



Connecticut Department of Energy and Environmental Protection



Open Burning Training Program

Module 6: ENFORCEMENT OF OPEN BURNING



ENFORCEMENT OF OPEN BURNING

MODULE OUTLINE

This module will outline the process in which open burning violations are enforced at the State and local levels. The module will review the applicable laws and the permitting process, and then go over the process for enforcement of open burning when State law or local ordinances are violated.

The module will cover the following:

- Open Burning Defined and Overview of Open Burning Laws in Connecticut
- State and Municipal Responsibilities
- When may Open Burning be Authorized?
- When is Open Burning Not Authorized?
- Enforcement of Open Burning Laws
- Municipal Enforcement Process
- Enforcement Penalties
- Enforcement Difficulties
- State Enforcement
- Take Aways



OPEN BURNING DEFINED

“Open Burning” is the burning of any matter, where smoke and other emissions are released directly into the ambient air without passing through an adequate stack or flue.

Typically, open burning involves the open burning of brush; but a barrel burn, a grill burning wood, a chiminea, or a campfire are also considered open burning.

Source: Response to Wood Burning Complaints in Connecticut, Guidance to support local health directors in their efforts to address local nuisance complaints stemming from wood burning, State of Connecticut’s Department of Public Health and Department of Environmental Protection, December 2010



OVERVIEW OF THE OPEN BURNING LAWS IN CONNECTICUT

Overview of the State's Open Burning laws

- **Section 22a-174(f) of the Connecticut General Statutes (CGS)**
 - Enumerates certain situations where open burning is authorized under State law if the required conditions are met.
 - Local law can further restrict the ability of open burning of brush within a municipality.
- **Section 23-48 of the Connecticut General Statutes (CGS)**
 - It is a misdemeanor offense to conduct an open burning without express authorization under State or local law.
- **Section 23-49a of the Connecticut General Statutes (CGS)**
 - Creates additional prohibitions on open burning when the forest fire danger is high to extreme or during a drought emergency, as declared by the State Forest Fire Warden.
 - This law must be complied with even if the open burning is otherwise authorized under State and local law.

Local Open Burning Ordinances

- Some of Connecticut's municipalities have enacted local Open Burning Ordinances.



STATE AND MUNICIPAL RESPONSIBILITIES RELATED TO OPEN BURNING

State Responsibilities

- Pursuant to CGS Section 22a-174(f), the Commissioner of the Department of Energy and Environmental Protection (referred to as the “State Agency”) is responsible for:
 - Allowing the open burning of brush on residential property;
 - Approving or disapproving any proposed permitting of the burning of brush at a municipal landfill, municipal transfer station or municipal recycling center;
 - Approving or disapproving any proposed permitting of open burning on state-owned properties for certain activities as identified in CGS 22a-174(f);
 - Certifying the nomination of any local Open Burning Official;
 - Enforcing open burning laws; and
 - May adopt regulations, in accordance with the provisions of CGS, Chapter 54, governing open burning and may authorize or prohibit open burning consistent with this section.



STATE AND MUNICIPAL RESPONSIBILITIES (CONT.)

Municipal Responsibilities

- ***Municipal authorities pursuant to CGS Section 22a-174(f):***
 - Except for actions on state-owned property, municipalities have the authority to *regulate or ban the open burning of brush within their boundaries for any purpose.*
 - Where open burning is allowed by State and local law, the municipality's Chief Executive Officer must *nominate* an individual to serve in the capacity of an Open Burning Official. The State Agency *must certify* the nominated Open Burning Official. The local Open Burning Official administers the open burning program for the municipality and has the responsibility for making determinations with regard to submitted permit applications to conduct open burning for certain activities as allowed for in CGS Section 22a-174(f).
- ***Municipal authorities pursuant to enacted local Open Burning Ordinances and Procedures:***
 - Municipalities can enact a local Open Burning Ordinance that can place greater restrictions than found in the Connecticut State Statutes or ban other types of allowable open burns of brush occurring within a municipality.
 - In addition to a local Open Burning Ordinance, municipalities are encouraged to have an Open Burning Enforcement Response Strategy to efficiently and effectively manage violations of state and local open burning laws.



MUNICIPAL – LOCAL OPEN BURNING ORDINANCE

Municipal Open Burning Ordinances

- **Enactment of a local Open Burning Ordinance:**
 - Some municipalities have enacted local Open Burning Ordinances.
 - Local Open Burning Ordinances provide a clear structure in the handling of open burning violations and ensure a more efficient enforcement process.
 - These ordinances also provide adequate notice to residents encouraging their orderly compliance.
 - Local Open Burning Ordinances may restrict authorized open burning, but may be no less restrictive than State Statutes and regulations governing open burning.
- **Open burning ordinances may include, but are not limited to, the following provisions:**
 - Process for obtaining open burning permits from the local Open Burning Official;
 - Impermissible uses of open burning permits;
 - Situations resulting in an unauthorized open burning;
 - Procedures for response to open burning violations and nuisance complaints;
 - Requirements and precautions to be taken when burning in accordance to a permit or permit exception;
 - Situations exempted from needing a permit;
 - Penalties and fines assessed for violating the local open burning ordinance.



WHEN MAY OPEN BURNING BE AUTHORIZED?

