



Division of Air Pollution Control Response to Comments

Rule: OAC Chapter 3745-19, Open Burning Regulations

Agency Contact for this Package

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Ohio EPA held a 30-day public comment period ending July 7, 2017 requesting comments on draft amendments to rules in Ohio Administrative Code (OAC) Chapter 3745-19. This document summarizes the comments and questions received at during the comment period.

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

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

OAC 3745-19-01, "Definitions"

Comment 1: The definitions look to be in alphabetic order with the exception of "Unrestricted Area". Relabel this definition as (P).
(Tim McCarthy, P.E., Safety Engineer, The Ohio State University)

Response 1: The definitions in Ohio Administrative Code (OAAC) rule 3745-19-01 are in alphabetical order. The definition of "Unrestricted Area" belongs in paragraph (O) alphabetically. The existing paragraph (P) titled "Referenced Materials" is not a definition. The paragraph contains information on the version and availability of items referenced in OAC Chapter 3745-19. Ohio EPA declines to make this change.

OAC 3745-19-03, "Open Burning in Restricted Areas" and OAC 3745-19-04, "Open Burning in Unrestricted Areas"

Comment 2: As an official of a conservation agency which serves nearly 800,000 citizens in Hamilton County, Ohio, and as an Ohio Certified Prescribed Fire Manager who is responsible for conservation, restoration, and management of prairie ecosystems. I have reviewed the proposed new revisions to the open burning regulations controlling open burns on prairies and similar ecosystems. I support all of the proposed changes, with the exception of one section which should be stricken. That is 3745-19(C)(4)(d), which reads:

"The person making the notification shall provide reasonable notification to populations potentially impacted by the smoke at least ten days before the burn is scheduled to occur."

This rule will cause an unnecessary burden on those using prescribed burns as a management tool for the following reasons:

1. There is no provided definition of what constitutes "reasonable notification." This is left nebulous, for diverse parties to define.
2. There is no definition of what constitutes "populations potentially impacted." Courts will likely be asked to define these populations, and may do so differently in different jurisdictions. This may result in confusing, complicating, and conflicting requirements which may effectively prohibit the use of prescribed fire in prairies or other ecosystems.
3. The statement is a redundancy of a previous statement in paragraph (C)(4)(b) which states:
'The burn shall be performed when it is anticipated weather conditions will minimize the dispersion of smoke near populated areas and the smoke does not create a visibility hazard on roadways, railroad tracks, or air fields. Smoke dispersion conditions shall be evaluated before, during, and after the fire and actions taken to minimize smoke impacts.'
This provision prohibits burns that allow smoke to impact areas "near populated areas ."
4. After having participated in or supervised Ohio EPA-permitted prairie burns for more than 20 years. I believe there is no demonstrated need for such notification. Ohio Certified Prescribed Fire Managers are already required to conduct burns in a way that lofts smoke above populated areas. The well-intentioned notification requirement, as drafted, creates a new unanticipated set of problems.
5. Despite having access to federal fire weather resources offered by the National Weather Service (NWS), burn managers do not have the ability to predict the date when acceptable prescribed fire weather will occur, especially as far as ten days prior to a burn.

Compliance with this proposed rule would mean notifications will go out, but burning may not take place if the weather isn't appropriate. This will likely mean confusion will result by those who receive the notification. Because each burn plan has a list of parameters of wind speed, direction, humidity and other atmospheric conditions that must be in alignment, prediction of appropriate weather is not realistic until 24-48 hours prior to the burn date, and in actuality the decision to burn is made on-site on the day of the burn, only after the conditions are measured at the location, before the burn.

(Bret Henninger, Natural Resources Director, Great Parks of Hamilton County)

As an Ohio citizen strongly involved in the conservation, restoration, and management of tallgrass prairie ecosystems in Ohio, I have reviewed the proposed new revisions to the open burning regulations controlling open burns on prairies and similar ecosystems. I strongly support all of those changes, except for one new paragraph that must be struck. That paragraph reads:

The person making the notification shall provide reasonable notification to populations potentially impacted by the smoke at least ten days before the burn is scheduled to occur.

Should this paragraph be enacted, exceptionally negative and unintended — but certain — outcomes will occur.

