

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). 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 on “...any part of a farm on which only animal or vegetable wastes resulting from the operation of such farm are deposited.” [6 NYCRR §215.1(d)]. The regulations also prohibit open burning “for onsite disposal of rubbish generated by industrial or commercial activities *other than agricultural*” [6 NYCRR §215.2(e), emphasis added]. Furthermore, the DEC recommends landfilling or burning material cultivated from created wetlands.
- 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.