

PADEP MODEL AIR POLLUTION CONTROL ORDINANCE
Open Burning

An ordinance of (municipality), _____ County, Commonwealth of Pennsylvania for the prevention and control of air pollution; defining certain terms used herein; providing for regulations, exceptions, enforcement orders, responsibility of owners and operators, penalties, unlawful conduct, public nuisances, repealing previous ordinance (number), and validity.

SECTION I. Title

This ordinance shall be known and may be cited as the (municipality) Air Pollution Control Ordinance of (year).

SECTION II. Authority

The (Council-Board) of the (municipality), under, and by virtue of and pursuant to the authority granted by (enabling authority/code) do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the (Council-Board) of (municipality) has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of (municipality), it is hereby declared to be the policy of (municipality) to safeguard the citizens of (municipality) from such air pollution.

SECTION IV. Definitions

The following words, terms, and phrases, when used in this ordinance, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them:

(1) Act 101 Recyclables – Materials which are readily recyclable in many markets including old newsprint, high grade office paper, corrugated cardboard, other marketable grades of paper, mixed paper, aluminum cans, steel or bimetallic cans, mixed cans, amber glass, clear glass, green glass, mixed glass, PET plastics, HDPE plastics, mixed plastics, other recyclable plastics, commingled materials, single stream materials.

(2) Air basin -A geographic area of this Commonwealth as delimited in attachment A.

(3) Air curtain destructor -A mechanical device which forcefully projects a curtain of air across a pit in which open burning is being conducted so that combustion efficiency is increased and smoke and other particulate matter are contained.

(4) Burning -The act of consuming by fire; to flame, char, scorch, or blaze. As used in this ordinance, smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.

(5) Clearing and grubbing wastes -Trees, shrubs, and other native vegetation which are cleared from land during or prior to the process of construction. The term does not include demolition wastes and laden roots.

(6) Composting the process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.

(7) Council-Board -Borough Council, Township Board of Supervisors.

(8) Domestic refuse -Waste which is generated from the normal occupancy of a structure occupied solely as a dwelling by two families or less. The term does not include appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint putrescible waste, solvents, tires, or treated wood.

(9) Leaf Waste – Leaves, garden residue, shrubbery and tree trimmings, and similar material but not including grass clippings.

(10) Municipality -A city, incorporated town, township, borough, county municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

(11) Open burning A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

(12) Person -Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth or the Federal Government, political subdivision, municipality, district, authority, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(13) Yard waste -Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

SECTION V. Regulations

After (the effective date) no person may permit the open burning of material with the exception of the following:

(1) A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Protection's Regional Air Quality Program office and set by or under the supervision of a public officer.

(2) Any fire set for the purpose of instructing personnel in fire fighting, when approved by the Department of Environmental Protection's Regional Air Quality Program office.

(3) A fire set for the prevention and control of disease or pests, when approved by the Department of Environmental Protection's Region Quality Program's Office.

(4) A fire set for the purpose of burning clearing and grubbing waste. If within an air basin an air curtain destructor must be used and must be approved by the Department of Environmental Protection's Regional Air Quality Program's Office.

(5) A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.

(6) A fire set for the purpose of burning that amount of domestic refuse generated from one dwelling, when the fire is on the premises of a structure occupied solely as a dwelling by two families or less and when the refuse results from the normal occupancy of said structure.

There shall be no burning of Act 101 recyclables or leaf waste in Lehigh County, whether at a residence or business. To reduce the unit cost associated with conversion of organics to usable compost, all yard waste and grass clippings collected within the County should be taken to the Lehigh County Organics Recycling Facility, or to a Lehigh County Organics Recycling Facility satellite site, or to a pre-existing, in-County municipally owned composting facility with an active PADEP permit to operate. Increasing the overall volume and variety of incoming organic material will improve the quality of the final product and assure a predictable flow of material through the process. In addition, no resident or business will be allowed to burn any items mandated or collected as a recyclable in the local municipality.

(7) A fire set solely for cooking food.

(8) A fire set solely for recreational or ceremonial purposes.

(9) No fires shall be left unattended. Any burning device shall be covered with a screen and not allowed to smolder.

[Note to the municipality: Municipal ordinances may not be less stringent than the regulations of the Department of Environmental Protection. Municipal ordinances may be more stringent than the regulations. If the municipality wishes to ban open burning of domestic refuse and/or yard waste, delete items 6 and 7 above from the municipal ordinance. If the municipality wishes to totally ban all open burning, simply enact a municipal ordinance which bans all open burning.]

