



Inter-office communication

To: District Office Chiefs and Local Air Agency Directors (via e-mail notification)
From: Mike Ahern, DAPC/PIDM
CC: see list at end of memo (via email)
Date: August 9, 1993 [Revised July 15, 1997] [Revised September 02, 2004] [Revised May 30, 2007] [March 5, 2008] January 13, 2011
Re: Open burning permissions and denials procedural requirements update

What this memo covers

This memo updates the previous versions of the *Open burning permission and denials* memo dated August 1993, July 1997, September 2004, May 2007 and March 5, 2008 to reflect the new Director and associated delegation.

The purpose of this memo is to:

- Identify and document common processing questions
- Provide templates for open burning permissions and denial letters (including appeal provisions)
- Establish and document the procedures for public notice and OEPA *Weekly Review* publication of all open burning actions

What this memo does not cover

- OAC [Chapter 3745-19](#) contains the open burning standards.
- [Engineering Guide 53](#) provides Interpretation of Open Burning Standards.
- *Open burning permission request form* – located on the Ohio EPA, Division of Air Pollution Control web page at [www http://www.epa.state.oh.us/dapc/general/openburning.html](http://www.epa.state.oh.us/dapc/general/openburning.html)
- *Open burning permission notification form* – located on the Ohio EPA, Division of Air Pollution Control web page at [www http://www.epa.state.oh.us/dapc/general/openburning.html](http://www.epa.state.oh.us/dapc/general/openburning.html)

Common processing questions

- **Are permissions/denials required to be sent by certified mail?**
Yes. Each written permission or denial is an action of the Director. The letter must be sent via certified mail to ensure appeal rights of the recipient are preserved. If the certified mail is rejected, the address and contact should be checked and the correspondence should be sent again via certified mail. Note that the new request forms include a request for a phone number or the requestor. This may aid confirming a correct address for mailing purposes. If the mail is rejected a second time, the correspondence can be hand-delivered. If unsuccessful, simply

make a note in the open burning file and retain the correspondence according to the records retention schedule.

- **Can an approved burn in a restricted area occur when the requestor receives the certified permission?**

Not necessarily. OAC rule 3745-19-05(A)(1) states:

- *An application for permission to open burn 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 a working day.*

The burn must occur, at a minimum eleven days from the date of the request and after approval has been received unless the permission specifically waives the ten day period. The ten day period is included so that the request can be evaluated (including a possible site visit), processing of the request, and public notice of the approval.

- **Does a new application need to be submitted if conditions don't permit the burn to occur within the authorized period?**

Generally, no. The requestor can fax in a letter indicating the reason the burn did not occur or could not be completed. You can process another permission based on the letter and the original application. No ten day waiting period is needed in this case. A new application may be required if the material to be burned or the location of the burn is different from the original application.

- **Are permissions issued as final actions?**

Permissions are to be issued as final actions, with appeal rights to the Environmental Review Appeals Commission; denials are to be issued as proposed actions, with the right to an adjudication hearing. To assure uniformity the formats attached to this memorandum (Attachment A and B) will be used.

Copies of all permission and denial letters must be sent on the date of issuance to Mike Ahern, Manager, PIDM so that they can be placed in the Director's journal.

Are denials issued as final actions?

No. Denials must be issued as proposed actions to allow the applicant to request adjudication of the denial. However, the template letter provides for a future effective date. This future effective date must be at least 30 days after the issue date of the proposed denial. Public notice of the denial in WRAPN will be identified as a proposed denial with a future effective date (see WRAPN instruction below).

Who gets copies of permission and denial letters?

Copies of all permission and denial letters must be sent on the date of issuance to Mike Ahern, Manager, PIDM so that they can be placed in the Director's journal.

Can I group process requests?

Generally, it is better to process each request individually so that the actions are separately appealable. However, there may be instances where it makes sense to group multiple requests into one approval or denial. Public notice of like-kind actions can be group processed as long as each individual action is clearly identified in the notice (see WRAPN instruction below).

