

**COUNCIL OF THE CITY OF PHILADELPHIA**

**OFFICE OF THE CHIEF CLERK**

**ROOM 401, CITY HALL**

**PHILADELPHIA**

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**AIR MANAGEMENT CODE**

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Certification: This is to certify that the following is a true and correct excerpt from The Philadelphia Code, pursuant to the original Ordinance adopted by the Council of the City of Philadelphia and approved by the Mayor on October 20, 1969 and including amendments through October 4, 1976.

*Chief Clerk of the Council*

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(BILL NO. 1046)

**AN ORDINANCE**

Amending The Philadelphia Code by repealing Title 3, Air Pollution Code, and adopting a new Title 3, Air Management Code to control, regulate, and eliminate air pollution and providing penalties for violations.

*The Council of the City of Philadelphia hereby ordains:*

SECTION 1. The Philadelphia Code is amended by repealing Title 3, Air Pollution Code, and adopting a new Title 3, Air Management Code, as follows:

**TITLE 3. AIR MANAGEMENT CODE**

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### **CHAPTER 3-100 GENERAL PROVISIONS**

#### **§3-101 LEGISLATIVE FINDINGS:**

- (1) The City Council of the City of Philadelphia finds:
  - (a) that the atmosphere over the City is polluted to a degree which
    - (.1) is harmful and detrimental to the health, welfare and safety of its inhabitants;
    - (.2) is injurious to property, vegetation and animal life;
    - (.3) interferes with the comfortable enjoyment of life, property and recreation, and with the conduct and operation of business and industry;
    - (.4) creates hazardous conditions for air, water and ground traffic

(.5) causes nuisances; and

(.6) degrades the quality of the air over wide areas;

(b) that the discharge of air contaminants to the atmosphere over the City of Philadelphia is causing the air to be polluted;

(c) that no one has any right to discharge air contaminants to the atmosphere;

(d) that effective control and elimination of air contaminants is essential to the furtherance of the health and welfare of the City's inhabitants, to the conduct of the normal pursuits of life, recreation, commerce and industrial activity, and to sustaining life in an urban area;

(e) that the emission of toxic air contaminants into the community air increases the risks respecting acute and long-term health effects;

(f) that the presence of toxic substances in a workplace is a potential source of toxic emissions into the community air;

(g) that individuals who live or work in the City have a right to know the generic names of the toxic air contaminants to which they are exposed; and

(h) that individuals who live or work in the City have a right to information concerning the health effects associated with the toxic air contaminants to which they are exposed.

(2) It is the intent and purpose of this Title:

(a) to provide for the effective management of the air resource, to prevent air pollution and air pollution nuisances and to limit, control and eliminate air contamination in general from whatever source;

(b) to provide for the establishment of acceptable air quality objectives, to prevent the deterioration of the air quality beyond established goals, to limit, control and prevent emissions of air contaminants into the atmosphere;

(c) to purify and clean the air throughout the City;

(d) to provide individuals who live or work in the City with information about the toxic air contaminants they may be exposed to and the health effects associated with these substances; and

(e) to empower the Air Pollution Control Board to promulgate regulations to the effect above.

(3) It is the further intent of City Council that:

(a) all City of Philadelphia agencies shall cooperate in the implementation of this Title;

(b) wherever permitted by law, the provisions of this Title shall apply to all governmental jurisdictions and their agencies in the operation of facilities located within the City of Philadelphia;

(c) the Department of Public Health of the City of Philadelphia shall cooperate with other governmental jurisdictions in the control and elimination of air pollution; and

(d) contractors and vendors providing services and products to the City shall comply with the requirements of this Title.

### **§3-102 DEFINITIONS**

The following definitions apply to this Title and the Regulations adopted hereunder.

(1) *Aerosol* - A dispersion or suspension of small solid or liquid particles or any combination thereof in the air or other gaseous medium.

(2) *Ashes* - The residue from combustion, including cinders, flyash or any other solid material resulting from combustion, as well as partially combusted materials and unburned combustibles.

(3) *Air Contaminant* - Any smoke, soot, flyash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, mists, aerosols, vapors, odors, toxic or radioactive substances, waste, particulate, solid, liquid or gaseous matter, or any other materials in the outdoor atmosphere.

(4) *Air Pollution* - The presence in the atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration that they are or may tend to be injurious to human, plant, or animal life, or property, or that interfere with the comfortable enjoyment of life or property or the conduct of business or other

human activities.

(5) *Air Pollution Nuisance* - The emission or discharge of one or more air contaminants to the atmosphere meeting one or more of the following criteria:

(a) In excess of emission standards promulgated by the Air Pollution Control Board;

(b) In such quantity and of such duration that they do or may tend to

(.1) interfere with health, repose or safety,

(.2) cause severe annoyance or discomfort,

(.3) lessen food or water intake,

(.4) produce irritation of the upper respiratory tract,

(.5) produce symptoms of nausea,

(.6) be offensive, or objectionable, or both, to persons because of inherent chemical or physical properties,

(.7) be detrimental or harmful to health, comfort, recreation, living conditions, welfare, or safety,

(.8) cause injury or damage to real or personal property of any kind,

(.9) or interfere with the conduct of industry, commerce, or transportation.

(6) *Board* - means the Air Pollution Control Board.

(7) *Cinders* - Particles consisting of fused ash or unburned matter.

(8) *Carbon Dioxide* (CO<sub>2</sub>) - A colorless, odorless gas at standard conditions which has the molecular formula CO<sub>2</sub>.

(9) *Commercial Fuel* - Liquid or gaseous fuel normally produced, manufactured, used or sold for the purpose of creating useful heat.

(10) *Condensed Fumes* - Minute solid particles generated by the condensation of vapors from solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

(11) *Department* - The Department of Public Health, Health Commissioner or any

authorized representative thereof.

