NOTE: In May 2006, the Division of Air Quality agreed to settle its case with Phillips & Jordan of Cary for $22,500 based on an April 2006 decision by the N.C. Supreme Court in a related case against MW Clearing & Grading Inc. of Blacksburg, S.C. In that case, the Court reversed a 2005 decision of the North Carolina Court of Appeals, which had upheld DAQ's authority to assess fines on a "per pile" basis. The ruling did not overturn DAQ's authority to assess fines in such open burning cases, but required the division to reassess the penalty amount. However, the division is working with the state Environmental Management Commission to consider amending the open burning rule to allow multiple penalty assessments based on multiple piles in future cases.

Record Fine Assessed for Open Burning Violation

RALEIGH - State air quality officials have fined a Wake County contractor more than $78,000 in the largest civil penalty ever assessed for an open burning violation in North Carolina.

The N.C. Division of Air Quality (DAQ) assessed the $78,932 fine against Phillips & Jordan, Inc. of Cary for violations that occurred on November 29 and December 3, 2001, at a land-clearing site near Garner. The contracting firm was cited for violating open burning regulations aimed at preventing air pollution. Violations included burning tires, a motorcycle, building materials, metal sheeting and pipes, bedsprings, wire and other non-permissible materials in 17 debris piles at the site. The contractor also was cited for burning debris piles within 1,000 feet of an occupied structure.

"We consider open burning violations to be serious because smoke from illegal fires is unhealthy to breathe, particularly for people with respiratory problems, and it harms the environment," said Keith Overcash, DAQ acting director. "Open burning cases are the most common and widespread violations of air quality rules across the state."

Under the North Carolina Open Burning Rule, the DAQ can assess fines as high as $10,000 per violation, but most fines are less than $1,000. Larger fines can be assessed in cases involving repeat violations, and people who knowingly violate the law.

The DAQ assessed the higher-than-usual fine because Phillips & Jordan had been fined five other times for violations involving open burning since 1997. Other factors included the large number of debris piles at the site and the large amount of non-permissible materials that were burned.

North Carolina law prohibits most open burning because the smoke from outdoor fires can cause serious health problems and pollute the air. For example, a recent study by the U.S. Environmental Protection Agency found that backyard burning of trash from a family of four can emit as much as some pollutants, such as dioxin and furan, as a well-controlled municipal incinerator serving tens of thousands of households. Nearly half of the DAQ's penalty cases involve open burning violations. Under the open-burning rule, it is illegal to burn:

- Garbage, paper and cardboard;
- Tires and other rubber products;
- Building materials, including lumber;
- Wire, plastics and other synthetic materials;
- Asphalt shingles and heavy oils;
- Paints, and household and agricultural chemicals.
Homeowners can burn yard trimmings - excluding stumps and logs over 6 inches in diameter - if it's allowed under local ordinances, no public pickup is available, and it doesn't cause a public nuisance. Other allowable burning includes campfires, outdoor barbecues, and bonfires for festive occasions. Landowners may be allowed to burn vegetation to clear land or clean up storm debris, but they should check first with the Division of Air Quality. People seeking to burn also may need permits from the state Division of Forest Resources.

A free brochure describing what is allowed and prohibited under the state open burning rule can be obtained by calling (919) 733-3340, or writing to the Division of Air Quality at 1641 Mail Service Center, Raleigh, NC 27699-1641, or checking the DAQ web site at http://daq.state.nc.us/

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