The deficiencies of the paragraph are as follows:

1. There is no provided definition of what constitutes “reasonable notification.” This is left nebulously for all diverse parties to self-define. In the end, various individuals and organizations will petition local or state courts for broad, court-mandated definitions. In a worse case, all individuals within a many-mile radius of the proposed open burn would be defined by the court as being “potentially impacted.” Notification of such populations is, de facto, impossible; thereby accomplishing the court petitioners’ real goal, to cause the prohibition of such open burns.
2. No definition of what constitutes potentially impacted populations is provided. Courts will be free, across the state, in a multitude or jurisdictions, diversely define such populations, utterly confusing, complicating, and effectively prohibiting the open burning of prairies and other wild ecosystems.
3. There is no reasonable requirement for this new paragraph. It is inordinately redundant. Paragraph (4)(b) states:

(b) The burn shall be performed when it is anticipated weather conditions will minimize the dispersion of smoke near populated areas and the smoke does not create a visibility hazard on roadways, railroad tracks, or air fields. Smoke dispersion conditions shall be evaluated before, during, and after the fire and actions taken to minimize smoke impacts.

This provision prohibits burns that allow smoke to disperse “near populated areas.” If the smoke rises, is lofted, into air strata above populated areas (as is the practice Ohio Certified Prescribed Fire Managers and those experienced in prairie burns), there simply will be no smoke at ground level to impact any human populations.

4. From many years of OEPA-authorized open prairie burns, there is no demonstrated need for such notification. The real requirement is to conduct burns that loft smoke above populated areas. The proposed notifications paragraph attempts to solve a problem that doesn't exist, but creates gigantic new, unanticipated or intended problems.
5. Instead, a suggested new paragraph, to this effect — “...emissions from such burns must be naturally and efficiently lofted into the air above downwind human populations. Smoke shall not leave the immediate open burning site at ground level.” — will provide precise language addressing and solving the downwind populations problem. Simply, require the smoke to loft into the air, above downwind populations. When properly conducted, when atmospheric columns are favorable, smoke lofting is natural and effective, as experienced prairie burn technicians know and follow. **(John A. Blakeman, Meadow Environments LLC)**

Sections 3745-19-03 (C)(4)(d) and 3745-19-04 (D)(2)(d) specify “*The person making the notification shall provide **reasonable notification** to populations **potentially impacted** by the smoke at least **ten days** before the burn is scheduled to occur.*” It is not clear what “reasonable notification” means, as well as the populations “potentially impacted”. Most agencies and organizations that conduct prescribed burning already notify adjacent landowners in advance of their planned burns, but particularly in urban areas where Metro Parks conduct burns, this could involve extensive notification. OPFC hopes that this requirement may be met by making notification of the *intent* to burn within a specific *window*, as the exact date(s) are not possible to predict due to weather forecasts being unreliable ten days in advance. **(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)**

Response 2: Ohio EPA agrees with the commenters that the wording in the draft rule was vague. Under Ohio EPA’s current rules, fires for recognized horticultural, silvicultural (forestry), range management, prairie and grassland management, invasive species management, or wildlife management practices are allowed only after receipt of written permission. For each permission issued by Ohio EPA, the agency provides a public notice in the form of a newspaper advertisement in the local paper in the county in which the fire is taking place.

In the proposed amended rules, Ohio EPA is proposing to replace the written permission provided by Ohio EPA with a notification process to be completed by the person making notification of the fire. Ohio EPA feels that maintaining reasonable public notice prior to performing the fire is an important step in protecting public health.

After discussions with several of the commenters, Ohio EPA acknowledges that there are valid methods, and in some cases those methods may be more appropriate, for providing public notification other than newspaper publication.

Therefore, Ohio EPA has modified the language in OAC 3745-19-03(C)(4)(d) and OAC 3745-19-04(D)(2)(d) to read as follows:

- (d) The person making the notification shall provide reasonable notification to populations potentially impacted by the smoke before the fire occurs. Populations potentially impacted shall include, at a minimum, those within one-quarter mile of the burn site. Reasonable notification shall include one of the following:
- (i) Posting notice of intent to burn, including contact information for the person making the notification and the anticipated date that the fire will occur, within open view from a public roadway adjacent to and outside of the property on which the fire will occur.
 - (ii) Posting a notice in a newspaper of general circulation in the local community in which the fire will occur. The notice shall include, at a minimum, the address of the property at which the fire will occur, contact information for the person making the notification and the anticipated date that the fire will occur.
 - (iii) Delivering written notice directly to residences and businesses within a minimum of one-quarter mile of the burn site. Notices shall include, at a minimum, the address of the property at which the fire will occur, contact information for the person making the notification and the anticipated date that the fire will occur.

