

**WEST PIKELAND TOWNSHIP
ORDINANCE 99-04**

**AIR POLLUTION CONTROL ORDINANCE
OPEN BURNING**

An ordinance of West Pikeland Township, Chester 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 and public nuisances.

SECTION I. Title

This ordinance shall be known and may be cited as the West Pikeland Township. Air Pollution Control Ordinance of 1999.

SECTION II. Authority

The Board of Supervisors of the West Pikeland Township, under, and by virtue of and pursuant to the authority granted by Second Class Township Code do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the Board of Supervisors of West Pikeland Township has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of West Pikeland Township, it is hereby declared to be the policy of West Pikeland Township to safeguard the citizens of West Pikeland Township 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) Air basin – A geographic area of this Commonwealth as referred to as the South East Pennsylvania air basin that includes the countries of Buck, Chester, Delaware, Montgomery, and Philadelphia.
- (2) 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.

- (3) 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.
- (4) 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 dirt laden roots.
- (5) Composting – The process by which organic solid waste is biologically decomposed under controlled anaerobic conditions to yield a humus-like product.
- (6) Council-Board –Township Board of Supervisors.
- (7) Domestic refuse –Waste which is generated from the normal occupancy of a structure solely as a dwelling by two families or less. The term does no include appliances, carpets, demolition waste (insulation, shingles, siding, etc.), furniture, mattresses or box springs, paint, putrescible waste, solvents, tires, or treated wood.
- (8) Municipality – A township.
- (9) Open Burning – A fire, the air contamination from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.
- (10) 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.
- (11) Yard Waste – leaves, grass clippings, garden residue, tree trimmings, chipped shubbery, and other vegetative material.

SECTION V. Regulations

After August 28, 1999 no person may permit the open burning of materials with the exception of the following:

- (1) A fire set to prevent or abate a fire hazard, when approved by the Department of Environmental Resources' 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 Protections' 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 Protections' Regional Air Quality Program 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 Protections' Regional Air Quality Program 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.
- (7) A fire set for the purpose of burning that amount of yard waste generated from the premises of a structure occupied solely as a dwelling by two families or less (except where composting is mandatory), when the fire is on the premises of said structure.
- (8) A fire set solely for cooking food.
- (9) A fire set solely for recreational or ceremonial purposes.
- (10) A fire may be prohibited in times of windy, dry weather, or when superseded by a state prohibited against open fires during times of drought.
- (11) Fires that are caused by accident.

SECTION VI. Enforcement Orders

- (1) The West Pikeland Township Building & Zoning Officer or any other duly authorized agent shall have the power and duty to enforce the provisions of this ordinance.
- (2) The West Pikeland Township Board of Supervisors may issue such orders 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 West Pikeland Township finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the West Pikeland Township finds that any person is in violation of any provision of this ordinance.

- (3) West Pikeland Township Board of Supervisors hereby authorizes any fire on public or private property may be extinguished by the local fire department having jurisdiction, either with or without the consent of the landowner or person in charge, if, in the opinion of the fire marshal, or police officer, such fire constitutes a danger to persons or property, or generates complaints from the public (causing it to be considered a nuisance fire.)
- (4) The West Pikeland Township Board of Supervisors may, in its order, require compliance with such conditions as are necessary to prevent or abate open burning or effect the purposes of this ordinance.
- (5) An order issued under this section shall take effect upon notice unless the order specifies otherwise. An appeal to the Board of Supervisors of the West Pikeland's order shall not act as a supersedes, provided, however, that, upon application and for cause shown, the Board of Supervisors may issue such a supersedes under rules established by the Board of Supervisors.
- (6) The authority of the West Pikeland Township, Board of Supervisors to issues 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) Any burning set with the approval of Department of Environmental Resources Regional Air Quality Program requires notification to the County Fire Communications center prior to burning and upon extinguishing of the fire.
- (2) Whenever those covered under exceptions noted in Section V above burn, burning is to be at least (50) feet from a building and a property line within a cleaned area having a radius of 15 feet with a extinguishing agent present during the burning.
- (3) Whenever the Building & Zoning Officer finds that open burning is occurring in West Pikeland Township, other than those exceptions noted in Section V above, the Building & Zoning Officer may order the owner or operator to take corrective action in a manner satisfactory to West Pikeland Township, or the Building & Zoning Officer may order the owner or operator to allow access to the land by the Building & Zoning Officer or a third party to take such action.
- (4) 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 Board of Supervisors of West Pikeland Township 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 Board of Supervisors of West Pikeland Township 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 Board of Supervisors of West Pikeland Township 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 Board of Supervisors of West Pikeland Township is hereby authorized to prosecute these offenses. For the purposes of this section, a summary offense may be prosecuted before any district justice in West Pikeland Township. There is no accelerated rehabilitation 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, West Pikeland Township 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 twenty-five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty the Board of Supervisors of West Pikeland Township shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of West Pikeland Township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the West Pikeland Township; 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 voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.
- (2) When the Board of Supervisors of West Pikeland Township 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 Board of Supervisors 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 Board of Supervisors within thirty (30) day in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in Commonwealth and is satisfactory to West Pikeland Township, Board of Supervisors. 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 Board of Supervisors 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 Board of Supervisors of West Pikeland Township shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The Board of Supervisors may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Board of Supervisors finds that the appellant is financially unable to pay. The Board of Supervisors shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to West Pikeland Township and shall be collectable 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 West Pikeland Township. 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 West Pikeland Township 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, person 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(g). 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 West Pikeland Township; 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 West Pikeland Township or its personnel in their performance of any duty

hereunder, including denying the Building & Zoning 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, or other natural resources of West Pikeland Township to result from the source.

SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by West Pikeland Township under this ordinance shall constitute a public nuisance. The Board of Supervisors 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 Board of Supervisors 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 abated 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

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 ordinances. It is hereby declared to be the intent of the Board of Supervisors 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 28 day of August, 1999.

RESOLVED and ENACTED this 23rd day of August, 1999.

Attest: _____
Secretary

West Pikeland Township
Board of Supervisors

Chairman

