



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

Re: **Fulton County
Open Burning Complaint
Notice of Violation (NOV) &
Return to Compliance (RTC)**

June 8, 2012.

CERTIFIED MAIL

The Honorable Ruth Marlatt
Mayor of The Village of Fayette
P. O. Box 87
125 West Main Street
Fayette, Ohio 43521

Dear Mayor Marlatt:

This office received a complaint on June 5, 2012, concerning open burning being conducted on property owned by the Village of Fayette (the Village), specifically Fulton County Parcel #18-037146-00.000. My investigation, conducted on June 6, 2012, shows that a pile of accumulated brush and storm debris, along with pieces of PVC pipe and miscellaneous metal parts, were burned for disposal purposes. The material was started on June 1, 2012, by Village personnel and was either actively burned or left to smolder every day until the pile was extinguished on June 6, 2012, as requested by this office.

Based on these findings, there is sufficient evidence to determine that illegal open burning did occur and the complaint is justified. This is a violation of both Ohio Administrative Code (OAC) rule 3745-19-04(A) and Ohio Revised Code (ORC) 3704.05.

A copy of the OAC rules pertaining to open burning has again been enclosed for review by the Village of Fayette. Please provide a written response acknowledging your receipt of this letter and your understanding of the rules. If you do not understand the rules please contact this office for additional explanation before responding. Your response is requested no later than June 25, 2012.

Because the fire has been extinguished, you are no longer in violation and the property is considered to have returned to compliance.

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This is the second time that the Village is being made aware of Ohio's open burning rules. On March 22, 2011, the Village's Municipal Administrator, then Ms. Amy Metz, requested permission to burn the piles which were recently illegally burned. Ohio EPA contacted Ms. Metz and explained that there are no provisions in the OAC which provide for disposal of such materials by municipalities by burning. Ms. Metz requested that Ohio EPA issue a formal denial of permission for the request so that she had an official determination to present to the Village Council. On April 1, 2011, Ohio EPA issued that denial and also included a letter with a more detailed explanation for the denial. Both of those letters have also been enclosed for your reference. Regardless of this information being sent, the piles in question were still burned for disposal.

Given that such documentation was sent to the Village Administrator and violations have still occurred, Ohio EPA is now bringing these issues to your attention. As the leading executive officer of the Village of Fayette, it is your responsibility to adequately disseminate this information to all village employees and representatives (such as the Village's Council). It is ultimately your responsibility, or that of any of your successors, to ensure compliance with these rules.

In addition to the issues addressed in previous correspondence from this agency and those already addressed in this letter, there are additional issues that should be brought to your attention. Village of Fayette Police Chief Jason Simon raised several issues during the course of my investigation that I feel need to be addressed. First, Chief Simon stated that the Village does not have sufficient funds to destroy records retained by the Village by using a document shredding service and inquired as to the legality of burning such records for disposal. As I explained to him at the time, there are no provisions in the OAC which provide for disposal of such materials by municipalities by burning. Second, Chief Simon inquired as to the responsibility of the Village should the brush spontaneously combust. As I explained to him at the time, in such a case the material in question is in the possession of and on the property of the Village and, therefore, the Village's responsibility. Upon discovery of such a fire, the fire must be immediately extinguished. It should be noted that proper management practices will reduce or eliminate the possibility of spontaneous combustion. Should the Village be interested in more information regarding such practices, please feel free to contact me and I will make sure you obtain that information. Finally, Chief Simon made the statement that I, as the responding inspector, was "harassing" the Village by conducting such an inspection related to an open burning issue, which he feels is a common practice in the area. As stated at that time, Ohio EPA received a complaint regarding smoke and odor produced by the Village's ongoing fire. Ohio EPA is required by law to investigate any complaints received within 14 days of receipt. This was not an act of "harassment" but the required response resulting from a justified complaint which we received from a Village resident regarding a burn which is illegal.

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Please be advised that the submission of information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek civil penalties pursuant to Ohio Revised Code Section 3704.06. The Ohio EPA will make a decision whether to pursue such penalties regarding this matter at a later date. The decision on whether to pursue or decline to pursue such penalties regarding this matter is dependent on several factors, one of which is your future compliance with applicable Ohio EPA requirements. If you have any questions concerning this letter or the regulations, please feel free to call me at (419) 373-3137 or e-mail at thomas.cikotte@epa.state.oh.us.

Sincerely,



Thomas C. Cikotte
Division of Air Pollution Control

/llr

Enclosure

pc: Fulton County Health Department
Thomas C. Cikotte, DAPC – NWDO
Certified Mail Receipt Number 7009 1410 0001 1834 3433

ec: William MacDowell, U.S. EPA Region V
Bruce Weinberg, DAPC - CO
Tom Sattler, DAPC - NWDO
Thomas C. Cikotte, DAPC – NWDO