Open Burning Authorized at the Municipal level:

- **CGS Section 22a-174(f) authorizes the following types of open burning - when a permit is obtained from the local Open Burning Official for open burning to occur on non-state property:**
 - Burning of brush on residential property conducted by the resident of the property or the agent of the resident;
 - Fire Training Exercises;
 - Eradication or control of insect infestations or disease;
 - Agricultural purposes;
 - Clearing of vegetative debris following a natural disaster; and
 - Vegetative management or enhancement of wildlife habitat or ecological sustainability on municipal property or any privately owned property permanently dedicated as open space.



WHEN MAY OPEN BURNING BE AUTHORIZED (CONT.)

Open Burning Authorized at the State level:

- **CGS Section 22a-174(f) authorizes the following types of open burning - when the permit is obtained from the State of Connecticut Department of Energy and Environmental Protection:**
 - Open burning of brush in municipal landfills, municipal transfer stations and municipal recycling centers may be authorized with a permit obtained by the fire marshal of the municipality and approved by the Commissioner of the Department of Energy and Environmental Protection. These types of permits may not be issued more than six times per year.
- **CGS Section 22a-174(f) authorizes the following types of open burning on State-owned properties - when the permit is obtained from the State of Connecticut Department of Energy and Environmental Protection:**
 - Fire Training Exercises;
 - Eradication or control of insect infestations or disease;
 - Agricultural purposes;
 - Clearing of vegetative debris following a natural disaster; and
 - Vegetative management or enhancement of wildlife habitat or ecological sustainability.



WHEN MAY OPEN BURNING BE AUTHORIZED (CONT.)

In addition to open burning authorized with a permit from the State or local Open Burning Official and pursuant to CGS Section 22a-174(f), the following open burning activities may be conducted within a municipality:

- **Campfires and Bonfires**

- The burning of *non-processed* wood for campfires and bonfires is not prohibited if the burning is conducted so as not to create a nuisance and in accordance with any restrictions imposed on such burning by the municipality.
 - *Non-processed wood* is considered to be any untreated, natural wood up to and including rough cut lumber. *Processed wood* is considered to be any wood that has been milled and/or planed and includes recycled wood, and/or glued wood, and/or treated wood, pallets, crates and/or wood scraps from these types of materials.
 - Campfires and bonfires are not defined by statute. Therefore, local Open Burning Officials should develop their own guidance in this area, preferably by town ordinance. Municipalities may impose further restrictions for these types of open burning, and these restrictions can be found in municipal Open Burning Ordinances.

- **Fire breaks**

- Fire breaks for the purpose of controlling forest fires and controlled fires in salt water marshes to forestall uncontrolled fires are not prohibited and do not require a permit.



WHEN IS OPEN BURNING NOT AUTHORIZED?

Open Burning Not Authorized

- **Pursuant to CGS Section 22a-174(f), even with a valid permit, open burning is not authorized in the following situations:**
 - When national or state ambient air quality standards may be exceeded;
 - Where a hazardous health condition might be created;
 - When the forest fire danger in the area is identified by the commissioner as extreme* and where woodland or grass land is within one hundred feet of the proposed burn;
 - Where there is an advisory from the commissioner of any air pollution episode;
 - Where prohibited by an ordinance of the municipality; and
 - In the case of a municipal landfill, when such landfill is within an area designated as a hot spot on the open burning map prepared by the commissioner.*
- **Pursuant to CGS Section 23-49a, even with a valid permit, open burning is not authorized in the following situation:**
 - No person shall kindle or use fire in the open air within one hundred feet of woodland, brush land, or areas containing dried grass that is adjacent to any woodland or brush land, when the forest fire danger is declared to be high to extreme, or during a drought emergency as declared by the State Forest Fire Warden. This law must be complied with even if the open burning is otherwise authorized under State and local law.



OPEN BURNING NOT AUTHORIZED: “NUISANCE” OR “PUBLIC HEALTH NUISANCE”

Open Burning Not Authorized (CONT.)

- An otherwise authorized open burning, will become unauthorized if the burning creates a “nuisance” or “public health nuisance”.
 - The majority of open burn complaints are nuisance-related and are most often the result of smoke impacting neighbors.
- “Nuisance”
 - A “Nuisance” is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the use or enjoyment of another individual's real property, without an actual trespass or physical invasion to the land.
 - When an otherwise authorized open burn rises to the level of a **nuisance**, a person is exceeding the scope of their authorization to burn.
 - Local officials are permitted to step in and enforce the violation under an applicable local ordinance or under sections 23-48 and/or 23-49a of the Connecticut General Statutes if no such ordinance exists. Violations of these statutes are misdemeanors and violators may be subject to fines and imprisonment. Violators are subject to arrest, processing and the assignment of a court date.



OPEN BURNING NOT AUTHORIZED: “PUBLIC HEALTH NUISANCE” (CONT.)

Open Burning Not Authorized (CONT.)

- **“Public Health Nuisance”**
 - **“Public Health Nuisance”** is a term used by local health officials to determine violations of the Public Health Code, 19-13-B2.
- Open burning creates a **“Public Health Nuisance”** when it creates a nuisance which has such intensity, characteristics, frequency and duration that:
 - It is, or can reasonably be expected to be, injurious to the public health or welfare; or
 - It unreasonably interferes with the use and enjoyment of life or the use of property, considering the character and degree of injury to, or interference with, the health, general welfare, property, or use of property of the people affected, and the location of the pollution source and character of the area or neighborhood affected.
- When an otherwise authorized open burn rises to the level of a **“Public Health Nuisance”**, a person is exceeding the scope of their authorization to burn.



OPEN BURNING NOT AUTHORIZED: “PUBLIC HEALTH NUISANCE” (CONT.)