Additionally, Ohio EPA would like to clarify that it is not necessary to provide an exact date on which you will perform the burn in the notification. The draft rule previously required notification “at least ten days before the burn is scheduled to occur.” Ohio EPA is revising this language to require that the notification occur “before the fire occurs.” It was Ohio EPA’s intent, and continues to be, that notification occurs before an entity performs a burn while understanding that factors, such as weather, can make it difficult to anticipate the actual date that a fire may occur. Flexibility in actual timing is often necessary to protect public health and the environment. We feel the revised language continues to capture our intent while recognizing flexibility is necessary to ensure compliance with this rule.

Comment 3: Language regarding the report to be submitted to Ohio EPA “*within ten days of the completion of the burn*” also gave us some concern. It is not clear what specific information should be submitted to Ohio EPA and whether there will be a specific form to ensure consistency. For many agencies and organizations in Ohio conducting prescribed burns in the spring or fall, the burn season may extend for 6-8 weeks. It would make most sense to submit all reports to Ohio EPA at the end of each season, not 10 days after each burn. Certified fire managers are already submitting reports to the Division of Forestry at the end of each season, so this would be the most convenient time to submit reports. We also wondered what is meant by the “*stop times of the fire*” as this could be when ignition ceases or when all mop-up is completed at the burn site.

(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)

Response 3: Ohio EPA is adding language to clarify the above comments as follows:

1. Language has been modified in OAC 3745-19-03(C)(4)(e) and OAC 3745-19-04(D)(2)(e). Ohio EPA will not require the person making the notification to submit a report to Ohio EPA within ten days of the fire. Instead, the person shall document and maintain the information for at least one year after the completion of the fire. The person shall then make the information available to Ohio EPA within ten days of a request from Ohio EPA for the information.
2. Language has been added at the end of OAC 3745-19-03(C)(4)(e) and OAC 3745-19-04(D)(2)(e) to replace the use of start time and stop time for the purposes of this rule. The use of “time the fire was initially kindled”, “time when active kindling ceased”, and “time at which mop up activities ceased” more accurately reflect the stages of the burning process.

The revised language is as follows:

(e) The person making the notification shall document information on the weather, smoke conditions, any air quality concerns before, during, and after the fire, the actual number of acres burned, the time the fire was initially kindled, the time when active kindling ceased and the time at which mop up activities ceased. The person making the notification shall maintain this information for a minimum of one year from the date of the fire and shall provide this information to the appropriate Ohio EPA district office or local air agency within ten days upon request.

Comment 4: Will the time of allowed burning be the same, 10am to 6pm?
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)

Response 4: The draft rules do not have a regulatory requirement regarding the time burning can occur. However, our application and notification forms state the following: “The Ohio Department of Natural Resources has statutory authority for reviewing requests to conduct prescribed burns (e.g., burning of fields to promote prairie grasses). In addition, concerned with the potential for brush and forest fires, the ODNR Division of Forestry prohibits outdoor burning in rural areas between the hours of 6 a.m. and 6 p.m. during the typically dry months of March, April, May, October and November. So, regardless of if Ohio EPA grants permission to open burn from an environmental perspective, if you live in an unincorporated area, ODNR may deny permission to burn during these times/months due to fire safety concerns. For more information, see the following ODNR resources: <http://forestry.ohiodnr.gov/burninglaws>.”