(12) *Dust* - Solid particles projected into the air and capable of temporary suspension therein.

(13) *Facility* - The area, buildings, and equipment used by any person at a single location in the conduct of business.

(14) *Flyash* - Particulate matter capable of being gasborne or airborne and consisting essentially of fused ash and/or burned or unburned material.

(15) *Fuel* - Any combustible matter.

(16) *Fuel Burning Equipment* - Any device, machine, mechanism or structure used in the process of burning fuel for indirect heating.

(17) *Fuel Merchant* - Any person who stores, offers for sale or sells commercial fuel in retail or wholesale trade, excluding agents, brokers, wholesalers, distributors or producers who sell commercial fuel for use in single steam and/or electric power generating facilities having rated hourly capacities that equal or exceed two hundred (200) million BTU gross heat input, or in a group of steam and/or electric power generating facilities at one location having a combined rated capacity which equals or exceeds four hundred and fifty (450) million BTU gross heat input.

(18) *Fuel Oil* - A liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil.

(19) *Household Appliances* - Any electric or gas operated device; commonly used in a dwelling, other than incinerators, heating systems, or hot water heating systems.

(20) *Incinerators* - All devices, including but not limited to crematories, intended or used for the destruction of garbage or other combustible materials by means of burning, or for the salvage of materials by means of burning of extraneous materials.

(21) *Installation, Equipment or Devices* - Any assembly or elements or components the operation of which does or may directly or indirectly affect the emission of air contaminants to the atmosphere.

(22) *Minor Repairs and Alterations* - Repair or alteration of any part of any existing installation, equipment, or device which does not materially alter the quantity or character of

discharge or emission into the atmosphere of air contaminants.

(23) *Mist* - A suspension of any finely-divided liquid in any gas or atmosphere.

(24) *Non-Commercial Fuel* - Liquid or gaseous fuel not normally produced, manufactured, used or sold for the purpose of creating useful heat.

(25) **[Not in SIP]**

(26) *Open Fires* - Any fire from which the products of combustion are emitted directly into the atmosphere without passing through a stack or chimney.

(27) *Particulate Matter* - Any material, liquid or solid, except uncombined water, which exists in a finely divided form at standard conditions.

(28) *Person* - Any individual, natural person, syndicate, association, partnership, firm, corporation, institution, agency, authority, department, bureau, or instrumentality of federal, state or local government or other entity recognized by law as a subject of rights and duties.

(29) *Smoke* - Small gas-borne particles resulting from combustion, consisting of carbon, ash, and other material.

(30) *Soot* - Agglomerated particles consisting mainly of carbonaceous material.

(31) *SSU Viscosity* - The number of seconds it takes 60 cubic centimeters of an oil to flow through the standard orifice of a Saybolt Universal Viscometer at 100 degrees F.

(32) *Stack or Chimney* - A flue, conduit or opening permitting particulate or gaseous emissions into the open air, or constructed or arranged for such purpose.

(33) *Standard Conditions* - A gas temperature of 60 degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute.

(34) *Sulfur Dioxide (SO<sub>2</sub>)* - A colorless gas at standard conditions which has the molecular formula SO<sub>2</sub>.

(35) *Vapor* - The gaseous form of a substance which is in the liquid or solid state at customary atmospheric temperature and pressure.

(36) *Viscosity* - The measure of a fluid's resistance to flow.

(37) *Toxic Air Contaminant* - A chemical substance or material the discharge of which into the atmosphere, based upon relevant available scientific evidence establishing

the toxic, mutagenic and/or carcinogenic effects of such substance or material, may pose a potential hazard to the community in terms of a significant increase in risk of acute or long-term health effects.

### **§3-103 ENFORCEMENT**

Any person who shall violate any provision of this Title, any regulation adopted hereunder, any order of the Department, or any condition of any required permit or license shall be subject to one or more of the following sanctions, in addition to any other sanction or remedial procedure imposed by the Statutes of the Commonwealth of Pennsylvania or Acts of the United States Government:

(1) Sealing of Equipment

Equipment or processes installed or operated without obtaining the required permit or license, or after revocation thereof, may be sealed by the Department with the approval of the Law Department in order to render it inoperable.

(2) Abatement

Continuing violations of this Title, any regulation adopted hereunder, or any order of the Department made hereunder are hereby declared to be a public nuisance per se. Where the Department determines that a nuisance per se exists, the Department, in addition to or in lieu of invoking any other sanction or remedial procedure provided, may either

(a) Certify the existence of a nuisance per se, to the Department of Licenses and Inspections which shall itself or by contract abate and remove the violation; charge the cost of the abatement or removal to the person responsible therefore; and with the approval of the Law Department, collect the cost by lien or otherwise as may be authorized by law; or

(b) Apply, through the Law Department, to any appropriate Court for relief by injunction or restraining order against any person responsible for the violation.

(3) Compliance

The Department may take action to secure compliance as set forth in Section 3-301



of this Title.

(4) Summons for Moving Violation

When the source of an emission in violation of this Title or the regulations adopted hereunder is mobile, the Department may cause the violator to stop and may forthwith issue a summons to appear in a court of proper jurisdiction to answer charges of violating this Title and the regulations hereunder.

(5) Penalties

Penalties may be imposed for any of the above violations committed in any thirty-six month period, as follows:

- (a) For the first violation, a fine of not less than \$25.00 and not more than \$300.00, or imprisonment of not more than 90 days, or both.
- (b) For the second violation, a fine of not less than \$100.00 and not more than \$300.00, or imprisonment of not more than 90 days, or both.
- (c) For the third and subsequent violations, fines of not less than \$300.00, or imprisonment of not more than 90 days for each offense, or both.
- (d) A violation of the same requirement shall be considered as a separate violation for each day the violation continues.