“Public Health Nuisance” (CONT.)

- When local officials are made aware of a “**Public Health Nuisance,**” the matter should be **promptly referred to local health directors for additional** enforcement under their authority in 19-13-B2. This enforcement should not take the place of violations for enforcement taken by locally designated officials responsible to enforce open burning under CGS Sections 23-48 and/or 23-49a.
 - More detail as to how a local Health Department determines a public health nuisance can be found in the Guidance Document entitled “*Response to Wood Burning Complaints in Connecticut*”; the document is located on the State of Connecticut’s Department of Public Health website.
- Additionally, those locally designated officials responsible to enforce open burning are permitted to step in and enforce the violation under an applicable local ordinance or under CGS Sections 23-48 and/or 23-49a if no such ordinance exists.



WHEN IS OPEN BURNING NOT AUTHORIZED? (CONT.)

WHEN THE FOREST FIRE DANGER IS DECLARED TO BE HIGH TO EXTREME OR DURING DROUGHT EMERGENCY, CGS Section 23-49a states the following:

- a) *No person shall kindle or use fire in the open air within one hundred feet of woodland, brushland, or area containing dried grass that is adjacent to any woodland or brushland, when the forest fire danger, as declared by the State Forest Fire Warden, is high or extreme, or during a drought emergency as declared by the State Forest Fire Warden. When weather conditions indicate that such forest fire danger exists, the State Forest Fire Warden shall make public announcement of the fact, using such news media as may be available and the provisions of this section shall then be in effect until canceled by said warden.*
- b) *Notwithstanding any provision of subsection (a) of this section to the contrary, an owner or an agent of such owner may apply to the State Forest Fire Warden or designee of said warden for a special burning permit during such period of burning ban. If the State Forest Fire Warden or designee is of the opinion that the proposed burning is of immediate necessity, will not be in conflict with local or state regulatory authority, and that the permittee has the necessary equipment and manpower to confine the fire, the State Forest Fire Warden may issue a special burning permit stating the location, time and conditions under which such burning is to be effected.*

Abstract of (a) and (b) above:

- a) Prohibits open burning within one hundred feet of woodland, brush land, or area containing dried grass that is adjacent to any woodland or brush land, when the forest fire danger, as declared by the State Forest Fire Warden, is high or extreme or during a drought emergency as declared by the State Forest Fire Warden.
- b) However, upon an adequate showing of necessity, the owner of land or agent of such owner may apply to the State Forest Fire Warden or designee of said warden for a special burning permit during such period of a burning ban.



ENFORCEMENT OF OPEN BURNING LAWS

Enforcement at the Municipal Level

- State Statutes
 - Enforcement of Open Burning Violations: Sections 23-48 and 23-49a of the CGS.
 - Responsibilities of local Open Burning Officials: Section 22a-174(f) of the CGS.
- Municipal Ordinances
 - Local laws enumerating the limits of authorized open burning within a municipality, and the penalties for violation.
- Municipal Enforcement Response Procedures
 - Procedures clearly detailing the proper steps to be taken to enforce open burning requirements, and identifying those responsible for enforcement matters.

Enforcement at the State Level

- State Statutes
 - Enforcement of Open Burning Violations: Sections 23-48 and 23-49a of the CGS.
 - Responsibilities of the Commissioner of the Department of Energy and Environmental Protection: Section 22a-174(f) – CGS Chapter 446c; Commissioner’s General Authority – CGS Chapter 439.
- State Enforcement Response Procedures
 - State may issue Notice of Violation, Administrative Orders, or in egregious situations refer matters to the Offices of the Connecticut Attorney General or Chief State’s Attorney.



MUNICIPAL LEVEL ENFORCEMENT

Municipal Level Enforcement

- Enforcement Authorities - Section 23-48 and 23-49a of the CGS AND/OR local ordinances.
- A municipality can attach more stringent permit conditions than those found in the Connecticut General Statutes to regulate open burning within its jurisdiction.
- Local ordinances and permit programs are used by municipalities to manage open burning within their boundaries.
- Municipalities should have an Enforcement Policy to assure consistent procedures are applied in the administration of enforcement matters and actions.
- Municipalities must determine the appropriate response based upon their municipal structure and available staff. A large number of open burning complaints occur after normal business hours. The local officials respond to complaints and violations of the law. The municipality must communicate to their residents the proper procedures and contact information should open burning become problematic.
- Municipalities which utilize their own ordinances may ticket the offender prior to utilizing CGS Sections 23-48 and/or 23-49a.
- Violations of CGS Sections 23-48 and/or 23-49a are misdemeanors and violators may be subject to fines and imprisonment.



MUNICIPAL LEVEL ENFORCEMENT (CONT.)

Municipal Level Enforcement (cont.)

- Municipalities have the discretion to choose the municipal officer or employee best able to fulfill the enforcement roles and responsibilities pursuant to State laws and local ordinances. Resources within the municipality may dictate who may be designated as the respondent. In general, open burning complaints are most often referred to the local Open Burning Official or the local Fire Marshal.
- In some municipalities, the designated official(s) responsible for enforcing and ensuring compliance of the open burning laws and ordinances could be the following:
 - Fire Marshal
 - Fire Department Official
 - Open Burning Official
 - Police Officer
 - Peace Officer
 - Health Department Official



MUNICIPAL LEVEL ENFORCEMENT (CONT.)

