

**BOARD OF SUPERVISORS
NORTH WHITEHALL TOWNSHIP
LEHIGH COUNTY
PENNSYLVANIA**

Ordinance 2008-02

Open Burning

An ordinance of North Whitehall Township, Lehigh 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 2007-14, and validity.

SECTION I. Title

This ordinance shall be known and may be cited as the North Whitehall Township Air Pollution Control Ordinance of 2008 (2008-02).

SECTION II. Authority

The Board of Supervisors of North Whitehall Township, under, and by virtue of and pursuant to the authority granted by the Air Pollution Control Act, as amended, 35 P.S. 4012, et seq., the Pennsylvania Municipalities Planning Code (MPC) and the Second Class Township Code Act of May 1, 1933 (P.L. 103, No. 69) reenacted and amended November 9, 1995 (P.L. 350, No. 60), as amended, do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the Board of Supervisors of North Whitehall 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 North Whitehall Township, it is hereby declared to be the policy of North Whitehall Township to safeguard the citizens of North Whitehall 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 delimited in attachment A.

(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 or aerobic conditions to yield a humus-like product.

(6) Board – North Whitehall Township Board of Supervisors.

(7) 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.

(8) 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.

(9) Open burning - A fire, the air contaminants 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 shrubbery, and other vegetative material.

SECTION V. Regulations

After November 1, 2008 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 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 Protection's 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 solely for cooking food.

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

SECTION VI. Enforcement Orders

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

(2) North Whitehall Township 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 Township of North Whitehall finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Township of North Whitehall finds that any person is in violation of any provision of this ordinance.

(3) North Whitehall Township 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.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the Zoning Hearing Board of the Township of North

Whitehall order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the Zoning Hearing Board of the Township of North Whitehall may issue such a supersedeas under rules established by North Whitehall Township.

(5) The authority of North Whitehall Township 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 Zoning and Codes Enforcement Officer finds that open burning is occurring in North Whitehall Township, other than those exceptions noted in Section V above, the Zoning and Codes Enforcement Officer may order the owner or operator to take corrective action in a manner satisfactory to North Whitehall Township, or the Zoning and Codes Enforcement Officer may order the owner or operator to allow access to the land by the Zoning and Codes Enforcement 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, North Whitehall 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 North Whitehall 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 North Whitehall 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 Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice having jurisdiction in or for North Whitehall Township. 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, North Whitehall 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 ten thousand dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, North Whitehall Township shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of North Whitehall Township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to North Whitehall 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 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.

(2) When North Whitehall 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 Zoning Hearing Board 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 Zoning Hearing Board 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 North Whitehall Township. 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 Zoning Hearing Board 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 Zoning Hearing Board shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The Zoning Hearing Board may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Zoning Hearing Board finds that the appellant is financially unable to pay. The Zoning Hearing Board 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 North Whitehall Township 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 North Whitehall 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 North Whitehall 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, 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.

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 North Whitehall 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 North Whitehall Township or its personnel in their performance of any duty hereunder, including denying the Zoning and Codes Enforcement 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 North Whitehall Township to result from the source.

SECTION XI. Public Nuisances

A violation of this ordinance or of any order issued by the North Whitehall Township under this ordinance shall constitute a public nuisance. North Whitehall Township shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, North Whitehall Township 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 2007-14 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 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 1st day of November 2008.

SECTION XV. Municipal Liability

The Board of Supervisors, and its agents, officials, and representatives, shall not under any circumstances be liable or responsible for damages caused by any person or property by reason of the issuance of any permit under the provisions of this Ordinance, or by reason of the conduct of any burning activity in compliance or noncompliance with the terms and provisions hereof. The person, persons, company or companies responsible for any such fire and the permit holder, if any, shall bear sole liability for any damages caused as a result thereof.

DULY ENACTED AND ORDAINED this 15th day of October, 2008 by the Board of Supervisors of North Whitehall Township, at a duly advertised, noticed, published and lawfully assembled regular public meeting and hearing.