## **CHAPTER 3-200 PROHIBITED CONDUCT**

### **§3-201 GENERAL PROVISIONS**

(a) No person shall discharge, or allow the escape of air contaminants to the atmosphere:

(1) which are prohibited by or are in excess of those permitted by this code or by the regulations of the Air Pollution Control Board; or

(2) which exceed the density or opacity limits established by the Board; or

(3) which result in or cause air pollution or an air pollution nuisance.

(b) No person shall perform any acts or operations in violation of orders issued by the Department pursuant to this Title and the regulations adopted hereunder.

(c)

(1) No person shall emit any toxic air contaminant unless within six months of the adoption of regulations by the Air Pollution Control Board listing toxic air contaminants, he provides notice to the Department including a Material Safety Data Sheet as described in §3-301(24) in accordance with the requirements and procedures established in regulations promulgated by the Air Pollution Control Board pursuant to this subsection.

If a person discharges a toxic air contaminant on the list established by the Air Pollution Control Board for the first time, that person shall provide the Department with proper notice no more than thirty days after its emission into the atmosphere.

The person responsible for any source of air contaminants affected by any subsequent additions to the list of toxic substances established in the regulations of the Air Pollution control Board shall similarly file notice with the Department within 90 days of the effective date of any revision to such list.

(2) The Department shall maintain a file of all notices relating to toxic air contaminants and shall make the file available for public inspection and reproduction during normal business hours.

(3) Within six months of the adoption of this subsection by the City Council, the Air Pollution Control Board shall promulgate regulations establishing a list of toxic air contaminants to which the provisions of this subsection shall be applicable, the form of the notice and request to be provided to the Department by any affected source of air contaminant emissions, and the

reporting requirements and procedures related thereto.

The following factors may be considered by the Board in establishing the list of toxic air contaminants:

- (a) risk of immediate acute or subacute harm to human health, at concentrations likely to be encountered in the community.
- (b) proven carcinogenicity through epidemiological studies in both human and animal populations;
- (c) suspected carcinogenicity as shown in human epidemiological studies or in laboratory studies of animals and other experimental media;
- (d) mutagenicity and teratogenicity as proven through human, animal, and experimental media;
- (e) bioaccumulative effects in humans and the environment;
- (f) findings of the Environmental Protection Agency, the Occupational Safety and Health Administration or other such agencies regarding toxicity;
- (g) extent to which the substance is likely to be found in Philadelphia industries;
- (h) other such factors necessary for the proper regulation of toxic air contaminants.

The Air Pollution Control Board shall, as appropriate, update and revise the list of toxic air contaminants subject to the provisions of this subsection on the basis of the latest available relevant scientific information.

### **§3-202 OPEN FIRES**

No person shall ignite, burn or permit the continuation of the burning of garbage, refuse, or other waste material, demolition materials, leaves, grass, weeds, trees, batteries, wire, tires, cars, vehicles, or parts thereof, or any other combustible material in an open fire. Any open burning for salvage purposes is prohibited. This requirement shall not apply to out-door home cooking. A special

exception may be made by order of the Commissioner of Health where the Fire Commissioner certifies an emergency exists which endangers the public safety, and the Health Commissioner finds that no practical alternative method of disposal of hazardous or flammable materials exists. The conditions for allowing open fires shall be approved by both the Health and Fire Commissioners.

### **§3-203 INSTALLATION AND OPERATION**

No person shall construct, reconstruct, convert, operate, add or alter any installation, equipment, device, contrivance, or appurtenances thereto, which by their operation or maintenance will emit, cause or allow, or will prevent or control the emission or escape of air contaminants to the atmosphere of the City of Philadelphia without obtaining the permits and licenses required by this Title.

### **§3-204 SEALING OF EQUIPMENT**

No person without the prior written approval of the Department shall break a seal placed by the Department with the approval of the Law Department and it shall be unlawful to operate any equipment, device, or process which has been sealed by the Department until the order is withdrawn.

### **§ 3-205 HABITABLE STRUCTURES OVER HIGHWAYS**

No structure for human habitation or occupancy shall be constructed over a highway or public roadway except where the Department determines that no health hazard to the occupants of the proposed structure will be created, and issues its written approval.

### **§3-206 AUTOMOTIVE FACILITIES**

No parking garages, underground parking facilities, or tunnels, shall be constructed except where the Department determines that no health hazard is created by the ventilation and exhaust control systems, and issues its written approval. This provision shall not apply to garages of one- or two family dwellings.

**§ 3-207. Sale of Fuel Oil.**

**(1) Commercial Fuel Oil.**

(a) On and after the effective dates listed therein no fuel merchant shall store, offer for sale, sell, deliver for use or exchange in trade, for use in Philadelphia, and no person shall use commercial fuel oils which contain sulfur in excess of the percentages by weight set forth in the following table:

Grades of Commercial Fuel Oil	SSU Viscosity at 100° F	Percent Sulfur by Weight	
		Effective 04-01-78	Effective 07-01-15
No. 2 and lighter	Less than or equal to 45	0.2%	0.0015% (15ppm)
No. 4	Greater than 45 but less than 145	0.3%	0.2500% (2500ppm)
No. 5, No. 6, and heavier	Equal to or greater than 145	0.5%	0.5000% (5000 ppm)

(b) The provisions of (a) above shall not apply in any case in which it is demonstrated to the Department that sulfur dioxide emissions, caused by the combustion of commercial fuel oils, from any stack or chimney into the outdoor atmosphere, can be controlled to levels that, on and after the effective dates listed herein, do not exceed at any time those quantities of sulfur dioxide, expressed in pounds per one (1) million BTU gross heat input, set forth in the following table:

Grades of Commercial Fuel Oil	SSU Viscosity at 100 °F	Permissible SO <sub>2</sub> Emissions (Pounds of SO <sub>2</sub> per Million BTU Fuel Gross Heat Input)	
		Effective 04-01-78	Effective 07-01-15
No. 4	Greater than 45 but less than 145	0.30 lb	0.26 lb
No. 5, No. 6, and heavier	Equal to or greater than 145	0.52 lb	0.52 lb