Local Enforcement Response Strategy:

- Most often, violations are determined during the actual burn and often occurs outside of normal business hours. Municipal responders should be knowledgeable in the response structure of their municipality to ensure an appropriate and timely response by the designated official. The designated official must understand the regulatory requirements and be trained to be knowledgeable in carrying out this function.
- Local municipalities are encouraged to have a clear strategy to respond to unauthorized open burns and related nuisance complaints.
- Local municipal enforcement response strategies could include, but are not limited to, the following:
 - Clearly enumerated procedures for adequately responding to open burning complaints;
 - The appropriate person to contact in the event of receiving an open burning complaint;
 - Proper designees to receive and respond to complaints received after hours, on weekends, or on holidays;
 - Designated enforcement officials trained and knowledgeable in enforcing and ensuring compliance of open burning laws and ordinances;
 - In those cases where the fire does not pose significant harm and/or would not result in damage to property, direct that the fire be extinguished and direct the individual not to repeat the violation; and
 - Local Open Burning Ordinances assessing penalties and fines for unauthorized open burning.



MUNICIPAL LEVEL ENFORCEMENT (CONT.)

Violations may be a result of, but not be limited to, the following:

- Failure to obtain a permit.
- Failure to obey conditions of the permit.
- The burning of unauthorized material.
- An improperly issued permit.
- A complaint in regards to open burning.
- Failure to obtain a valid permit for any activity expressly requiring a valid permit.
- Open burning on state property without valid written approval from the Commissioner of the Department of Energy and Environmental Protection.

In the event of an alleged violation:

- A designated enforcement official may respond to a complaint. A determination must be made by the designated enforcement official if a violation has occurred.
 - If a violation has occurred, then the designated enforcement official shall determine and pursue an appropriate enforcement response.
- In addition to local ordinances, local police or peace officers have the authority to enforce CGS Sections 23-48 and/or 23-49a.



ENFORCEMENT VIOLATIONS



Violation - Open Burning Permit issued for Agricultural Use, however, the burn pile contained unauthorized material.



Violation - Illegal burn of processed wood.

Photos Courtesy of the Town of Glastonbury



Connecticut Department of Energy and Environmental Protection

ENFORCEMENT: “PEACE OFFICER” DEFINED

Local police or peace officers have the authority to enforce CGS sections 23-48 and 23-49a.

- **CGS Section 53a-3(9)** “Peace Officer” means a member of the Division of State Police within the Department of Public Safety or an organized local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal while exercising authority granted under any provision of the general statutes, a judicial marshal in the performance of the duties of a judicial marshal, a conservation officer or special conservation officer, as defined in section 26-5, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, 29-18a or 29-19, an adult probation officer, an official of the Department of Correction authorized by the Commissioner of Correction to make arrests in correctional institution or facility, any investigator in the investigations unit of the office of the State Treasurer or any special agent of the federal government authorized to enforce the provisions of Title 21 of the United States code.



ENFORCEMENT: “OFFENSE” DEFINED

CGS sections 23-48 and 23-49a are misdemeanor offenses subject to fines and/or imprisonment. This requires an arrest, processing and the assignment of a court date. Because such burning has a fine or imprisonment, it is an “offense”

- **CGS Section 53a-24 Offense defined.** *(a) The term “offense” means any crime or violation which constitutes a breach of any law of this state or any other state, federal law or local law or ordinance of a political subdivision of this state, for which a sentence to a term of imprisonment or fine, or both, may be imposed, except one that defines a motor vehicle violation or is deemed to be an infraction. The term “crime” comprises felonies and misdemeanors. Every offense, which is not a “crime”, is a violation. Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.*



ENFORCEMENT: “ARREST WITHOUT WARRANT” DEFINED

Any “offense” subjects the person to arrest without warrant by a “Peace Officer” in that “peace officer’s” jurisdiction.

- **CGS Section 54-1f. Arrest without warrant. Pursuit outside precincts.** *(a) For the purposes of this section, the respective precinct or jurisdiction of a deputy sheriff or special deputy sheriff shall be wherever he is required to perform his duties. Peace officers, as defined in subdivision (9) of section 53a-3, in their respective precincts, shall arrest, without previous complaint and warrant, any person for any offense in their jurisdiction, when the person is taken and apprehended in the act or on the speedy information of others, provided that no constable elected pursuant to the provisions of section 9-200 shall be considered a peace officer for the purposes of this subdivision, unless the town in which such constable holds office provides, by ordinance, that constables shall be considered peace officers for the purpose of this subsection.*



ENFORCEMENT: PENALTIES

- **Under CGS Section 23-48:** *Any person who kindles or directs another to kindle a fire in the open air, without proper authorization from state or local authorities or any person who burns materials that are prohibited from being burned by any provision of the general statutes, regulation of the state or local ordinance, shall be fined not more than two hundred dollars or imprisoned not more than six months or both.*
- **CGS Section 23-49a:** *(a) No person shall kindle or use fire in the open air within one hundred feet of woodland, brushland, or area containing dried grass that is adjacent to any woodland or brushland, when the forest fire danger, as declared by the State Forest Fire Warden, is high to extreme, or during a drought emergency as declared by the State Forest Fire Warden. (c) Any person who violates any of the provisions of subsection (a) of this section shall be fined not more than two hundred dollars or imprisoned not more than six months or both.*
- **For those municipalities that have enacted local Open Burning Ordinances, penalties and fines can be assessed at the local level.** First offenses range from a written notification to monetary penalties. These penalties can be assessed by any local law enforcement or peace officer within the jurisdiction.
- For those rare occasions that the State Agency would become involved at a local level, the enforcement protocol can include the following: Issuance of a Notice of Violation from the Agency; a Unilateral Order or Consent Order with penalties; and a Referral to the Attorney General's Office or Chief State's Attorney.



