

Guidelines for Review of Local Laws Affecting On-Farm Open Burning

- The regular operations of a farm typically involve the removal of trees and brush during field clearing and maintenance; the removal or trimming of diseased fruit canes, vines, and trees; and the removal of vegetative material from cultivated wetlands, among other things. These materials are often disposed of on the farm by open burning. On-farm open burning is considered by the Department to be a practice that is part of a “farm operation” and thus protected from unreasonable local restriction.
- Open burning is regulated by the Department of Environmental Conservation (DEC). As applied to farm operations located within a county adopted, State certified, agricultural district, local laws should allow open burning consistent with the DEC’s regulations and/or guidance. The DEC’s regulations on Open Fires which are set forth in 6 NYCRR Part 215 prohibit open burning except, in part, as follows: “[o]n-site burning of ***agricultural wastes*** (emphasis added) as part of a valid agricultural operation on contiguous agricultural lands larger than five acres actively devoted to agricultural or horticultural use, provided such waste is actually grown or generated on those lands and such waste is capable of being fully burned within a 24-hour period.” The regulations allow “[t]he use of liquid petroleum fueled smudge pots to prevent frost damage to crops” and “maple sugar arches and similar outdoor cooking devices when actually used for cooking or processing food.” Part 215 also includes an exception for on-site burning in any town with a total population less than 20,000 of downed limbs and branches (including branches with attached leaves or needles) less than six inches in diameter and eight feet in length between May 15th and the following March 15th.
 - “Agricultural Wastes” is defined in 6 NYCRR Part 215 as “[a]ny waste from naturally grown products such as vines, trees and branches from orchards, leaves and stubble. In addition, it includes “any fully organic waste either grown or generated on the premises, including but not limited to paper feed bags, wood shavings used for livestock bedding, baling twine, and other non-plastic materials. Agricultural waste does not include pesticide containers, fertilizer bags, large plastic storage bags (including bags commonly known as Ag bags), offal, tires, plastic feed bags, and other plastic or synthetic materials.”
 - “Agricultural Land” is defined in 6 NYCRR Part 215 as “[t]he land and on-farm buildings, equipment, manure processing and handling facilities, and practices that contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a *commercial horse boarding operation* and *timber processing*. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.”
- Whether local government regulation of open burning is unreasonably restrictive depends on the requirements imposed and the aim of the regulation. For example, a requirement to apply for a permit for large scale burning is generally not unreasonable. Also, it is generally not unreasonable for a local law to require that the burning be controlled and conducted in a manner so as not to create a nuisance. The Department urges local governments to take into account the size and nature of the particular farm operation when setting and administering its open burning regulations.