- Comment 5:** Language in Sections 3745-19-03 (C)(4)(f) and 3745-19-04 (D)(2)(f) states “*Reasonable access to the burn site shall be provided to Ohio EPA representatives at any time during the burn.*” The OPFC recommends that the language be amended to state: “*Reasonable and safe access to the burn site shall be provided to Ohio EPA representatives at any time during the burn. Such access should be at the direction of the individual responsible for the burn.*” This clarification ensures that Ohio EPA representatives do not access a prescribed burn in progress in an unsafe manner.
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)
- Response 5:** Ohio EPA understands the desire to provide a safe working environment at the fire location, however, amending the language to read as suggested by the commenter would put responsibility for the safety of Ohio EPA personnel on the person performing the fire. Ohio EPA inspectors are trained to assess situations and not enter a site when there may be a risk to themselves. Ohio EPA will leave the language as drafted.
- Comment 6:** How will the notification to Ohio EPA be made, via email, via a standard form from Ohio EPA, and will it be made to the same Ohio EPA district office or local air agency as is the current process?
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)
- Response 6:** The notification process is similar to the process for requesting permission to open burn. The notification form can be found on Ohio EPA’s website at: <http://epa.ohio.gov/dapc/general/openburning.aspx>. Upon finalization of the rules, Ohio EPA will make necessary amendments to the notification and permission forms to comply with these rule changes. The completed notification will be submitted to the appropriate Ohio EPA district office or local air agency having jurisdiction over the county in which the fire will be taking place.
- Comment 7:** In some cases, it is not possible to reach the local Fire Department at least 24 hours prior to the burn. Will Ohio EPA share the notification it receives with the appropriate local Fire Department? Will it be acceptable to notify the local Sheriff’s Office, as many of us currently do?
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)
- Response 7:** The notification required in OAC 3745-19-03(C)(4)(c) and OAC 3745-19-04(D)(2)(c) is intended to alert local officials to the intended burning and to give the applicant a chance to discover if any local ordinances exist that would prevent their open burning activities. Notification to the local fire department is important because it gives smaller departments the opportunity to prepare for a potential issue which could result in faster response times and a more

effective response, which would lead to reduced emissions from a fire that may be out of control. Ohio EPA wishes to clarify that notification may occur through multiple methods, such as a phone call, e-mail, or fax notification. Documentation of the notification, including form, should be maintained.

Comment 8: If someone submits an unacceptable or unsafe notification, how will Ohio EPA deny the request?
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)

Response 8: OAC rule 3745-19-05(B)(1) requires that the notification of intent to burn be submitted at least 10 working days prior to the fire being set. This 10-day window gives Ohio EPA an opportunity to review the notification and determine if it meets Ohio EPA requirements. Notifications not meeting Ohio EPA requirements will be contacted and directed to refrain from their fire until a proper notification can be submitted.

Comment 9: As we have discussed with you previously, some of the Ohio EPA district offices and local air agencies currently attach their own conditions to the burn permits. Will this continue to occur with the notification process for prescribed burns?
(Jennifer L. Windus, Chair, Ohio Prescribed Fire Council Steering Committee)

Response 9: One of the reasons Ohio EPA is considering the changes to OAC 3745-19-03(C)(4) and OAC 3745-19-04(D)(2) is to streamline and simplify the process through which fires for recognized horticultural, silvicultural (forestry), range management, prairie and grassland management, invasive species management, and wildlife management practices are performed. As long as the responsible party has completed and submitted the notification form, found on Ohio EPA's website, to the appropriate Ohio EPA district office or local air agency, and performs the fire according to the requirements set forth in the rule, then no additional terms or conditions will be issued.

Comment 10: 19-03 - (C) (3) (b) should be rephrased; I would suggest rephrase to identify the smoke as being any "smoke resulting from the open burning". Similar revisions may also be needed in (C) (4) (b).

19-04 - (C) (3) (b) should be rephrased; I would suggest rephrase to identify the smoke as being any "smoke resulting from the open burning".
(Tim McCarthy, P.E., Safety Engineer, The Ohio State University)

Response 10: Due to the fact that the overall paragraph language in OAC 3745-19-03(C)(3) and OAC 3745-19-04(C)(4) discuss the permission to perform open burning, it is understood that the smoke referenced in the two subparagraphs would be the smoke derived from performing open burning under those paragraphs. As

such, Ohio EPA declines to make the changes and will leave the language as presented in the draft.

Comment 11: What is your definition of visibility hazards? Is it less than ¼ mile visibility or would be nice to have a firm definition so we have something to measure it by.

Paragraph (B)(3)(b): The sentence is being changed to clarify that the smoke from the fire cannot cause visibility hazards.

(Ryan Sundberg, Fire Staff Officer, U.S. Forest Service, Wayne National Forest)

Response 11: Ohio EPA would consider any smoke crossing a roadway, railroad track, or air field to be a potential visibility hazard. As required in OAC 3745-19-03(C)(3)(a) and OAC 3745-19-04(B)(3)(a), the fire is only allowed to be set when atmospheric conditions will readily dissipate contaminants. It is understood that some distance may be required for the smoke to rise and become airborne as it is carried away/dissipated. As the smoke rises, it cannot drift in such a way that it would cross a roadway, railroad track, or air field at a level where it could impair visibility or cause a distraction.

End of Response to Comments