(c) Notwithstanding the requirements of subsections (a) and (b) above, No. 2 grade commercial fuel oil that was stored by the ultimate consumer at its Facility prior to July 1, 2015, and that met the applicable maximum allowable sulfur content for commercial fuel oil through June 30, 2015 at the time it was stored, may be used by the ultimate consumer at its Facility on and after July 1, 2015, provided that all of the following shall apply:

(.1) Any such ultimate consumer demonstrates to the Department, by means of written records (including but not limited to documentation from fuel suppliers), that any fuel oil delivered to the Facility after April 1, 2015 met the sulfur content standard effective July 1, 2015 under this Section 3-207, which records shall be maintained until July 1, 2016, or until such time as the consumer no longer relies on the exemption in subsection 3-207(c) or (d), whichever is later;

(.2) Any such fuel oil may only be used at the Facility where such fuel oil was delivered and stored on or before June 30, 2015; and

(.3) Any fuel oil that is not compliant with the standards for sulfur content imposed by this Section effective July 1, 2015 shall be consumed, brought into compliance, or otherwise eliminated from use no later than July 1, 2020.

(d)

(.1) Notwithstanding subsection (c)(.3), the Department shall have the authority to extend the exemption in subsection 3-207(c) on a case-by-case basis through December 31, 2025, or such later time as the Department deems appropriate. The Department shall grant or deny an extension request within sixty (60) days and shall base any decision on such a request on the following factors:

(a) The quantity and sulfur content of such fuel oil at the time of the request for the extension;

(b) The quantity and sulfur content of such stored fuel as of July 1, 2015, unless the user demonstrates to the satisfaction of the department that the user could not reasonably obtain such information;

(c) Confirmation that the user of such fuel oil has acquired for storage at its Facility only fuels meeting the standards set forth in this Section 3-207 since July 1, 2015;

(d) The expected impact to the public health and the environment of granting or denying the extension;

(e) The economic impact to the user of granting or denying the extension (excluding the incremental cost of new fuel meeting the standard set forth in this Section 3-207); and

(f) Such other information as may be relevant.

(.2) The Department's decision to deny an extension shall be reviewed in the same manner as any order, requirement, decision or determination rendered pursuant to the air pollution control program established pursuant to Section 3-401, including the denial or revocation of any license or permit.

(.3) In addition to its authority under subsection 3-207(1)(d)(.1), the Department may establish by regulation standards for continued use of fuel oil subject to the exemption in subsection 3-207(c) after June 30, 2015.

(e) The exemption in subsection 3-207(c) shall not apply to fuel oil merchants or distributors.

(f) The reselling of fuel oil subject to the exemption in subsection 3-207(c) in the City shall be prohibited.

## **(2) Non-Commercial Fuel.**

(a) No person shall cause, suffer, allow or permit sulfur dioxide, caused by the combustion of non-commercial fuel or the combustion of non-commercial and commercial fuel mixtures, to be discharged from any stack or chimney into the outdoor atmosphere in excess of the following limits, expressed as ppm by volume adjusted to twelve (12) percent carbon dioxide by volume, or equivalent method approved by the Department:

Annual average 250 ppm

Maximum monthly average 310 ppm

(b) Where a single manufacturing facility contains multiple stacks or chimneys for discharge of flue gases from burning non-commercial fuels or noncommercial and commercial fuel mixtures, the emissions from any single stack may exceed the SO<sub>2</sub> concentration limits given in (2)(a) provided that it can be satisfactorily demonstrated to the Department that:

(.1) The emission rate of sulfur dioxide from non-commercial fuel combustion on a total weight basis for the facility will not exceed that allowed by (2)(a); and

(.2) The ground level concentrations of sulfur dioxide at any point in the neighborhood, area, or region caused by the combustion of all noncommercial

fuel at the facility shall not exceed those concentrations that would result from compliance with (2)(a); and

(.3) The concentration of SO<sub>2</sub> emitted from any such stack does not exceed any limit imposed by regulations of the State of Pennsylvania or the U.S. Environmental Protection Agency; and

(.4) Compliance with (2)(b) shall not prevent the achievement or maintenance of any national air quality standard for SO<sub>2</sub> established by the Environmental Protection Agency.

(c) Any person responsible for the discharge of SO<sub>2</sub> caused by the combustion of non-commercial fuel or the combustion of non-commercial and commercial fuel mixtures from any stack or chimney as provided for in (2)(a) and (2)(b) shall submit a detailed report to the Department at least once every month, providing fuel usage and emissions information sufficiently adequate to determine compliance with this Section.

(3) Exemptions. The provisions of this Section shall not apply to commercial fuel used by ocean-going vessels.

(4) Emergency Conditions.

(a) When it appears that the delivery of low sulfur fuel oil, as set forth in Par. 3-207(1)(a), (b) and (2)(a), is, or is about to be, interrupted because of unavailability, accident, or other emergency conditions, the Department may authorize the use of an alternative fuel supply, containing the least amount of sulfur available, for a period not to exceed 30 days. Longer periods of time of 120 days each may be authorized by the Department only after a review and recommendation made by the Air Pollution Control Board for each extended period of time.

(b) Factors to be considered shall include the availability of alternate complying fuels, the availability of sulfur dioxide stack gas removal equipment, and the anticipated effect on air quality in the neighborhood, area, and region.

(c) The Air Pollution Control Board, after a hearing, shall have the right to adjust, revoke, rescind, and make any changes or modifications of any authorizations issued under (4)(a) above if there shall occur such change in the condition of availability of low sulfur fuel or the factors set forth in subsection (4)(b) above.



