

## ORDINANCE NO. 133

AN ORDINANCE OF THE TOWNSHIP OF DAUGHERTY, BEAVER COUNTY, PENNSYLVANIA, ENACTING BURNING REGULATIONS FOR THE PREVENTION AND CONTROL OF AIR POLLUTION; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT, PUBLIC NUISANCES, REPEALING ORDINANCES NO. 77 AND 85, AND VALIDITY.

### SECTION I SHORT TITLE

This Ordinance shall be known and may be cited as the "Daugherty Township Burning Ordinance."

### SECTION II AUTHORITY

This Ordinance is enacted pursuant to the authority conferred by the Second Class Township Code.

### SECTION III STATEMENT OF FINDINGS

The Board of Supervisors of Daugherty 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 Daugherty Township, it is hereby declared to be the policy of Board of Supervisors to safeguard the citizens of Daugherty 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:

Air basin – A geographic area of this Commonwealth as delimited in attachment A.

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.

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.

Clearing and grubbing wastes – Trees, shrubs, and other native vegetation which are cleared from land during or prior to the process of construction of major subdivision and/or land developments. The term does not include demolition wastes and dirt laden roots.

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

Board of Supervisors – The Board of Supervisors of Daugherty Township, Beaver County, Pennsylvania.

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, plastics, putrescible waste, solvents, tires, or treated wood.

Enforcing Officer – Any agent duly authorized by the Board of Supervisors to enforce the provisions of this ordinance.

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.

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

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.

Township – Daugherty Township, a Second Class Township located in Beaver County, Pennsylvania.

Yard waste – Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

## SECTION V REGULATIONS

1. After the effective date of this ordinance no person may permit the open burning of any material with the exception of the following:
  - a. 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.
  - b. 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.

- c. 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.
  - d. 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.
  - e. A fire set in conjunction with the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.
  - f. 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.
  - g. 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, when the fire is on the premises of said structure.
  - h. A fire set solely for cooking food.
  - i. A fire set solely for recreational or ceremonial purposes.
2. Open burning shall be prohibited on Sundays and all Federal holidays designated under Federal law (5 U.S.C. 6103). Open burning described in Section V, subsection (1)h and (1)i above shall be exempt from this provision.
  3. Open burning shall be prohibited between the hours of 4:00 P.M. Eastern Standard Time and 8:00 A.M. Eastern Standard Time. Open burning described in Section V, subsection (1)e, (1)h and (1)i above shall be exempt from this provision.
  4. Open burning of any kind shall be prohibited on any public street or right-of-way.
  5. Open burning of any kind shall be prohibited unless conducted under constant adult supervision.
  6. Open burning of any kind shall be prohibited within twenty (20') feet of any structure or property line.
  7. Open burning of any kind shall be prohibited unless the person responsible for the open burning has adequate fire protection equipment on site to prevent the spread of the fire.
  8. Open burning of any kind shall be prohibited unless it is conducted within a steel, stone earth or concrete containment structure including but not limited to steel barrels, wire baskets, fire pits and rings, and outdoor fireplaces.

- a. In the event that the quantity of material to be burned is of such quantity as to render it impractical to place in a containment structure, then in that event open burning shall not be permitted unless the person contacts Beaver County Emergency Services and the Daugherty Township Volunteer Fire Department is placed on call.
9. Open burning shall be prohibited upon declaration by the Daugherty Township Fire Chief that unsafe conditions exist due to drought.

## SECTION VI            ENFORCEMENT

1. Officers of the New Brighton Police Department, the Zoning and Codes Officer, or any other duly authorized agent shall have the power and duty to enforce the provisions of this ordinance.
2. The 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 finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the township finds that any person is in violation of any provision of this ordinance.
3. The 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. The authority of the 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 enforcing officer finds that open burning is occurring in the township, 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 township, 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 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 township issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than three hundred dollars (\$300.00) 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 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 Township Solicitor is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any magisterial district justice in this 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, the township may assess a civil penalty for the violation in accordance with the provisions of the Air Pollution Control Act (APCA), as amended, 35 P.S. 4012, Sections 9, 9.1, and 12(g). The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed two thousand five hundred dollars (\$2,500.00) per day for each violation. In determining the amount of the penalty, the township shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the township or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the 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. The Township, through its solicitor, may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.
3. Nothing contained in this section shall be construed or interpreted to grant any person or entity other than the Township the right to commence any action for enforcement pursuant to this section.

## SECTION X APPEALS

Any person aggrieved by any action of the Township or its designee, relevant the provisions of this ordinance, may appeal to the relevant judicial or administrative body according to law, within the time period allowed.

## SECTION XI 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 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 the township 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, or other natural resources of the township to result from the source.

## **SECTION XII PUBLIC NUISANCES**

A violation of this ordinance or of any order issued by the township under this ordinance shall constitute a public nuisance. The 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, the 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 XIII REPEALER**

Ordinance 77 and 85 previously enacted are hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed to the extent of such inconsistency.

## **SECTION XIV 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.

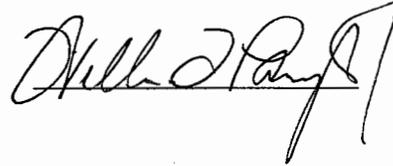
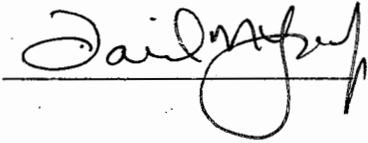
## **SECTION XV EFFECTIVE DATE**

This Ordinance shall become effective five (5) days after the final enactment or adoption and shall remain in full force and effect until amended or revoked.

DULY ENACTED AND ORDAINED this 12th day of August, 2010, by the Board of Supervisors of the Township of Daugherty, Beaver County, Pennsylvania, in lawful session duly assembled.

ATTEST:

Township of Daugherty



## 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, Royaltown 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, Laflin 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.