

City of Allentown Clean Air Ordinance

CITY OF ALLENTOWN
LEHIGH COUNTY, PENNSYLVANIA
ORDINANCE NO. _____

AN ORDINANCE OF CITY OF ALLENTOWN, LEHIGH COUNTY, PENNSYLVANIA ESTABLISHING AIR QUALITY MONITORING AND EMISSION STANDARDS AND PROVIDING FOR CRIMINAL AND CIVIL PENALTIES AND OTHER ENFORCEMENT ACTIONS

WHEREAS, the United States of America Clean Air Act, as amended, including Amendments of 1989, and the Pennsylvania Air Pollution Control Act of January 9, 1960 (P.L. 2119), as amended, provide in part for the better protection of the health, general welfare and property of the people of the Commonwealth by the abatement, reduction and prevention of the pollution of the air by smokes, fumes, gases, odors, mists, vapors, and similar matter, or any combination thereof; and

WHEREAS, the Federal and Commonwealth Legislatures have granted the power to local municipalities to adopt more stringent air pollution standards than those provided within the cited Acts, as affirmed by the adoption of section 12 of Act 95 of 1992, 35 P.S.§4012; and

WHEREAS, local municipalities have thus been empowered with the right to enact ordinances in protecting and preserving the ambient air quality; and

WHEREAS, Allentown's ambient air quality is a matter of vital concern to the residents of the City; and

WHEREAS, the City of Allentown is of the opinion that increased introduction of air contaminants within the City would have an adverse effect on the ambient air quality; and

WHEREAS, the City of Allentown has determined that the impact of increased air contaminants should be borne by those introducing the contaminants; and

WHEREAS, the City of Allentown has determined that existing Federal and Commonwealth standards for air pollution monitoring and control are less stringent than desired, as they do not require state-of-the-art pollution prevention, monitoring or emissions reduction technology, do not reflect the current scientific understanding of the impact of environmental toxins on human health, and do not account for multiple, additive, cumulative and synergistic effects of pollutants on health; and

WHEREAS, pursuant to 53 P.S. § 37403, the City is empowered to prohibit nuisances, including, but not limited to accumulations of garbage and rubbish, and the storage of abandoned or junked automobiles, on private or public property, and the carrying on any offensive manufacture or business;

WHEREAS, the City of Allentown finds that the Pennsylvania Department of Environmental Protection does not possess sufficient staff, funding, or resources to continuously verify compliance with applicable environmental protection requirements;

WHEREAS, there are many pollutants that could be released into the City's air for which no monitoring is required or for which monitoring is too infrequent to serve as an accurate indicator of annual emissions, given that occasional tests

do not capture or measure emissions during start-up, shutdown or malfunction conditions, and do not capture or measure variations in emissions due to variability in fuels, feedstocks, processes, or changes in operating conditions;

WHEREAS, as required by 35 P.S. §4012(a), the City of Allentown finds that the provisions of this Ordinance are not less stringent than those of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or the rules and regulations promulgated thereunder;

WHEREAS, the residents of Allentown deserve to be protected from unnecessary air pollution by having the City's industries operate as good neighbors, using the cleanest, least-polluting operating methods and technologies as are available in their industry;

WHEREAS, the Precautionary Principle states that: "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context the proponent of an activity, rather than the public, should bear the burden of proof;"

WHEREAS, the City of Allentown finds that the Precautionary Principle is a more appropriate risk management method than the traditional risk assessment model used by environmental regulatory agencies;

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED BY THE PEOPLE OF THE CITY OF ALLENTOWN, AS FOLLOWS:

ARTICLE I – TITLE, PURPOSE AND AUTHORITY

Section 1. Short Title

This Ordinance shall be known and may be cited as the "City of Allentown Clean Air Ordinance."

Section 2. Purpose

The purpose and intent of this ordinance is to ensure that accurate and complete information is available to the City and general public about pollutants released from new air polluting facilities within the City of Allentown, Lehigh County, Pennsylvania, and to exercise the authority granted to the City under the Pa. Air Pollution Control Act.