## CHAPTER 3-300 ADMINISTRATIVE PROVISIONS

### §3-301 POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH

The Department of Public Health shall have the following powers and duties:

(1) The Department shall prepare the air resources management plan, as indicated in Section 3-302, for submission to the Air Pollution Control Board.

(2) The Department shall be responsible for the administration and enforcement of this Title and all regulations adopted hereunder.

(3) The Department shall have the power to effect compliance with this Title, any regulations hereunder, or the provisions of any license or permit required under this Title, by,

(a) Order pursuant to Section 3-305 commanding all necessary actions or forbearances, and specifying a maximum period of time for the installation of any equipment or any other measures necessary to achieve compliance, or

(b) Initiation, through the Law Department, of appropriate legal proceedings in any appropriate Court for the imposition of a penalty under Section 3-103 of this Title, or

(c) Initiation, through the Law Department, of any appropriate legal proceedings in any Court of Law or Equity in order to prevent, restrain or abate emission of air contaminants in excess of the allowable limits set by this Title or any of the regulations adopted hereunder, or

(d) Initiation, through the Law Department, of any legal action necessary in any Court of Competent Jurisdiction in order to prevent, restrain or abate any violation of this Title, the regulation adopted hereunder or violations of the

provisions of any license or permit issued under this Title or the violation of the provisions of any order made under Section 3-305.

The imposition of any penalty under Section 3-103 shall not prevent the Department from instituting any appropriate administrative action or proceeding or any action at law or equity to require compliance with the provisions of this Title, regulations adopted hereunder, the provisions of any permits or licenses issued hereunder, or administrative orders and determinations made hereunder.

(4) The Department shall investigate complaints about air pollution, make observations and maintain surveillance of the discharge or escape of emissions to the atmosphere. The names and addresses of complainants shall be kept confidential by the Department.

(5) The Department shall establish a city-wide network of monitoring stations to determine the conditions and trends of air quality and such information shall be available to all persons.

(6) The Department may inspect from time to time any installation, premises, equipment, devices, and appurtenances thereto that may, can or do cause air pollution. In the case of motor vehicles, these may be stopped for inspection or ordered to an inspection station.

(7) The Department may take samples and make analyses of

(a) emissions which may escape or be discharged to the atmosphere, and

(b) fuels and process materials used and waste products incinerated.

The owner shall provide at his expense, convenient access, including where necessary, platforms, ports, and electric power connections, to a representative sampling location where ordered by the Department. Where directed, the owner

shall provide assistance in obtaining normal operating conditions during periods of sampling.

(8) The Department shall prescribe and publish for distribution standard methods for the sampling and the analysis of air, air pollutants, fuels, and other materials, including the number of samples and the technical sampling and analytical procedures, as may be required or necessary to evaluate performance and compliance with this Title and regulations adopted hereunder.

(9) The Department shall review all applications for permits and licenses required by this Title and the regulations adopted hereunder and recommend approval, modification or disapproval. Factors to be considered shall include compliance of the proposed installation with the regulations of the Air Pollution Control Board, operating and maintenance problems experienced at similar installations, anticipated effect on air quality in the neighborhood, area, and region, results of experimental tests and pilot plants, and other factors related to performance, maintenance, and dependability. Such approval may be revoked on order of the Department of Public Health for violation of the provisions of the permit approval, this Title, or the regulations.

(10) The Department may require from an applicant for, or holder of, any permit or license, and from the owner of any source of air contaminants such information, plans, specifications, analyses, performance data and tests or examinations as will disclose the nature, effects, extent, quantity, or degree of air contaminants which are or may be discharged from such source.

(11) The Department may order the owner, lessee or his agent, of equipment, storage and processing facilities or fuel, to conduct at his expense such tests as are necessary in the opinion of the Department to determine whether the equipment, facilities or

fuel, or the operation and use thereof, are in compliance with this Title and the regulations adopted hereunder or whether any material used in any manufacturing process is contributing to any violation of this Title, and to submit the test results to the Department within 10 days after the tests are completed. Such tests shall be conducted by professionally competent personnel and in a manner approved by the Department and subject to witness by the Department.

(12) The Department may require the submission of information on the sources of the discharge or escape of air contaminants to the atmosphere, including the nature, characteristics and concentration of contaminants, the volume and weight of discharges, the period of time of discharges, the toxicity, the effects, and the location and height of points of discharge.

(13) The Department may classify sources of emission and operations and identify those which tend to create air pollution problems. At such designated sources, it may order the installation and operation of sampling and testing equipment or other measures to detect the emission of air contaminants, on a continuous or periodic basis, to determine the quantity and concentration of emissions, and to record this information on time charts, subject to inspection by the Department. It may require that the installations be equipped to activate alarms, control equipment, and process regulators.

(14) The Department may require the designation of a person, or persons, to be responsible for air pollution control operations and the submission of reports and information.

(15) The Department may declare an air pollution warning, alert or emergency, where

(a) existing weather conditions and concentrations of air contaminants or

(b) weather forecasts and projected concentrations of air contaminants provide a threat to the health, welfare or safety of all or any part of the population, and order such actions as the protection of the public requires, including the restriction or cessation of activities which result in air contamination, and the installation and operation of control measures for such periods.

(16) In disasters, the threat of disasters, and other serious emergencies involving air contamination, the Department shall have the authority to enter premises, make inspections, take and analyze samples, and in cooperation with other government agencies, take necessary actions to protect life and property.

(17) The Department may approve improvement plans and schedules for compliance where the renovation of existing equipment, the installation of new systems of air pollution control, or a change in basic processes which in the judgment of the Department will take a period of time, not to exceed six months, to effect. A longer period of time shall not be approved unless the matter has been submitted to and a recommendation received from the Air Pollution Control Board. The Department may establish special operational requirements necessary to minimize air contaminant discharges during this period as a condition of approval. Violations of these conditions shall be considered a violation of this Title. The existence of such an approved improvement plan will have no bearing on any violations due to conditions not covered by the plan. Nothing in this Title shall be construed as limiting the rights of any person to redress in a court of law for any injury to persons or damage to property caused by air pollution.

