

**ORDINANCE NO. 411**

AN ORDINANCE OF THE BOROUGH OF LEESPORT, BERKS COUNTY, 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 AND PENALTIES FOR VIOLATION; AND DECLARING VIOLATIONS AS UNLAWFUL CONDUCT AND PUBLIC NUISANCES.

The Borough Council of Leesport Borough, Berks County, Pennsylvania, hereby enacts and ordains the following to be an Ordinance of the Borough.

SECTION 1. Title

This Ordinance shall be known and may be cited as the Leesport Air Pollution Control Ordinance.

SECTION 2. Authority

The Council of the Borough of Leesport, under and by virtue of and pursuant to the authority granted by Section 12 of the Air Pollution Control Act (35 P.S. §4012) and Section 1202 of the Borough Code (53 P.S. §46202) does hereby enact and ordain this Ordinance.

SECTION 3. Policy

Whereas Council of the Borough of Leesport has determined that air pollution from open burning may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of Leesport Borough, it is hereby declared to be the policy of the Borough of Leesport to safeguard the citizens of Leesport Borough from such air pollution.

#### SECTION 4. 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 - Reading air basin as delineated in 25 Pa.Code 121.1.
- (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) Borough - The Borough of Leesport, Berks County, Pennsylvania.
- (4) Burning - The act of consuming 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.
- (5) 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.
- (6) Composting - The process by which organic solid waste is biologically decomposed under controlled anaerobic or aerobic conditions to yield a humus-like product.
- (7) Council - The Council of the Borough of Leesport.
- (8) 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.

(9) Enforcement Officer'- the duly authorized person appointed by Council to enforce the provisions of this Ordinance.

(10) Open Burning - A fire, the air contaminants from which are emitted directly into the outdoor atmosphere and not directed thereto through a flue.

(11) 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.

(12) Yard waste - Leaves, grass clippings, garden residue, tree trimmings, chipped shrubbery, and other vegetative material.

#### SECTION 5. Regulations

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 the Leesport Fire Chief 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 and the Leesport Fire Chief.

(3) A fire set during the daylight for the prevention and control of disease or pests, when approved by the Department of Environmental Protection's Regional Air Quality Program office and the Leesport Fire Chief.

(4) A fire set in a metallic or other non-combustible container or device for cooking food.

(5) A fire set solely for recreational or ceremonial purposes when approved by the Leesport Fire Chief.

#### SECTION 6. Enforcement Orders

(1) The Borough shall have the power and duty to enforce the provisions of this Ordinance.

(2) The Enforcement Officer 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 Enforcement Officer finds that any condition existing in or on the facility or source involved is causing or contributing to open burning or if the Enforcement Officer finds that any person is in violation of any provision of this Ordinance.

(3) The Enforcement Officer may, in his 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 Council of the Enforcement Officer's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, Council may issue such a supersedeas under rules established by Council.

(5) The authority of the Enforcement Officer 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 7. Responsibility of Owners and Operators

(1) Whenever the Enforcement Officer finds that open burning is occurring in the Borough, other than those exceptions noted in Section 5 above, the Enforcement Officer may order the owner or operator to take corrective action in a manner satisfactory to the Enforcement Officer, or the Enforcement Officer may order the owner or operator to allow access to the land by the 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, the 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 9 of this Ordinance.

SECTION 8. Penalties

Any person who violates any provision of this Ordinance or any order of the Enforcement Officer 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 one thousand dollars (\$1,000.00) for each separate offense. The Enforcement Officer is authorized to conduct inspections or investigations and to issue or file citations for summary violations under this Ordinance, and the Borough Solicitor is hereby authorized to prosecute these offenses.

SECTION 9. 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, Council 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, Council shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the 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 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 Council 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 Borough within the thirty (30) day period for placement in a non-interest bearing escrow account with any bank doing business in the Commonwealth of Pennsylvania or post an appeal bond to the Borough 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 Council. 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 Borough shall, within thirty (30) days, remit the appropriate amount to the person. 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. Council shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. Council may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and Council finds that the appellant is financially unable to pay. Council shall issue an order within thirty (30) days of the date of the hearing to consider the appellants's alleged inability to pay. The amount assessed after administrative hearing or after wavier of administrative hearing shall be payable to the

Borough 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 the Borough. 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 of Berks County, Pennsylvania. The Prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Borough, 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 10. 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 Enforcement Officer; 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 Enforcement Officer in his performance of any duty hereunder, including denying the 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 the Borough to result from the source.

Section 11. Public Nuisances

A violation of this Ordinance or of any order issued by the Enforcement Officer under this Ordinance shall constitute a public nuisance. The Enforcement Officer 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 may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section 9. 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 12. Repealer

All other Ordinances or parts thereof which are in conflict with this Ordinance are hereby repealed.

Section 13. 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 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 14. Effective Date

This Ordinance shall become effective on the 20th day of October, 2004.

ENACTED AND ORDAINED by the Borough Council of Leesport Borough on the 20th day of October, 2004.

BOROUGH COUNCIL  
BOROUGH OF LEESPORT  
BERKS COUNTY, PENNSYLVANIA

ATTEST:

*Dawn Haver*  
Secretary

X *Billy S. Reed*  
President

*Carissa C. [unclear]*

*Dorita Angelo*

*Jeffrey W. Schwach*

*Debra L. Hoffmaster*

*Robert E. Hoffmaster*

*Richard R. [unclear]*

*Christina C. Wood*