Section 3. Applicability

This ordinance shall apply and be in full force and effect in City of Allentown, Lehigh County, Pennsylvania.

Section 4. Authority

This Ordinance is enacted pursuant to the authority granted to the City of Allentown by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

Pennsylvania Constitution, Article I, Section 27;

Pennsylvania Air Pollution Control Act, 35 P.S. § 4012, which preserves the rights of municipalities to adopt air

pollution ordinances and regulations not less stringent than the requirements of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or rules and regulations promulgated thereunder.

ARTICLE II – DEFINITIONS

The following words and phrases when used within this Ordinance, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Article:

- (a) Air pollution permit – any authorization from the Department allowing a facility to legally emit air pollutants, including an Air Quality Plan Approval, Title V Operating Permit, Federally Enforceable State Operating Permit, conditions placed on a facility in a Request for Determination (RFD) of Requirement for Plan Approval, or a Consent Order and Agreement.
- (b) City – The City of Allentown, Pennsylvania.
- (c) Commercially available – A system that is currently offered for purchase by equipment vendors for the proposed application, and for which service contracts can be obtained for a fee. The determination of commercial availability does not include an analysis of the costs of the system.
- (d) Continuous Emissions Monitoring System (or “CEMS”) – A pollution monitoring system capable of sampling, conditioning, analyzing, and providing a record of emissions at frequent intervals and meets U.S. Environmental Protection Agency or Department data acquisition and availability requirements. The sampling frequency capability sufficient to qualify a system as a CEMS for the purposes of this ordinance shall at a minimum deliver a monitoring sample (i) once per minute or (ii) any lesser frequency of interval that still provides sufficient data for a direct determination of compliance with all applicable emission limitations imposed by the Department for the Facility, but in no case may the frequency of interval for monitoring samples be less than once per hour.
- (e) Department – The Pennsylvania Department of Environmental Protection, or any successor state agency responsible for air pollution permitting.
- (f) Entity – All entities which are the subject of legal rights and duties, including those which possess limited liability characteristics, corporations, companies, partnerships, limited partnerships, limited liability partnerships, non-profit organizations, business trusts, limited liability corporations, societies, foundations, institutions or other association of persons, governmental bodies and municipal authorities organized under the laws of any state or the United States or any country.
- (g) Facility – A New Air Polluting Facility, as defined by this ordinance.
- (h) Hazardous Air Pollutants (HAPs) – A pollutant regulated under Section 112 of the Clean Air Act.
- (i) New Air Polluting Facility – Any facility, located in the City of Allentown, that commences operation after the effective date of this ordinance, which produces energy or disposes of waste by combusting a Solid Fuel or Waste or gases produced from Solid Fuel or Waste, and which is capable of processing at least one ton per day.
- (j) Person – Natural persons, not including corporations or other entities.

- (k) Owner – The person or Entity that has the legal right of proprietorship of a Facility.
- (l) Operator – Each person or Entity that operates a Facility.
- (m) Responsible Party – If the facility is owned and operated by a person, the responsible party is that natural person. If the facility is owned and/or operated by an Entity, this term shall include the Entity and all officers, directors, and general partners or trustees of any Entity that owns or operates the facility. If the Owner and Operator are separate entities, both Owner and Operator shall be considered responsible parties and shall be jointly and fully responsible for compliance with all aspects of this ordinance.
- (n) Solid Fuel or Waste – Any municipal waste, residual waste or hazardous waste as defined by 25 Pa. Code §271.1 or 25 Pa. Code §287.1, coal refuse as defined by 52 P.S. §§30.51–30.101, biomass as defined by 52 Pa. Code § 75.1, or other material that is solid at ambient temperatures.
- (o) TEQ_{DF}-WHO₉₈ – A unit of measurement for dioxins and furans, standardized to toxic equivalents, calculated in accordance with the World Health Organization’s 1998 method.