(18) The Department shall conduct or contract for research on the nature and causes of air pollution, its effects, and efficient and economical methods of control.

(19) The Department shall conduct or contract for training programs for personnel who operate processes and equipment that may cause air pollution. It shall maintain on file as much of the current literature on air pollution and its control as is practicable and shall make this material available to interested parties at its offices during regular working hours.

(20) The Department shall conduct or contract for the in- service training of its personnel in the observation and detection of air contaminants, including odors.

(21) The Department shall inform the public concerning the quality of air, the effects and trends in air pollution, program accomplishments and needs. It shall advise the public concerning measures to control air pollution.

(22) The Health Commissioner, or his designee, shall administratively hear objections to orders of the Department where error is alleged. Consideration of such objections shall be limited to adequacy of notice, matters of fact, existence of violation, and reasonableness of the time specified for compliance. The Health Commissioner may sustain, modify, or revoke any order where error is found to exist.

(23) The Commissioner, or his designee, may appoint such technical advisory committees as he deems necessary.

(24) The Department shall obtain a Material Safety Data Sheet (MSDS) for each toxic air contaminant subject to the notice requirement. Such MSDS shall be provided to the Department by the person responsible for the affected source of emission as part of the notice requirements in Section 3-201(c)(3). The Department shall include these MSDS in the file of notices regarding the emission of toxic air contaminants and shall make this file available to the public for inspection and reproduction during normal business hours. The MSDS shall conform to the format and contain the type

of information required by the U.S. Department of Labor form OSHA 20, Material Safety Data Sheet (latest edition).

(25) The Department shall have the authority to require persons subject to Section 3-201(c)(1) to take all necessary measures to bring their emission of toxic air contaminants into compliance with the Code and regulations promulgated thereunder.

### **§3-302 POWERS AND DUTIES OF THE AIR POLLUTION CONTROL BOARD**

The Air Pollution Control Board shall have the following powers and duties:

(1) To promulgate regulations, implementing this Title, preventing degradation of air quality, preventing air pollution, eliminating air pollution nuisances and, limiting, controlling, or prohibiting the emission of air contaminants to the atmosphere from any sources. Such regulations may include, but are not limited to, the following:

(a) The concentration, volume, weight, and other characteristics of emissions of air contaminants to the atmosphere, the circumstances under which such emissions are permitted, and the degree of control of emissions of air contaminants required;

(b) the emissions of air contaminants to the atmosphere and related actions which are prohibited;

(c) the types and kinds of control measures and actions, equipment, storage and handling facilities, processes and systems, including specifications and/or performance requirements, which may be required to control or eliminate emissions of air contaminants to the atmosphere;

(d) the characteristics of fuels and wastes which may be combusted in the city,

insofar as such characteristics may effect the emissions of air contaminants to the atmosphere;

(e) the density, opacity and duration of discharges and emissions of air contaminants to the atmosphere which obscure and reflect light, and the establishment of methods for evaluating density, opacity, equivalent opacity or density;

(f) the odorous substances that shall be considered offensive and objectionable under this Title because of the nature, composition, character, or concentration and the emissions of such substances that are to be prohibited, limited, or controlled;

(g) the ventilation of parking garages, tunnels, underground parking facilities, and the like and the control of exhausts therefrom, including the protection of habitable structures in the vicinity;

(h) criteria for declaring air pollution warnings, alerts, and emergencies; special requirements which will be applicable during such emergencies or alerts; and preparatory measures which may be required in anticipation of such events; including, but not limited to the following: Curtailment or cessation of manufacturing, transportation, incineration, processing, and other activity which causes air pollution; drastic control measures to prevent air pollution; alternate methods of operation, systems of control, auxiliary fuel supplies or energy sources to be used during alerts and emergencies;

(i) the substances to be considered toxic air contaminants under this Title and regulations for reporting the emission of these toxic air contaminants to the Department.



(2) To promulgate regulations to establish objectives for the quality of community air, to establish areas where objectives are applicable, and limiting, prohibiting, or otherwise controlling emissions to achieve this quality of air. Such regulations may include, but are not limited to, the following:

(a) control or prohibition of emissions of air contaminants or other acts that may cause air pollution or an air pollution nuisance, including each and every means enumerated in paragraph (1) of this Section;

(b) control and limitation of the density of sources of emission of air contaminants by:

(.1) the restriction of uses of land, new installations, or expansion of existing facilities and operations that will aggravate or create air pollution,

(.2) the designation of certain processes or operations which are so objectionable because of the character of emissions that the location of such processes and operations in the city may be prohibited, or restricted to certain areas, or required to be surrounded by a specified amount of open space, and

(.3) the designation of areas where the present density of sources of air contaminants is such that the expansion of existing processes or operations and/or the installation of new processes or operations, in these areas may be prohibited or restricted;

(.4) the designation of areas where future construction of dwellings is prohibited because of existing installations, processes or operations, including streets and highways, which after employing all known technology may still create localized nuisance, health or comfort problems to residential uses in the immediate vicinity;

(c) restriction of traffic, restricting uses of land, new installations, or expansion of existing facilities and operations, mode of transportation, types of motive power for conveyances, and emission control for vehicles.

(d) Further, in the development of air quality objectives, the Board shall take into consideration the following:

(.1) the concentration of air contaminants, the duration and frequency of exposure, and effects, individually and in conjunction with other pollutants, including, but not limited to, effects on human and animal life, vegetation and materials, interference with the health and comfort of persons, the conduct of recreation, commerce, industry, and transportation, the use of property, the restriction of visibility, noxious qualities, and other nuisance;

(.2) the anticipated growth for a period of ten years of population, commercial and industrial activity in determining the control necessary to meet the air quality objectives and to improve current air quality.

