the requirements of this rule because they cannot meet the 1000' setback requirement in OAC rule 3745-19-04(B)(3)(c) and remain on their property.

The AWPOA is not a "one-, two- or three-family residence" and, therefore, is incapable of generating a "residential waste", per the definition in OAC rule 3745-19-01(L). Although AWPOA members may be a one-thirty-seventh owner of AWPOA property, AWPOA property is not part of a "one-, two- or three-family residence". The AWPOA does not generate "residential wastes" or "agricultural wastes" so the provisions in OAC rule 3745-19-04(B)(3) are not applicable for consideration.

The provisions in OAC rule 3745-19-04(C) allow for open burning with written permission from the Ohio EPA. None of the purposes identified in this rule apply to the AWPOA and, therefore, none of them would be allowed, if requested.

The provisions in OAC rule 3745-19-04(D) allow for open burning "for the purpose of prevention or control of disease or pests" when the criteria of the remainder of that rule are met, which includes "that open burning is the only appropriate disposal method". This provision is not applicable to the situation of the AWPOA burning AW residents' wastes. Please be aware that the Ohio Department of Agriculture - Emerald Ash Borer Program has stated that there are other available means of disposal of ash borer infested material, such as chipping or shredding, so burning is not the "only appropriate disposal method" for wastes from ash trees.

With the above stated, AW residents have traditionally taken their waste to the property of the AWPOA and burned in the communal burn pile, mentioned above, throughout the year.



Mr. Dirk Ward, President  
November 18, 2014  
Page 3

Therefore, the AWPOA has accepted wastes generated from other properties and burned it for disposal, which is a violation of the OAC rule 3745-19-04(A), as cited above.

Please note that the submission of the requested information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek civil penalties as provided in Section 3704.06 of the Ohio Revised Code. Ohio EPA will determine later whether to pursue such penalties in this case. The decision on whether to pursue or decline to pursue such penalties regarding this matter is dependent on several factors, one of which is your future compliance with applicable Ohio EPA requirements.

If you have any questions concerning this letter or the regulations, please feel free to call me at (419) 373-3137 or e-mail at [thomas.cikotte@epa.ohio.gov](mailto:thomas.cikotte@epa.ohio.gov).

Sincerely,



Thomas C. Cikotte  
Division of Air Pollution Control

/llr

Enclosure

pc: Wood County Health Department  
Thomas C. Cikotte, DAPC – NWDO  
Certified Mail Receipt Number 7012 2920 0000 9004 3928

ec: Jim Kavalec, DAPC - CO  
Tom Sattler, DAPC - NWDO  
Thomas C. Cikotte, DAPC – NWDO  
Wendy Licht, DAPC – NWDO  
Jeremy Scoles, DAPC – NWDO

## **ATTACHMENT 5**

**RESPONSE TO EPA**

**“OKAY WE GET IT”**



November 28, 2014

Mr. Thomas C. Cikotte  
Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, OH 43402-9398

Dear Mr. Cikotte:

Arlington Woods Property Owners Association is in receipt of your certified letter, dated November 18, 2014, responding to AWPOA's request for further clarification of AWPOA's non-compliance to OHIO EPA Regulations.

Thank you for your quick response to our request and I believe we now understand the regulations much better. To a lay person, sometimes it is difficult to sort out the regulations that apply. Your explanation certainly made it easier for us to follow.

To further assure you that we do take this seriously, I have included with this letter a copy of the notice that was sent to all residents of Arlington Woods concerning the Association's immediate stance on Open Burning, along with a copy of your Certified Letter and your enclosure of the Regulations. This notice was sent out to the residents effective November 7, 2014, the date we received the Certified Letter.

AWPOA has no intention of violating any OHIO EPA Regulations, and hopefully, as you can see by the Notice sent to the residents, we take it seriously.

If you have any further questions, please do not hesitate to contact me.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk Ward", with a stylized, cursive script.

Dirk Ward  
President, AWPOA Board of Trustees