

EMLENTON BOROUGH, VENANGO COUNTY, PENNSYLVANIA
ORDINANCE NO. 324

AN ORDINANCE OF THE BOROUGH OF EMLENTON, VENANGO COUNTY PENNSYLVANIA, FOR THE PREVENTION AND CONTROL OF AIR POLLUTION CAUSED BY OPEN BURNING, DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR REGULATIONS, EXCEPTIONS, ENFORCEMENT ORDER, RESPONSIBILITY OF OWNERS AND OPERATORS, PENALTIES, UNLAWFUL CONDUCT AND PUBLIC NUISANCES.

BE IT ENACTED and ORDAINED, by the Borough Council of the Borough of Emlenton, Venango County, Pennsylvania, as follows:

SECTION I. TITLE This Ordinance shall be known and may be cited as the Emlenton Open Burning Ordinance of 2006.

SECTION II. AUTHORITY The Borough Council of the Borough of Emlenton, Venango County, Pennsylvania, under and by virtue of and pursuant to the authority granted by The Borough Code [53 P.S. §46202 (21) & (74)].

SECTION III. POLICY Whereas the Council of the Borough of Emlenton has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Emlenton Borough, it is hereby declared to be the policy of Emlenton Borough to safeguard the citizens of Emlenton Borough 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. **Burning** - The act of consuming by fire; to flame, car, scorch, or blaze. As used in this Ordinance, smoldering shall have the same meaning as burning and any smoldering shall be deemed a burning.
2. **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.

3. **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, treated wood or similar materials.
4. **Open burning** - A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flu.
5. **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.
6. **Yard waste** - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery and other vegetative material.

SECTION V. REGULATIONS After adoption of this Ordinance no person may engage in the open burning of material with the exception of the following:

1. A fire set to prevent or abate a fire hazard;
2. Any fire set for the purpose of instructing personnel in fire fighting;
3. A fire set for the prevention and control of disease or pests;
4. A fire set for the purpose of burning clearing grubbing waste;
5. 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 the said structure;
6. A fire set solely for cooking food.

SECTION VI. PERMIT Prior to conducting any open burning as contemplated in Section V above (except #6), the person proposing to conduct said activity shall obtain written approval from an authorized member of the Emlenton Volunteer Firefighters' Association (hereinafter "EVFA"). The applicant for the permit shall provide all pertinent information requested by the EVFA. Upon written approval by EVFA, the applicant then shall obtain the permit from the Emlenton Borough office at a cost of \$5.00 per permit. The EVFA shall set the date and hours during which the permit is valid. A separate permit shall be obtained for each day any open burning is being conducted.

SECTION VII. ENFORCEMENT ORDERS

1. Emlenton Borough Police Department personnel or any other duly authorized agent (including authorized members of the EVFA) shall have the power and duty to enforce this Ordinance.

2. Emlenton Borough 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 or any open burning; or orders requiring production of information. Such an order may be issued if Emlenton Borough finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if Emlenton Borough finds that any person is in violation of any provision of this Ordinance.
3. Emlenton Borough 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 specified otherwise. An appeal to the District Court of Emlenton Borough's order shall not act as a supersedeas, provided, however, that upon application and for cause shown, the District Court may issue such a supersedeas under rules established by the District Court.
5. The authority of Emlenton Borough 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 VIII. RESPONSIBILITY OF OWNERS AND OPERATORS

1. Whenever an enforcing office finds that open burning is occurring in the Borough of Emlenton, other than those exceptions noted in Section V hereinbefore, such enforcing officer may order the owner or operator to take corrective action in a manner satisfactory to Emlenton Borough or the enforcing officer may order the owner or operator to allow access to the land by such 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 recover action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, Emlenton Borough 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 X of this Ordinance.

SECTION IX. CRIMINAL PENALTIES Any person who violates any provision of this Ordinance or any order of the Borough of Emlenton 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 or Agents (including authorized members of the EVFA) of Emlenton Borough 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 Emlenton Borough Council is hereby authorized to prosecute these offenses. For the purposes this section, a summary offense may be prosecuted before any district justice in the Borough of Emlenton. There is no accelerated rehabilitative disposition authorized for a summary offense.

SECTION X. 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 Borough of Emlenton 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 be less than one hundred (\$100.00) and not exceed ten thousand dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, Emlenton Borough shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of Emlenton Borough or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the Borough; the size of the source of 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 the Borough of Emlenton 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 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 District Court 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 District Court 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 Emlenton Borough. 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 District Court 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 District Court shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The District Court may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the District Court finds that the appellant is financially unable to pay. The District Court 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 the Borough of Emlenton 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 the assessed 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 the Borough of Emlenton. 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 the Borough of Emlenton, 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 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 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 Borough of Emlenton; 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 Borough of Emlenton, 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 Borough of Emlenton to result from the source.

SECTION XII. PUBLIC NUISANCES A violation of this Ordinance or of any order issued by the Borough of Emlenton under this Ordinance shall constitute a public nuisance. The Borough of Emlenton 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 Borough of Emlenton may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section X. 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 All other Ordinances or parts thereof which are in conflict with this Ordinance are hereby repealed.

SECTION XIV. COMMONWEALTH STATUTES Nothing in this Ordinance shall be construed to conflict with or take precedent over or enforcement from the Department of Environmental Protection of the Commonwealth of Pennsylvania's statute, rules and/or regulations governing burning or air quality.

SECTION XV. 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 provision of this Ordinance. It is hereby declared to be the intent of the Borough Council 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 XVI. EFFECTIVE DATE This Ordinance shall be come effective on the 5th day of June, 2006.

ATTEST:

Harry Marano
(SEAL)

COUNCIL PRESIDENT

Barry Louise

BOROUGH of EMLENTON MAYOR

[Signature]