ARTICLE III – MONITORING REQUIREMENTS

Section 1. Air Pollution Monitoring

- (a) The Owner and Operator of any New Air Polluting Facility operating within the City of Allentown shall install and operate continuous emissions monitoring systems (CEMS) for all pollutants listed in Section 2 and shall monitor and disclose information on emission of pollutants as required under Sections 2 and 3 at all times when the Facility is in operation.
- (b) CEMS for which there exist U.S. Environmental Protection Agency or Pennsylvania Department of Environmental Protection standards must also comply with such applicable standards. The facility shall observe the requirements and procedures in 25 Pa. Code 139.101 and the latest revision of the Department’s Continuous Source Monitoring Manual to the extent that the requirements in that manual do not conflict with the requirements of this ordinance. The facility shall seek certification and approval for each CEMS without respect to whether the facility’s plan approval or operating permit from the Department requires continuous emission monitoring for a given pollutant. CEMS operation required under this ordinance shall be conducted regardless of whether the Department has certified and approved the CEMS. In the event of denial, the facility shall make necessary adjustments to CEMS equipment or procedures in order to obtain Department certification and approval, unless: (1) the Department indicates that it cannot provide the same for that particular pollutant, (2) the approval could only be obtained by adjusting monitoring to the extent that it would no longer satisfy minimum standards of “continuous” monitoring as defined in this ordinance, or (3) the Department refuses to certify CEMS that are not required under permits issued by the Department.
- (c) Pollution monitoring results shall become the property of the City of Allentown. All costs of monitoring shall be borne by the person or Entity owning the Facility.
- (d) Emissions monitors must be started up at least twelve (12) hours before the commencement of Facility operation, unless the manufacturer of the monitors certify that the equipment can sample accurately with a

shorter warm-up time.

- (e) Exhaust gases may not be released into the atmosphere until they have cooled to below 200 degrees Centigrade in order that all dioxins and furans can be monitored accurately and completely. Dioxin/furan emissions monitors must be placed at a point where the exhaust gases have cooled to below 200 degrees Centigrade. Dioxin and furan measurements must be standardized to TEQ_{DF}-WHO₉₈ units for reporting purposes under this Ordinance. Reporting of dioxins and furans shall be in TEQ_{DF}-WHO₉₈ units as well as all other measurement methods available from the dioxin/furan CEMS.
- (f) Where applicable, non-detects shall be reported as half the minimum detection limit.
- (g) The Facility Owner and Operator shall furnish to the City written consent for the inspection of the Facility at any time by the designees of the City for the purpose of assuring compliance with this Ordinance. Such designees shall be permitted entry upon any property or into any building, premises or place on which or within which a New Air Polluting Facility may be located and to inspect the emissions monitoring equipment as may be necessary to ensure that such equipment is operational, is operating properly and is being used as intended by the manufacturer and in accordance with this Ordinance.
- (h) If additional chemicals can be monitored with the equipment required to monitor the pollutants regulated under this Ordinance, the emissions of these additional chemicals shall also be reported. If CEMS equipment is capable of reporting categories of chemicals in more detail (for example, separate readings for NO and NO₂ as opposed to a total reading for NO_x), this increased level of detail must be reported.