ENFORCEMENT: DIFFICULTIES

- Local Open Burning officials should carry out their duties pursuant to State and local laws.
- If in carrying out those duties, the local Open Burning Official is unable to compel local law enforcement or peace officers to take meaningful action pursuant to applicable state or local open burning laws, and attempts by the local Open Burning Official to personally rectify violations that have been ignored or met with excessive resistance from violators, the local Open Burning Official should contact the State of Connecticut's Department of Energy and Environmental Protection's Bureau of Air Management's Enforcement Division for further assistance in enforcing the open burning violations.
- The State Agency's Enforcement Division can be reached at 860-424-3702.
- Upon receiving a complaint from a local Open Burning Official, the State may take action it deems reasonably necessary to resolve the issue(s).



STATE LEVEL ENFORCEMENT

STATE LEVEL ENFORCEMENT

- The State Agency uses a broad range of regulatory, permitting, assistance and enforcement tools to maximize protection of public health and the environment, to maintain a strong, credible enforcement presence and to minimize potential impacts that regulated activities can have on the environment.
- The enforcement and/or compliance tools the State Agency employs include inspections, data tracking and monitoring, compliance assistance, and administrative enforcement.
- Examples where the State may step in to enforce include, but is not limited to, the following scenarios:
 - Against a municipal permittee exceeding the permissible scope of a permit;
 - Against a municipality if burning without a permit;
 - Against illegal open burns on **state property**;
 - Against a responsible party who conducted an egregious violation of the open burning law or when a municipality requests and shows cause for assistance in enforcing open burning laws.
 - Against a municipality if a local Open Burning Official neglects their duties or acts beyond the scope of their authority, the State Agency may step in and issue a Notice of Violation to the municipality. Any failure to comply with the Notice of Violation may result in further legal action.



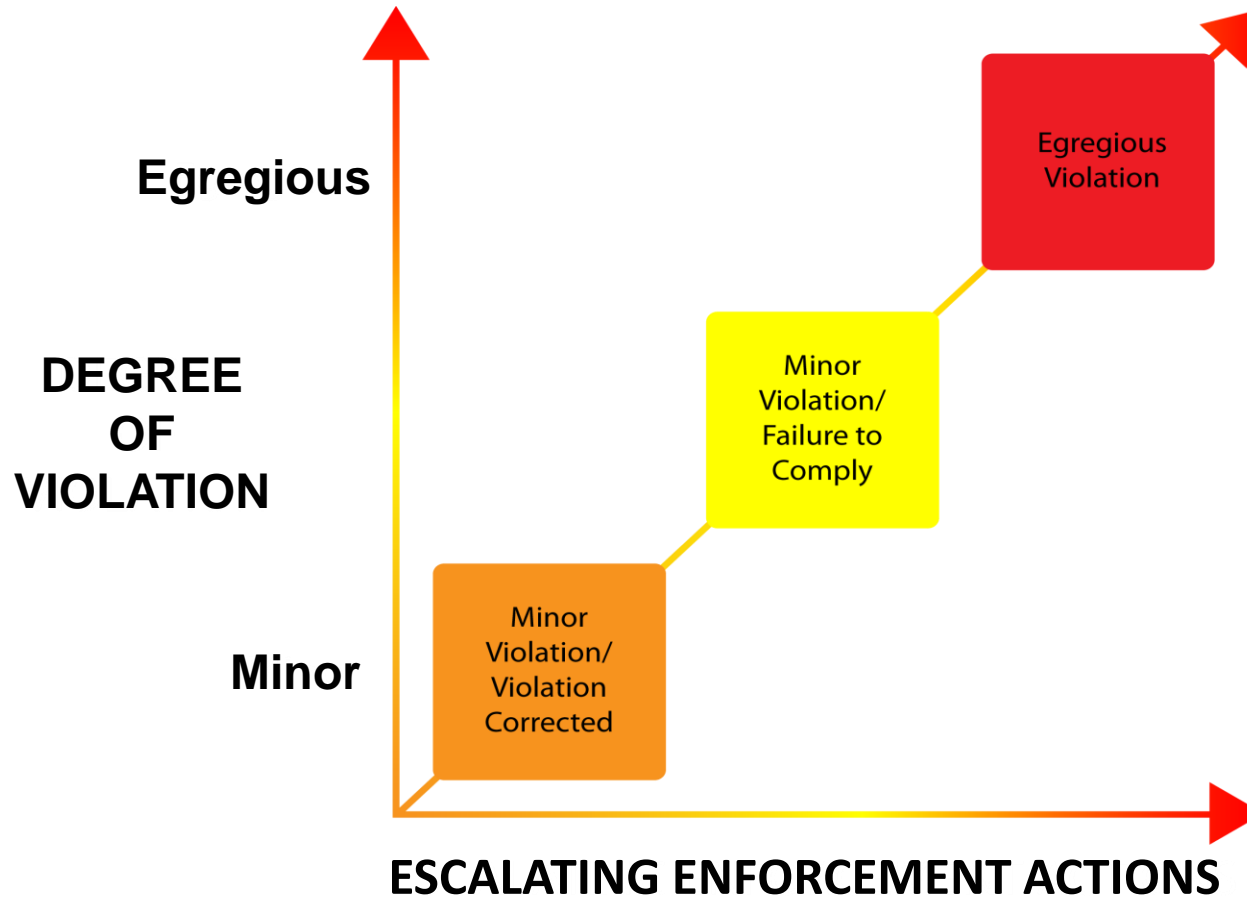
STATE LEVEL ENFORCEMENT (CONT.)