How are actions public noticed and published in the Agency publication *Weekly Review*?

As of January, 2008, all District Office and local air agencies (with the exception of Lake County General Health District and Mahoning-Trumbull APC) have access to the Agency electronic public notice request system (WRAPN) via the CITRIX VPN. Each open burning contact has been granted a user name and password for the system. This system replaces the hard copy

public notice/weekly review request forms. Please contact Mike Ahern if you do not have a user account in the WRAPN.

▪ *Following are the steps for accessing the secure system for **local air agencies**:*

- 1) Log into WRAPN via the Remote Access Server (RAS) – contact Mike Ahern if you do not have a WRAPN icon on your desktop or in your program list in Windows
- 2) Complete a notice request for each permission/denial (see Attachment “C” for details)
- 3) Save the request
- 4) When you have completed all the notices, Exit out of WRAPN

▪ *Following are the steps for accessing the secure system for **OEPA District Offices**:*

- 1) Have your LAN Administrator set WRAPN up for you on your desktop
- 2) Log into WRAPN
- 3) Complete a notice request for each permission/denial (see Attachment “C” for details)
- 4) Save the request
- 5) Exit out of WRAPN

The system will gather all requested entered during the week and will publish them in a combined Agency notice to be sent by legal services to the appropriate newspaper. The requests will also be combined into the Agency “Weekly Review” publication and be posted to the Agency Weekly Review and Public Notice web page.

This document can be electronically accessed via the Answer Place. Log in using your Ohio EPA or local air agency account and search on “Ohio EPA’s regulations on open burning” once you are logged in. This document will appear below the information presented to the public on this topic if you are logged into the Answer Place with a valid DO/laa account. If you have any questions about this memorandum or the procedures outlined herein please contact me at (614) 644-3631 or Lee Burkleca at (614) 728-1344

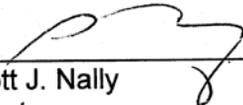
*Cc: Drew Bergman, Supervising Attorney
Zona Clements, Hearing Clerk
Ken Schultz, DERR
Tom Kalman, DAPC
Bob Hodanbosi, DAPC
District Air Unit Supervisors
Permitting & Enforcement Committee*

enclosure: Delegation of Authority, approval letter, denial letter, WRAPN instructions, WRAPN results Attachments

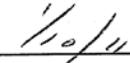
**DELEGATION OF AUTHORITY REGARDING:
OPEN BURNING PERMISSIONS AND DENIALS**

I, Scott J. Nally, Director of Environmental Protection, hereby delegate to all Ohio Environmental Protection Agency District Office Chiefs and Local Air Agency Directors, or in their absence, their designated representatives, the authority to sign on my behalf, as my agent, all open burning permissions and denials issued pursuant to Ohio Administrative Code Chapter 3745-19, provided that the person signing any such permission or denial shall specifically state in so signing that he or she is signing as my agent.

This Delegation of Authority supersedes any previous delegation made by me with respect to the subjects specified herein.



Scott J. Nally
Director



Date

ATTACHMENT A - PERMISSION

Issuance Date: **[Date]**
Permission Request Number: **[Unique permission number]**

CERTIFIED MAIL

[name]
[address]
[city]

RE: Permission to Open Burn

Dear **[Salutation]**:

My staff have reviewed your application for permission to open burn, dated **[Date]** . In your application you requested permission to open **burn [type of material and/or purpose]** at **[specific address]**. This address is in a **[restricted/non-restricted]** area. Therefore, your request for permission to open burn is made pursuant to **[cite the specific OAC rule(s)]**.

I find that your request is allowed under the Ohio Administrative Code rules governing open burning. I hereby grant you permission to open burn at the site under the attached conditions You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review appeals commission pursuant to ORC Section 3745.04.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall also be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

Sincerely,

_____, as agent for
Scott J. Nally
Director, Ohio Environmental
Protection Agency

ATTACHMENT B - DENIAL

Issuance Date: **[Date]**
Effective Date: **[Date, should be dated 30 days after the issue date]**
Permission Request Number: **[Unique permission number]**

Certified Mail

[name]
[address]
[city]

RE: Denial of request for permission to Open Burn

Dear **[Salutation]**:

My staff have reviewed your application for permission to open burn, dated **[Date]** .