ATTEST:

**BOARD OF SUPERVISORS OF
NORTH WHITEHALL TOWNSHIP**

BY: Brenda Norder
Brenda Norder, Secretary

By: Ronald E. Stahley
Ronald E. Stahley, Chairman

By: Terry P. Stoudt
Terry P. Stoudt, ViceChairman

(SEAL)

By: Ronald J. Heintzelman
Ronald J. Heintzelman, Supervisor

Attachment A

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

- 1) **Allegheny County** air basin - Allegheny County.
- 2) **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.
- 3) **Erie** air basin - The following political subdivisions in Erie County: City of Erie, Harborcreek Township, Lawrence Park Township, Millcreek Township, and Wesleyville Borough.
- 4) **Harrisburg** air basin - The following political subdivisions in Cumberland County: Camp Hill Borough, East Pennsboro Township, Lemoyne Borough, New Cumberland Borough, West Fairview Borough, Wormleysburg Borough, and the political subdivisions in Dauphin County of the City of Harrisburg, Highspire Borough, Lower Swatara Township, Middletown Borough, Paxtang Borough, Royalton Borough, Steelton Borough, Susquehanna Township, and Swatara Township.
- 5) **Johnstown** air basin - The political subdivisions in Cambria County of Brownstown Borough, Conemaugh Township, Daisytown Borough, Dale Borough, East Conemaugh Borough, East Taylor Township, Ferndale Borough, Franklin Borough, Geistown Borough, City of Johnstown, Lorain Borough, Lower Yoder Township, Middle Taylor Township, Southmont Borough, Stoneycreek Township, upper Yoder Township, West Taylor Township, and Westmont Borough.
- 6) **Lancaster** air basin - The political subdivisions in Lancaster County of East Petersburg Borough, City of Lancaster, Lancaster Township, Manheim Township, and Millersville Borough.
- 7) **Lower Beaver Valley** air basin - All of Beaver County except for the following political subdivisions: Darlington Borough, Darlington Township, Economy Borough, Frankfort Springs Borough, Franklin Township, Hanover Township,

Independence Township, Marion Township, New Sewickley Township, and South Beaver Township.

8) **Monongahela Valley** air basin - The following political subdivisions in Fayette County: Belle Vernon Borough, Brownsville Borough, Brownsville Township, Fayette City Borough, Jefferson Township, Nowell Borough, and Washington Township; the following political subdivisions in Washington County: Allenport Borough, California Borough, Carroll Township, Charleroi Borough, Coal Center Borough, Donora Borough, Dunlevy Borough, Elco Borough, Fallowfield Township, Finleyville Borough, Long Branch Borough, Monongahela City, New Eagle Borough, North Charleroi Borough, Roscoe Borough, Speers Borough, Stockdale Borough, Twilight Borough, Union Township, and West Brownsville Borough; and the following political subdivisions in Westmoreland County: Monessen City, North Belle Vernon Borough, Rostraver Township, and West Newton Borough.

9) **Reading** air basin - The political subdivisions in Berks County of Bern Township, Cumru Township, Kenhorst Borough, Laureldale Borough, Leesport Borough, Lower Alsace Township, Mohnton Borough, Mt. Penn Borough, Muhlenberg Township, City of Reading, Shillington Borough, Sinking Spring Borough, Spring Township, St. Lawrence Borough, Temple Borough, West Lawn Borough, West Reading Borough, Wyomissing Borough, and Wyomissing Hills Borough.

10) **Scranton, Wilkes-Barre** air basin - The political subdivisions in Lackawanna County of Archbald Borough, Blakely Borough, Dickson City Borough, Dunmore Borough, Jessup Borough, Moosic Borough, Old Forge Borough, Olyphant Borough, City of Scranton, Taylor Borough, Throop Borough, and the political subdivisions in Luzerne County of Ashley Borough, Avoca Borough, Courtdale Borough, Dupont Borough, Duryea Borough, Edwardsville Borough, Exeter Borough, Forty Fort Borough, Hanover Township, Hughestown Borough, Jenkins Township, Kingston Borough, Laffin Borough, Larksville Borough, Laurel Run Borough, Luzerne Borough, City of Nanticoke, City of Pittston, Pittston Township, Plains Township, Plymouth Borough, Plymouth Township, Pringle Borough, Sugar Notch Borough, Swoyersville Borough, Warrior Run Borough, West Pittston Borough, West Wyoming Borough, City of Wilkes-Barre, Wilkes-Barre Township, Wyoming Borough, and Yatesville Borough.

11) **Southeast** Pennsylvania air basin - The counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia.

12) **Upper Beaver Valley** air basin - The following political subdivisions in Lawrence County: Bessemer Borough, Ellport Borough, Ellwood City Borough, Enon Valley Borough, Little Beaver Township, New Beaver Borough, City of New Castle, North Beaver Township, Shenango Township, South New Castle Borough, Taylor Township, Wampum Borough, and Wayne Township.

13) **York** air basin - The political subdivisions in York County of Manchester Township, North York Borough, Spring Garden Township, Springettsbury Township, West Manchester Township, West York Borough, and City of York.