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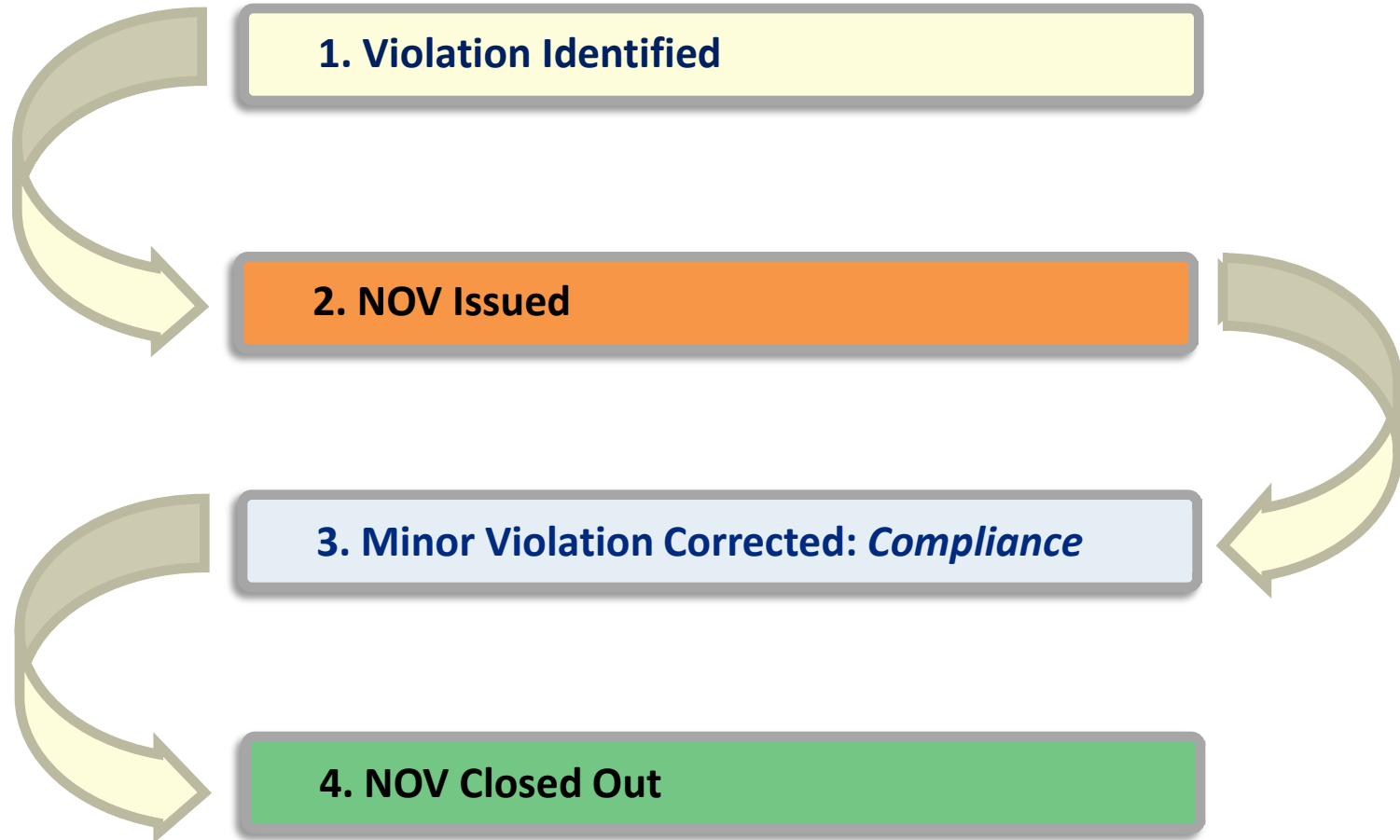
- In the event of an alleged violation, the Commissioner of Energy and Environmental Protection has the authority, under Chapter 446c of the Connecticut General Statutes, to take any of the following actions:
 - The State Agency may respond to a complaint as a result of a municipal burn. Staff may then inspect the site and surrounding area to investigate the complaint. The State Agency will speak with appropriate municipal officials to determine if a violation did occur.
 - If a violation did occur, the following enforcement activities could be considered:
 - Issuance of a Notice of Violation (NOV) and 30 day period to respond
 - Issuance of Administrative Orders (includes both Unilateral Order or Consent Order with penalties)
 - Referral to the Attorney General's Office or Chief State's Attorney
 - Arrest/fine under CGS Section 23-48 and/or Section 23-49a