SECTION VI. Enforcement Orders

(1) The (municipality) (supervisor, codes officer, zoning officer, or any other duly authorized agent) shall have the power and duty to enforce the provisions of this ordinance.

(2) The (municipality) may issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful open burning which, in the course of its occurrence, is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of any open burning; or orders requiring production of information. Such an order may be issued if the (municipality) finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the (municipality) finds that any person is in violation of any provision of this ordinance.

(3) The (municipality) may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or affect the purposes of this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the (quasi judicial body) of the (municipality's) order shall not act as a supersedes, provided, however, that, upon application and for cause shown, the (quasi judicial body) may issue such a supersedes under rules established by the (quasi judicial body).

(5) The authority of the (municipality) to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

SECTION VII. Responsibility of Owners and Operators

(1) Whenever the (enforcing officer) finds that open burning is occurring in the (municipality), other than those exceptions noted in Section V above, the (enforcing officer) may order the owner or operator to take corrective action in a manner satisfactory to the (municipality) or the (enforcing officer) may order the owner or operator to allow access to the land by the (enforcing officer) or a third party to take such action.

(2) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, the (municipality) may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section IX of this ordinance.

SECTION VIII. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the (municipality) issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees of the (municipality) authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this ordinance, and the (municipal) Counsel is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this (municipality). There is no accelerated rehabilitative disposition authorized for a summary offense.

SECTION IX. Civil Penalties

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this ordinance or any order issued pursuant to this ordinance, the (municipality) may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, the (municipality) shall consider the willfulness of the violation; damage to air, soil, water, or other

natural resources of the (municipality) or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the (municipality); the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

[Note to the municipality: The allowable amounts for the penalty increase in 1995 to \$15,000.00 per day for each violation and in 1996 and thereafter to \$25,000.00 per day for each violation. The municipality may want to write these amounts into its ordinance as appropriate.]

(2) When the (municipality) proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the (quasi judicial body) within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the (quasi judicial body) within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the (municipality). If, through (administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the (quasi judicial body) shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The (quasi judicial body) shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal.

The (quasi judicial body) may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the (quasi judicial body) finds that the appellant is financially unable to pay. The (quasi judicial body) shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the (municipality) and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a) (2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the (municipality). The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the (municipality), the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

[Note to the municipality: The penalties and remedies available to the municipality are those set forth in the Air Pollution Control Act (APCA), as amended, 35 P.S. 4012, Sections 9, 9.1, and 12(9). Each municipality may tailor the penalty provisions to reflect the municipality's preferred penalty policy, within the legal limits of the APCA.]

SECTION X. Unlawful Conduct

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of the (municipality); or to cause a public nuisance; or to cause air, soil, or water pollution resulting from an open burning incident, or to hinder, obstruct, prevent, or interfere with the (municipality) or its personnel in their performance of any duty hereunder, including denying the (enforcing

officer) access to the source or facility, or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this ordinance. The owner or operator of an open burning source shall not allow pollution of the air, water, other or natural resources of the (municipality) to result from the source.

SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by the (municipality) under this ordinance shall constitute a public nuisance. The (municipality) shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the (municipality) may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section IX. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

SECTION XII. Repealer

Ordinance (no.____) previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XIII. Validity

The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance. It is hereby declared to be the intent of the (Council-Board) that this ordinance would have been adopted if such illegal, invalid, or unconstitutional section, clause, sentence, part, or provision had not been included herein.

SECTION XIV. Effective Date

This ordinance shall become effective on the (no.) day of (month) (year).

Attachment A

Air basins of the Commonwealth of Pennsylvania as delimited in 25 Pa. Code 121.1. Definitions.

Allentown, Bethlehem, Easton air basin - The following political subdivisions in Lehigh County: City of Allentown, City of Bethlehem, Catasauqua Borough, Coplay Borough, Emmaus Borough, Fountain Hill Borough, Hanover Township, Salisbury Township, South Whitehall Township and Whitehall Township, and the following political subdivisions in Northampton County, Allen Township, Bath Borough, City of Bethlehem, Bethlehem Township, East Allen Township, City of Easton, Freemansburg Borough, Glendon Borough, Hanover Township, Hellertown Borough, Lower Nazareth Township, Lower Saucon Township, Nazareth Borough, North Catasauqua Borough, Northampton Borough, Palmer Township, Stockertown Borough, Tatamy Borough, Upper Nazareth Township, West Easton Borough, and Wilson Borough.