Section 2. Pollutants to be Continuously Monitored

- (a) Continuous Emissions Monitoring Systems (“CEMS”) equipment shall be used to monitor, measure and disclose the emission of all pollutants for which the Department sets permitted emissions limits (or limits under which the facility must remain in order to avoid more stringent regulation) in the Facility’s air pollution permit, provided that CEMS for the pollutant are commercially available. The determination of commercial availability shall be made according to the 5-year review schedule in Section 3. If there are multiple emission point sources at a facility, separate CEMS shall be installed on each and every non-fugitive emission point source at the Facility for which permit limits apply.
- (b) If a Facility’s air pollution permit sets a limit for Hazardous Air Pollutants as a category or on a single generic, non-specified Hazardous Air Pollutant or both, the Facility must use CEMS to monitor and disclose emissions of all chemicals and chemical groups classified by the U.S. Environmental Protection Agency as Hazardous Air Pollutants in Section 112 of the Clean Air Act, provided that CEMS for such chemicals or chemical groups are commercially available.
- (c) A Facility must continuously monitor and disclose emissions of dioxins and furans, even if dioxins and furans are not specifically regulated by the facility’s air permit, if:
 - i. the facility is regulated, classified or otherwise known as being of an industry listed as a known or suspected source of dioxin and furans in Chapter 1, Table 1-5 of the U.S. Environmental Protection Agency’s “Inventory of Sources and Environmental Releases of Dioxin-Like Compounds in the United States: The Year 2000 Update” or a substantially similar chart in any succeeding report; or

- ii. any process connected to or leading to the non-fugitive air emission point source exceeds 300 degrees Celsius.
- (d) A Facility operating any type of fluidized bed combustor must continuously monitor and disclose emissions of nitrous oxide (N₂O) even if this pollutant is not specifically regulated by the facility's air permit.
 - (e) A Facility operating air pollution control devices that inject ammonia to control emissions must continuously monitor and disclose emissions of ammonia even if this pollutant is not specifically regulated by the facility's air permit.
 - (f) A Facility operating any combustion source must continuously monitor and disclose emissions of the following pollutants even if these pollutants are not specifically regulated by the facility's air permit:
 - i. Carbon Dioxide (CO₂) & Carbon Monoxide (CO)
 - ii. Hydrochloric Acid (HCl) & Hydrofluoric Acid (HF)
 - iii. Nitrogen Oxides (NO_x)
 - iv. Sulfur Oxides (SO_x)
 - v. Particulate Matter (PM)
 - vi. Volatile Organic Compounds (VOCs)
 - vii. Polycyclic Aromatic Hydrocarbons (PAHs)
 - viii. Arsenic, Cadmium, Chromium, Lead, Manganese, Mercury, Nickel, Selenium & Zinc

Section 3. Five Year Review for Commercial Availability

- (a) New Air Polluting Facilities must go through the following process in order to determine which pollutants must be continuously monitored. Nothing in this section shall prevent the City from making a determination of which CEMS are commercially available and must be used by a Facility that has not yet gone through this review process. The review process shall be conducted every five years, with the initial review commencing 60 days after the effective date of this ordinance and subsequent reviews commencing one year prior to every fifth anniversary of the effective date of this ordinance (years 4, 9, 14, 19, etc.).
- (b) New Air Polluting Facilities must submit a list of all air pollutants regulated by their air pollution permits to the City, specifying which of those pollutants can be monitored by CEMS that are currently commercially available at the time of submission. The list shall separately include and evaluate CEMS availability of each Hazardous Air Pollutant if Hazardous Air Pollutants are regulated generically in their permit. These submissions shall be made to an official designated by the city. Submissions shall be made by all Facilities and are due to the City on the day that the review process commences.
- (c) The City shall make the submissions available for public review within two business days of when the City receives them. Within 60 days of the commencement of the review process, the City shall publicly notice and conduct a public meeting where Facility owners, operators and the general public may comment on the submissions and on whether CEMS technology is available for the pollutants regulated under this ordinance. The City shall accept public comments for a period of 30 days after the public meeting.
- (d) If there is any dispute over whether CEMS technology is commercially available for any of the pollutants regulated under this ordinance or for the specific application of CEMS at one or more specific Facilities, the City shall hire an environmental consultant to research and evaluate whether the technology is available for the

proposed application. The consultant must be familiar with current state-of-the-art CEMS technology and the U.S. Environmental Protection Agency's Environmental Technology Verification (ETV) Program. Facility owners and operators must provide pertinent information to the consultant at the consultant's request. The consultant shall report to the city on whether CEMS are commercially available for the proposed application. The consultant shall report to the city no later than 60 days after the closing of the public comment period. The consultant shall be paid with application fees described in Article VIII.