(3) Within one year from the effective date of this Title, the Board shall adopt an air resources management plan covering a period of ten years from the date of adoption. This plan shall be revised every two years and may be amended as necessary. The plan shall indicate areas of the city and the air quality objectives established for each area. Factors to be considered are the preservation of the character of use, such as residential, recreation, medical care, or other use, the current quality of the air, and the density, magnitude and characteristics of sources of pollution.

(4) To classify sources of air contaminants by character, process, industry, cause, effects, or other reasonable system for the purpose of promulgating regulations requiring the application of measures to control and/or eliminate emissions and prohibiting acts which contribute to air pollution.

(5) To hold public hearings at least once a year.

(6) To advise the Department of air pollution control matters.

**§3-303 POWERS AND DUTIES OF THE DEPARTMENT OF LICENSES AND INSPECTIONS**

(1) The Department of Licenses and Inspections shall have the following powers and duties:

(a) to transmit to the Department of Public Health for its recommendation all applications, plans and specifications for the construction, reconstruction, conversion, or alteration of any installation, equipment, or appurtenances and any equipment pertaining thereto that may produce air pollution or an air pollution nuisance, and to request the Department of Public Health to make recommendations for the approval, disapproval, or modification of each application.

(b) to issue permits for applications which have been approved by the Department of Public Health;

(c) to issue licenses for operation where the Department of Public Health certifies that the installation and operation are in conformity with the provisions of this Title and the regulations adopted hereunder.

(d) to renew licenses, as required, upon payment of stipulated fees unless the Department of Public Health has filed a stop order;

(e) to revoke permits and licenses upon certification by the Department of Public Health that the installation or operation does not comply with the provisions

of the application, that the installation or operation produces air pollution or emissions of air contaminants in excess of the standards established by this Title and the regulations, that orders for correction or abatement have not been affected, or that the installation or operation does not comply with this Title and the regulations.

(f) Where the Department of Public Health has provided lists of uses or areas of the city where there are air pollution problems, no change in occupancy or use may be exercised unless prior approval for the same, under this Title, has been granted by the Department of Public Health.

### **§3-304 INSPECTION**

(1) The Department of Public Health is authorized to make inspections, including the requiring of information and reports, the taking of samples, and the performance of tests, as necessary, to determine compliance with this Title and regulations adopted under it. For this purpose, the Department is authorized to enter and examine any establishment, institution or private residence at all reasonable times, as provided by law.

In the case of vehicles, these may be stopped for such inspection. Where the City of Philadelphia has jurisdiction, ships and airplanes may be boarded for inspection by uniformed employees of the City of Philadelphia.

(2) Where the Department of Public Health is satisfied that any other governmental or private agency or industry requires compliance with standards which are at least equivalent to comparable City standards, that their inspection service is effective, that an acceptable level of compliance is maintained and that such compliance is required by inspectors approved by the Department, it may accept the result of such

inspections in lieu of making its own inspections.

(3) The Department of Public Health shall continue to exercise any functions and perform any duties in administering and enforcing the provisions of any act of the Commonwealth of Pennsylvania which is not hereby affected and which is or may be vested in or placed upon the Department so long as such acts remain in force.

(4) The Department of Public Health shall cooperate with state and federal inspection agencies and the regional agency, when and if one is empowered to act; that duplication of inspection shall be avoided wherever feasible and consistent with the protection of the public; and that reciprocity between, and augmentation of, existing inspectional services shall be encouraged.

(5) The Department of Public Health may contract to provide air pollution control services to other jurisdictions on a reimbursable basis. The Department may contract with other jurisdictions for air pollution control services.

### **§3-305 ORDERS**

(1) Except as otherwise provided, and subject to the provisions of the Charter, whenever the Department of Public Health determines the existence of a violation of this Title, any regulations adopted hereunder, or the provisions of any license or permit issued hereunder, the Department may, in addition to any other remedy available at law or equity, enter an order against the person or persons responsible for the violations requiring such action or forbearance from action as the Department determines necessary to correct the violation.

(2) All such orders shall be in writing and shall be served on the person from which action, forbearance, or compliance is required except that where the Department of

Public Health finds willfulness or a menace to public health requiring immediate corrective action such orders may be oral in the first instance.

(3) Any person to whom such an order is directed or from whom any action, forbearance, or compliance is in any way required shall comply with such order within such period of time as the Department of Public Health may therein prescribe.

(4) While an appeal from an order, as hereafter provided, is pending, compliance with such order shall not be required unless the Department of Public Health finds, and certifies in writing in such order, that immediate compliance is necessary to protect the public health. The pendency of an appeal from any order shall not operate to bar or stay proceedings in any court for the imposition of a penalty under Section 3-103 of this Title, nor shall such appeal bar any proceeding at law or equity under Section 3-301(3)(c) to prevent, restrain or abate violation of the provisions of the order where the order contains a certification that immediate compliance is necessary to protect the public health.

(5) Any person who is aggrieved by an order directed to him or requiring any action, forbearance, or compliance from him may request and receive a prompt administrative hearing before the Health Commissioner, or any representative specifically designated by him, provided that such request for hearing is made in writing within 5 days from the receipt of such order.

### **§3-306 PERMITS AND LICENSES**

#### **(1) Installation and Construction Permits**

(a) No person shall build, erect, install, alter or replace any article, machine, equipment, device, or other contrivance or appurtenances, the use of which may cause the issuance of air contaminants or the use of which may

eliminate, reduce or control the issuance of air contaminants, until an air management permit has been obtained for such installation and construction. Such a permit shall remain in effect until the license to operate the equipment for which the application was filed is granted or denied or the application is cancelled, except as provided in (b).

(b) If any installation is not started within one year of the date of issuance of the permit for it, the permit shall be invalid and any fee paid shall be forfeited.