I must deny permission for the reasons stated below

In your application you requested permission to open burn **[type of material and/or purpose]** at **[specific address]**. Your application must be denied because **[state reasons and cite specific rules; if you wish to offer alternatives for disposal you may do so in a following paragraph]**.

This denial is issued as a proposed action pursuant to Ohio Revised Code Section 3745.07. This action will become final on the date indicated unless you or a citizen objector files an appeal requesting an adjudication hearing within thirty (30) days of the date of issuance as provided by Section 3745.07 of the Ohio Revised Code. Requests for a hearing shall be in writing and shall specify the issues of fact and law to be contested. Requests for hearings shall be sent to the Hearing Clerk, Ohio EPA, Box 1049, 50 West Town Street, Columbus, Ohio 43216-0149.

If you do not appeal this action, it will become final automatically as of the effective date shown above.

If you have any questions regarding the above, please contact **[DO/LAA Contact]** at **[Phone Number]**.

Sincerely,

_____, as agent for
Scott J. Nally
Director, Ohio Environmental
Protection Agency

ATTACHMENT C

Weekly Review and Public Notice (WRAPN) electronic data entry.

Notification
Type: APPROVED PERMISSION FOR OPEN BURNING OAC CHAPTER
Identification No: 070607mwa1 Date of Action: 07/06/2007
Include in:
 Weekly Review
 Public Notice

Entity
Entity Name: John Doe
Mailing Address: 123 Main Street
Twp / City-State-Zip: Jefferson Township, OH 43004
Facility: Franklin
Description: Air
Receiving Waters:

Remarks:
Standard Code: 11 - THIS FINAL ACTION NOT PRECEDED BY PROPOSED ACTION AND IS APPEALAB
Others: Approval to burn two acres for disposal of land clearing waste generated on the premises pursuant to OAC rule 3745-19-04(C)(4).

Meeting / Complaint
Remarks:

Remark Standard Code
THIS FINAL ACTION NOT PRECEDED BY PROPOSED ACTION AND IS APPEALABLE TO ERAC.

Save Mem: 79.1 MB | 7-6-07 14:43:40

Steps for data entry:

(1) **Log In to WRAPN**

Local Air Agency personnel will have establish a connection to WRAPN via the Remote Access Server (RAS). Please contact Mike Ahern if you do not see a WRAPN icon on your desktop or in your programs listing in Windows. District Office personnel should contact the ITS helpdesk if you do not see a WRAPN icon on your desktop or in your programs listing in Windows. Double click the WRAPN icon

(a) RAS access (LAA folks only): A Novell login will appear for the local air agency personnel
Enter:

- (i) User name: *Openburn*
- (ii) Password: *Notices*
- (iii) Select the "Local Workstation" check box

(b) WRAPN Access: District Office personnel should use their normal log in/password; local air agency personnel should use the user name and password provided by DAPC.

(2) **Choose the correct Type:**

(a) Note: it is important to choose the correct type:

- (i) Approved permission for open burning OAC Chapter 3745-19; or,
- (ii) Denied permission for open burning OAC Chapter 3745-19

*You will notice other type codes for air actions; **DO NOT USE THESE.***

(3) **Included In:** These two fields should be defaulted to checked, if not make sure they are so a notice and an entry in the Agency *Weekly Review* are both requested.