- (e) The City shall make public the consultant's report within two business days of receipt of the report. Based on the consultant's report and public comments, the City shall release a final list of the pollutants for which CEMS shall be considered commercially available for the period until the next five-year review. If there are special circumstances that make CEMS technology for a given pollutant available for some Facilities and not others, the list may include facility-specific qualifications. The City shall publish the final list which shall be released no more than 180 days after the commencement of the review process. In order to evaluate the consultant's report and the public comments, the City may convene a seven-to-nine (7-9) person CEMS evaluation committee to meet in an open, public meeting to make recommendations to the City. No persons with financial, organizational or familial ties to any owner or operator of a Facility shall be eligible for committee membership.
- (f) CEMS required by this ordinance that are deemed commercially available by the City shall be installed and shall be fully operational, submitting data to the City as required in Article IV. New CEMS that are determined to be commercially available in the second or subsequent review processes must be installed and must be fully operational, submitting data to the City as required in Article IV, no later than one year following the commencement of that review process, which shall fall on every fifth year following of the effective date of this ordinance (years 5, 10, 15, 20, etc.).

Section 4. Hazardous Air Pollutant Monitoring Exemptions

- (a) If a Facility is required under this ordinance to use commercially available CEMS for all Hazardous Air Pollutants (HAPs), per Article III, Section 2(b), due to a generic limit on HAPs in their air pollution permit or the requirements of Article III, Section 2(f), the Facility's Owner, Operator or other Responsible Party can seek an exemption for the monitoring of certain HAPs, even if CEMS are commercially available, if they demonstrate that their process cannot emit the pollutant(s) in question.
- (b) An exemption must be sought through a written application, justifying how a particular stack or other emission source cannot emit a given pollutant because of the nature of the process generating the emissions from such stack or source. The application must include test results for the relevant compounds and elements in all feedstocks or other inputs into the process leading to the air emissions source, including chemicals injected in the pollution control process. Sampling of feedstocks and inputs into the process must be representative of the range of variability in their chemical makeup.
- (c) All sampling must be conducted in coordination with an environmental consultant selected and retained by the City. The Facility Owner must pay the City for all costs related to the retention of this consultant and associated costs for laboratory testing of samples. The responsibility to cover these costs is independent of the license fees required in Article VIII.
- (d) The City's consultant shall recommend which tests must be conducted to make an informed decision on whether the Facility is capable of emitting the pollutant in question, and the Facility is required to conduct any such tests as are deemed necessary by the City's consultant. All sampling must be conducted using split samples, with one

of each sample going to the consultant retained by the City, and the other to a laboratory of the Facility Owner's choosing. The City's consultant shall have the samples tested and shall compare them to the samples done by the Facility Owner.

- (e) The City's consultant shall report to the City on whether the sampling results are similar enough to represent an accurate estimation of the chemical makeup of the feedstock or input in question, and shall recommend to the City whether the Facility shall be exempted from monitoring a given Hazardous Air Pollutant.
- (f) No exemptions shall be granted for pollutants for which monitoring is required under Article III, Sections 2(c) and 2(d).
- (g) No exemptions shall be granted to point sources where air emissions originate from the combustion of a Solid Fuel or Waste (or gases derived from such Solid Fuel or Waste) where the Solid Fuel or Waste is known to be highly variable in its chemical composition, which includes but is not limited to municipal solid waste, construction and demolition waste or municipal sewage sludge.
- (h) Each City-granted exemption from the CEMS requirement shall be for a specific pollutant at a specific stack or source at a specific Facility. Such exemption shall be applicable only to the emission of that given pollutant at such stack or source and shall be valid only under the circumstances set forth in the application justifying the exemption. Such exemption shall automatically expire if the circumstances under which the exemption was granted change, including any change in feedstock or other chemical inputs. Any exemptions obtained must be renewed on a five-year basis and shall be timed to coincide with the five-year review outlined in Section 3, so that any testing begins after each review period commences and the City's exemption determination is made no later than 180 days after each review period commences.