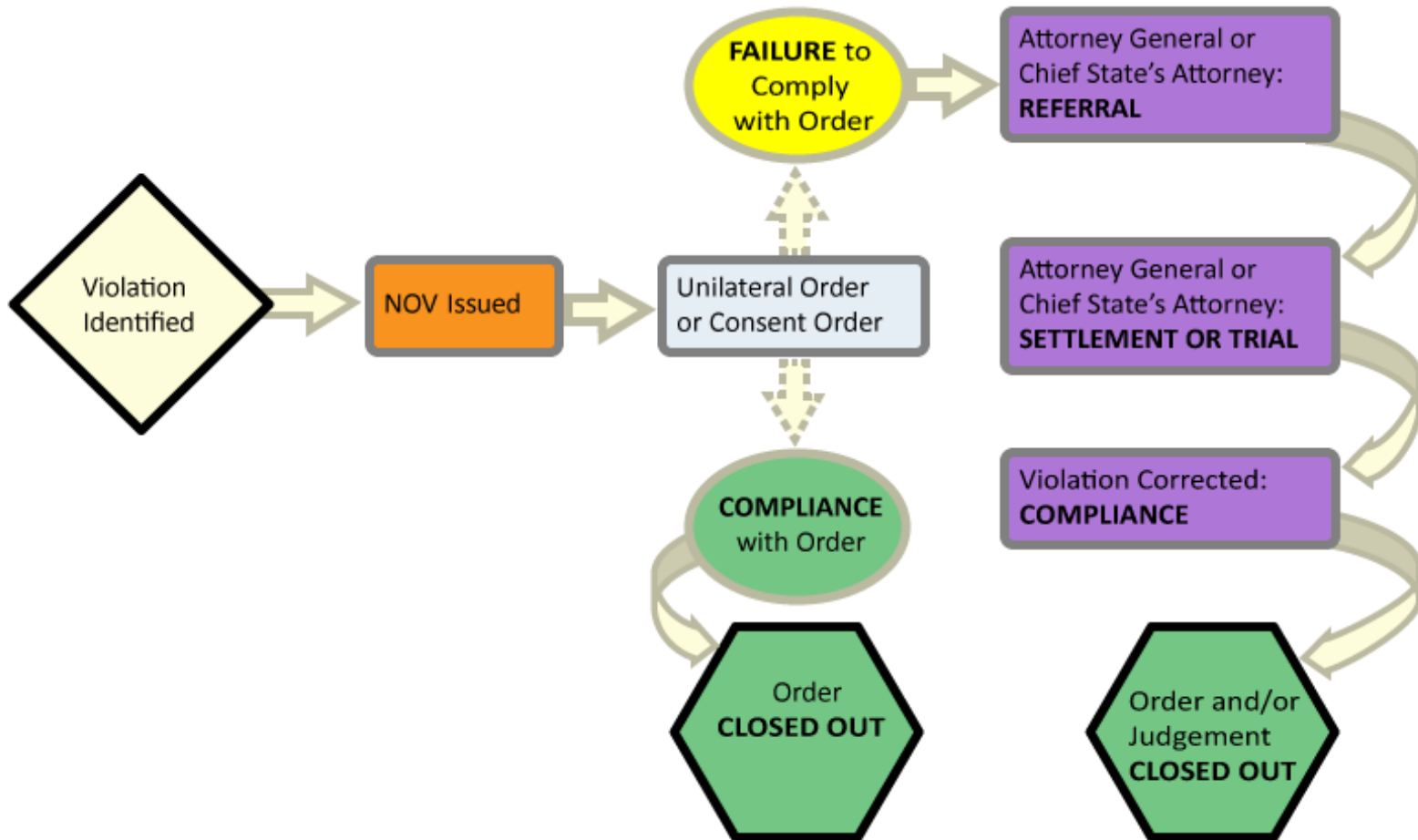
EXAMPLES OF THE STATE AGENCY'S ENFORCEMENT RESPONSE: *VIOLATIONS OF OPEN BURNING STATUTES*



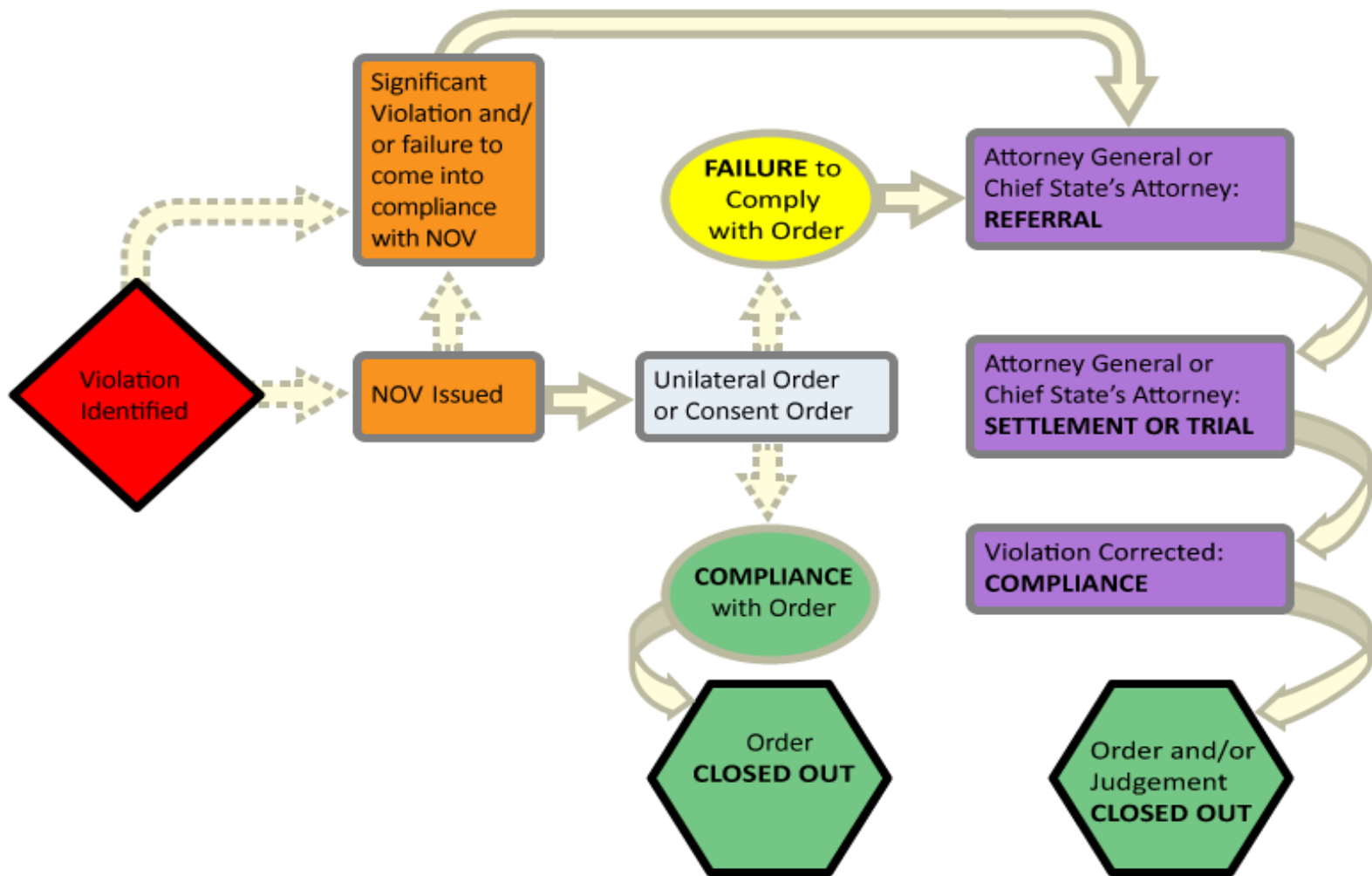
Example of the State Agency's Enforcement Path: *Minor Violation/Violation Corrected*