- (4) **Identification No:** This field can be populated using the same format your office has used in the past. The key is for the ID to be unique within a calendar year. The suggested format is the date followed by your initials, followed by “a” through “z” or “1” through “99”. See the example above.
- (5) **Date of Action:** This should be the issue date on the permission or denial letter.
- (6) **Entity Name:** This should be who the permission/denial is issued to.
- (7) **County:** This should be the county where the burn is requested to occur. Note: this identifies where the item is printed in the weekly review and which newspaper the notice is published in.
- (8) **Mailing address:** This most times is the mailing address of the applicant. However, for open burning, **this address should reflect where the burn will actually occur**. The address can be descriptive (e.g., ¼ mile south of the intersection of SR A and County Road B).
- (9) **Description:** Should always be “Air”
- (10) **Twp/City-State-Zip:** This most times is the mailing address of the applicant. However, for open burning, **this information should reflect where the burn will actually occur**.
- (11) **Receiving waters:** Leave blank
- (12) **Remarks, Standard Code:** If the action is a permission, use code **11**, if it is a denial, choose code **XX**.
- (13) **Remarks, Others:** This is where the rubber meets the road, be as descriptive as you like. It is suggested you include a slightly modified version of the first paragraph of the permission or denial letter. The idea is to let the public know what is requested to be burned, where, and any conditions for approval/reason for denial.
- (14) **Meeting/Complaint Remarks:** Leave this field blank
- (15) **Choose** *Save from the File menu.*

Other things you can do in WRAPN.....

You can see/modify your entered records:

- (1) Choose “List Notifications” from the tool bar or from the **Actions** option in the menu
- (2) Select the row you want to view/edit
- (3) Make changes
- (4) **Choose** *Save from the File menu.*

You can delete entered records before Thursday, 4:00 pm each week.

- (1) Choose “List Notifications” from the tool bar or from the **Actions** option in the menu
- (2) Select the row you want to view/delete
- (3) Chose “Delete” (the trash can) or “Delete” from the **Actions** option in the menu

You can add multiple entries in one session. After completing an entry:

- (1) Choose “**Data Entry**” from the tool bar or choose “Data Entry” from **the File, Open** option in the menu
- (2) Enter the new notification
- (3) **Choose** *Save from the File menu.*

What will it look like?

See next page.....

The results:



PUBLIC NOTICE RECORD

Notification Type: APPROVED PERMISSION FOR OPEN BURNING OAC CHAPTER 3745-19

Entity Info

Name: John Doe

Address: 123 Main Street

City/Township/Zip: Jefferson Township, OH 43004 **County:** Franklin

Description: Air

Notice Info

Weekly Review

Public Notice

Date Of Action: 07/06/2007

Notification Number: 070607mwa1

Receiving Waters:

Meeting Details:

Standard Remark:

THIS FINAL ACTION NOT PRECEDED BY PROPOSED ACTION AND IS APPEALABLE TO ERAC.

Other Remark:

Approval to burn two acres for disposal of land clearing waste generated on the premises pursuant to OAC rule 3745-19-04(C)(4).