## (2) License to Operate

(a) Before any article, machine, equipment or other contrivance described in (1) above may be operated or used, a license to operate shall be obtained. Such licenses shall be issued upon inspection and approval by the Department of Public Health as to conformity with the permit issued in (1) above and the regulations of the Air Pollution Control Board.

(b) Where installations were initiated prior to the effective date of this Title an application for a license shall be filed within 90 days from the effective date and within two years a license to operate shall be obtained. No license shall be issued, however, until the installation has been inspected and approved by the Department of Public Health to be in conformity with this Title and the regulations adopted hereunder.

(c) Licenses to operate shall be renewed annually, except as in (.2) below, at a time established by the Department of Licenses and Inspections. A license shall not be renewed where the installation is in violation of this Title unless the installation is in compliance with an improvement plan approved under this Code.

(.1) The operating license shall be renewed only upon certification by the Department of Public Health that inspection shows the installation

and operation are in conformity with this Title and the regulations adopted hereunder. The Department of Public Health may waive any annual inspection and recommend renewal of the operating license, but such waiver shall not be made in successive years.

(.2) Where the rated capacity is less than 2 million BTU/hr., or where gas or No. 5 grade, or better, fuel oil is the only fuel used, boilers, warm furnaces, hot water heaters and their burners and stokers shall be issued an indefinite operating license.

(d) An installation or construction made under 1(a), above, may be placed in operation, with the consent of the Department, for debugging or demonstration purposes before the decision is made to grant or deny the license to operate.

(e) Where it is planned to take any article, machine, equipment or other contrivance described in (1) above, out of service for any reason whatsoever, except for normal plant shutdowns, the Department shall be notified at least three days in advance. Where the reason for being out of service is an unexpected breakdown or similar emergency, the Department shall be notified immediately.

(3) Issuance of a permit or license shall not exempt any person from prosecution for violation of this Title if the operation of the installation, equipment or device for which the permit was issued creates or results in emissions in excess of the regulations of the Air Pollution Control Board or in air pollution or an air pollution nuisance. Where regulations are amended or new regulations adopted, the holders of permits and licenses issued prior to the effective date thereof shall comply with any new requirements within the period of time provided therein.

(4) The provisions of this Section shall not apply to:



(a) the construction, reconstruction, conversion, alteration, replacement or installation of any household appliance;

(b) the construction, reconstruction, conversion, alteration, replacement or installation of motor vehicles or other equipment used on highways;

(c) any building or structure used exclusively for dwelling purposes and containing fewer than three dwelling units;

(d) fuel burning equipment of a net load rating of 250,000 BTU per hour or less.

(5) Whenever the Department of Public Health determines that any person holding any permit or license has violated any of its conditions, it may serve written notice of the violation upon the holder of such license stating the nature of the violation and the time in which compliance with all requirements of the license may be achieved. Such notice may also describe a course of remedial action.

If at the expiration of the time accorded for compliance the violation has not been corrected, the Department of Public Health may make an official finding of violation and certify such findings to the Department of Licenses and Inspections which shall forthwith revoke such license.

Any person whose license has been revoked shall in addition thereto be liable to the penalties and/or other remedial action prescribed by this Title.

While an appeal from the revocation of any license as hereinafter provided is pending, compliance with such revocation shall not be required, unless the Department of Public Health certifies in writing that immediate compliance is necessary to protect the public health.

**§3-307 FEES**

(1) Installation Permits

The fee shall be as follows:

(a) Boilers, Warm Air Furnaces, and Hot Water Heaters

(.1) Where the rated capacity is 20,000,000 BTU  
per hour or less.....\$ 30.00

(.2) Where the rated capacity is over 20,000,000 BTU  
per hour.....\$ 50.00

(b) Incinerators and Crematories..... \$ 50.00

(c) Smoke Ovens, tar and asphalt kettles, road material treating plants, and varnish and  
paint heating kettles.....\$ 50.00

(d) Paint spraying equipment and dryers, per unit.....\$ 25.00

(e) Chemical processing equipment; crushing, grinding or milling equipment;  
rendering kettles; air cleaning devices, per unit.....\$ 50.00

(f) Others.....\$ 50.00

(2) Operating Licenses

An operating license shall be obtained for each boiler, furnace, or other combustion unit, process unit, or air cleaning device and their related appurtenances. In general, the classification established for the installation permit shall apply to operating licenses. A fee of \$10.00 shall be charged for the issuance of an indefinite operating license. An annual fee for renewable operating licenses shall be charged according to the following schedule:

(a) Boilers and furnaces of a capacity of 20,000,000 BTU per hour,

or less.....\$ 40.00

(b) Boilers and furnaces of a capacity of more than 20,000,000 BTU per hour.....\$ 100.00

(c) Incinerators and Crematories.....\$ 100.00

(d) Smoke ovens, tar and asphalt kettles, road material treating plants, and varnish and paint heating kettles.....\$ 100.00

(e) Paint spraying equipment and dryers.....\$ 50.00

(f) Chemical processing equipment, crushing, grinding or milling equipment, rendering kettles, and air cleaning devices.....\$ 100.00

(g) Others.....\$ 100.00

In addition to any applicable fee set forth in (1) and (2) above, each application for a permit or license required by this Title shall also be assessed a non-refundable filing fee of \$25.00, payable at the time the application is submitted.

**§3-308 POWERS RESERVED TO THE DEPARTMENT UNDER EXISTING LAWS**

(1) Nothing in this Title shall limit in any way whatever the powers conferred upon the Department by the Health Code or any other Code of the City.

(2) All regulations adopted under previous authority to control air pollution which are not contrary to this Title shall continue in force until revised, repealed, or new

regulations are adopted under this Title.

### **§3-309 SEVERABILITY**

The provisions of this Title are severable and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this Title would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.