EXAMPLE OF THE STATE AGENCY'S ENFORCEMENT PATH: *MINOR VIOLATION/FAILURE TO COMPLY*



EXAMPLE OF THE STATE AGENCY'S ENFORCEMENT PATH: *EGREGIOUS VIOLATION*



TAKE AWAYS

- The local Open Burning Official is tasked with regulating the vast majority of open burning within a municipality's jurisdiction. These duties include granting open burning permits under certain circumstances, and creating adequate procedures to ensure orderly compliance with open burning laws. However, local Open Burning Officials are not specifically tasked with the enforcement of open burning violations.
- The municipality should designate a local official for the enforcement of open burning violations to ensure full compliance with the law. The municipal enforcement designee may include, but is not required to be, the local Open Burning Official.
- In order to ensure compliance with the State and/or local open burning laws, municipalities are strongly encouraged to adopt local ordinances and enforcement response procedures to ensure the laws are properly adhered to and effectively and efficiently enforced.
- Local Open Burning Officials are entrusted with important duties to ensure that State and local laws are properly enforced. Should a local Open Burning Official fail to and/or improperly perform their duties, the State Agency may become involved to assure compliance with relevant State open burning laws.
- The State Agency's Open Burning Program is an important resource to contact should assistance be needed by the local Open Burning Official to resolve difficult enforcement related issues at the local level.



TAKE AWAYS

- Synopsis of the terms “Nuisance” and “Public Health Nuisance” with regard to the enforcing open burning laws.

	Definitions	When Open Burning is Not Authorized	Enforcement
Nuisance	A “Nuisance” is the unreasonable, unwarranted, or unlawful use of one’s property in a manner that substantially interferes with the use or enjoyment of another individual’s real property, without an actual trespass or physical invasion to the land.	When an otherwise authorized open burn rises to the level of a “Nuisance”, a person is exceeding the scope of their authorization to burn (per permit conditions and/or CGS 22a-174(f)). Violation(s) of CGS sections: 22a-174(f); 23-48; and 23-49a.	Local officials are permitted to step in and enforce the violation under an applicable local ordinance or under sections 23-48 and/or 23-49a of the CGS if no municipal ordinance exists. Violations of these statutes are misdemeanors and violators may be subject to fines and imprisonment. Violators are subject to arrest, processing and the assignment of a court date.
Public Health Nuisance	<p>“Public Health Nuisance” is a term used by local health officials to determine violations of the Public Health Code (19-13-B2). Open burning creates a “Public Health Nuisance” when it creates a nuisance which has such intensity, characteristics, frequency and duration that:</p> <ul style="list-style-type: none"> • It is, or can reasonably be expected to be, injurious to the public health or welfare; or • It unreasonably interferes with the use and enjoyment of life or the use of property, considering the character and degree of injury to, or interference with, the health, general welfare, property, or use of property of the people affected, and the location of the pollution source and character of the area or neighborhood affected. 	When an otherwise authorized open burn rises to the level of a “Public Health Nuisance”, a person is exceeding the scope of their authorization to burn. Violation(s) of CGS Sections 22a-174(f); 23-48; and 23-49a.	When local officials are made aware of a “Public Health Nuisance,” the matter should be promptly referred to local health directors for additional enforcement under their authority. Additionally, those locally designated officials responsible to enforce open burning are permitted to step in and enforce the violation under an applicable local ordinance or under CGS sections 23-48 and/or 23-49a if no such ordinance exists.





STATE OF CONNECTICUT
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ENVIRONMENTAL PROTECTION
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The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at 860-418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint.



Connecticut Department of Energy and Environmental Protection