CUYAHOGA

PUBLIC NOTICE

THE FOLLOWING APPLICATIONS AND/OR VERIFIED COMPLAINTS WERE RECEIVED, AND THE FOLLOWING DRAFT, PROPOSED, OR FINAL ACTIONS WERE ISSUED, BY THE OHIO ENVIRONMENTAL PROTECTION AGENCY (OEPA) LAST WEEK. "ACTIONS" INCLUDE THE ADOPTION, MODIFICATION, OR REPEAL OF ORDERS (OTHER THAN EMERGENCY ORDERS); THE ISSUANCE, DENIAL, MODIFICATION OR REVOCATION OF LICENSES, PERMITS, LEASES, VARIANCES, OR CERTIFICATES; AND THE APPROVAL OR DISAPPROVAL OF PLANS AND SPECIFICATIONS. "DRAFT ACTIONS" ARE WRITTEN STATEMENTS OF THE DIRECTOR OF ENVIRONMENTAL PROTECTION'S (DIRECTOR'S) INTENT WITH RESPECT TO THE ISSUANCE, DENIAL, ETC. OF A PERMIT, LICENSE, ORDER, ETC. INTERESTED PERSONS MAY SUBMIT WRITTEN COMMENTS OR REQUEST A PUBLIC MEETING REGARDING DRAFT ACTIONS. COMMENTS OR PUBLIC MEETING REQUESTS MUST BE SUBMITTED WITHIN 30 DAYS OF NOTICE OF THE DRAFT ACTION. "PROPOSED ACTIONS" ARE WRITTEN STATEMENTS OF THE DIRECTOR'S INTENT WITH RESPECT TO THE ISSUANCE, DENIAL, MODIFICATION, REVOCATION, OR RENEWAL OF A PERMIT, LICENSE, OR VARIANCE. WRITTEN COMMENTS AND REQUESTS FOR A PUBLIC MEETING REGARDING A PROPOSED ACTION MAY BE SUBMITTED WITHIN 30 DAYS OF NOTICE OF THE PROPOSED ACTION. AN ADJUDICATION HEARING MAY BE HELD ON A PROPOSED ACTION IF A HEARING REQUEST OR OBJECTION IS RECEIVED BY THE OEPA WITHIN 30 DAYS OF ISSUANCE OF THE PROPOSED ACTION. WRITTEN COMMENTS, REQUESTS FOR PUBLIC MEETINGS, AND ADJUDICATION HEARING REQUESTS MUST BE SENT TO: HEARING CLERK, OHIO ENVIRONMENTAL PROTECTION AGENCY, P.O. BOX 1049, COLUMBUS, OHIO 43216-1049 (TELEPHONE: 614-644-2129). "FINAL ACTIONS" ARE ACTIONS OF THE DIRECTOR WHICH ARE EFFECTIVE UPON ISSUANCE OR A STATED EFFECTIVE DATE. PURSUANT TO OHIO REVISED CODE SECTION 3745.04, A FINAL ACTION MAY BE APPEALED TO THE ENVIRONMENTAL REVIEW APPEALS COMMISSION (ERAC) (FORMERLY KNOWN AS THE ENVIRONMENTAL BOARD OF REVIEW) BY A PERSON WHO WAS A PARTY TO A PROCEEDING BEFORE THE DIRECTOR BY FILING AN APPEAL WITHIN 30 DAYS OF NOTICE OF THE FINAL ACTION. PURSUANT TO OHIO REVISED CODE SECTION 3745.07, A FINAL ACTION ISSUING, DENYING, MODIFYING, REVOKING, OR RENEWING A PERMIT, LICENSE, OR VARIANCE WHICH IS NOT PRECEDED BY A PROPOSED ACTION, MAY BE APPEALED TO THE ERAC BY FILING AN APPEAL WITHIN 30 DAYS OF ISSUANCE OF THE FINAL ACTION. ERAC APPEALS, ACCOMPANIED BY A \$70 FILING FEE WHICH THE COMMISSION IN ITS DISCRETION MAY REDUCE IF BY AFFIDAVIT THE APPELLANT DEMONSTRATES THAT PAYMENT OF THE FULL AMOUNT OF THE FEE WOULD CAUSE EXTREME HARDSHIP, MUST BE FILED WITH: ENVIRONMENTAL REVIEW APPEALS COMMISSION, 309 SOUTH FOURTH STREET, ROOM 222, COLUMBUS, OHIO 43215. A COPY OF THE APPEAL MUST BE SERVED ON THE DIRECTOR WITHIN 3 DAYS AFTER FILING THE APPEAL WITH THE ERAC.

APPROVED PERMISSION FOR OPEN BURNING OAC CHAPTER 3745-19

BOY SCOUTS OF AMERICA
5659 MAYFIELD RD
LYNDHURST OH ACTION DATE : 06/01/2007
FACILITY DESCRIPTION: AIR
IDENTIFICATION NO. : OBP 24-07
THIS APPLICATION HAS BEEN GRANTED PERMISSION TO OPEN BURN FOR CEREMONIAL PURPOSES (5'X5'X5' AND BURN NO LONGER THAN 3 HOURS. THE MATERIAL TO BE BURNED WILL BE CLOTH FLAGS. THE BURN WILL BE LOCATED IN THE REAR PARKING LOT. THE BURN WILL TAKE PLACE ON OR AFTER JUNE 14, 2007, WEATHER PERMITTING.