Section 5. Unlawful Conduct

It shall be unlawful for any person, Entity, or other Responsible Party to:

- (a) Fail to comply with any provision of this Ordinance;
- (b) Violate or assist in the violation of any of the provisions of this ordinance.
- (c) Attempt to circumvent any provision of this Ordinance through misrepresentation or failure to disclose all relevant facts. Nothing in this Ordinance shall be construed to affect the application of provisions of the Crimes Code, Title 19 of the Pennsylvania Consolidated Statutes relating to perjury, false swearing or unsworn falsification to authorities.
- (d) Intentionally obstruct, impair or interfere with the administration of this Ordinance by the City or their designees by force, violence, physical interference or obstacle or any other unlawful act. Nothing in this Ordinance shall be construed to affect the application of Section 5101 of the Crimes Code, Title 2le of the Pennsylvania Consolidated Statutes as to obstructing administration of law or other governmental function.
- (e) Tamper or interfere with any sample, process, device, equipment, computer hardware or software, indicator or alarm, report, electrical power, pipe, gas or other media so as to affect or alter any sample, process, device, equipment, indicator or alarm, report, electrical power, pipe, gas or other media used in the gathering and analysis of samples or the disclosure of sample analysis as may be required by the City in the administration of

this ordinance.

ARTICLE IV – DATA DISCLOSURE

Section 1. Website for Data Disclosure

- (a) No later than 60 days after the effective date of this ordinance, the City shall procure a computer consultant to establish the website, to be owned by the City, where Facilities shall submit the data required to be disclosed by this ordinance. The website and any software needed to be developed for it, shall be completed and ready for use no later than eight (8) months after the effective date of this ordinance. The software shall be designed to automatically present the data that the City is required to present under Section 2. Facility owners and operators must cooperate with the computer consultant, providing relevant CEMS data, CEMS vendor contacts and other such information as may be needed for the efficient and effective design of the website and corresponding software.
- (b) In addition to the requirements for the software outlined in Section 2, the software must be designed to immediately alert by email designated city officials – and other parties who sign up to be notified – any time emissions at a Facility exceed that Facility’s air pollution permit limitation. The City must designate an enforcement officer who will receive emailed alerts of emissions exceedances.
- (c) The City shall archive and preserve all digital data submitted under this ordinance until five years after the date when there are no more facilities required to submit data to the City under this ordinance.

Section 2. Disclosure of Emissions Data

- (a) CEMS Data Disclosure
 - i. The Owner and Operator of any New Air Polluting Facility operating within the City of Allentown shall transmit CEMS data collected at the facility to a publicly-available website managed by the City. All CEMS data that is available to the operator in a digital format shall be supplied real-time through an Internet feed to the city's website. Data shall be submitted to the city's website no later than twenty-four (24) hours after the data is available to the facility Owner or Operator.
 - ii. The Owner and Operator of any New Air Polluting Facility is responsible for CEMS data disclosure upon start-up of the facility. For any additional CEMS required on a New Air Polluting Facility after the 5-year review, the data disclosure shall start once the new CEMS are installed.
 - iii. The Owner and Operator of any Facility is required to immediately notify the Department of any violations of state or federal air pollution permit limits detected by CEMS required by this ordinance.
 - iv. Any gaps in CEMS data reporting, or violations of emissions limits imposed by state or federal air pollution permits or by this ordinance, shall be explained by the Facility Operator in the data reported to the Borough.
- (b) Air Emission Stack Test Data Disclosure

- i. The Owner and Operator of any New Air Polluting Facility operating within the City of Allentown shall disclose stack test data for any air pollution stack tests conducted at the facility that are required by state or federal permits. This data shall be submitted to the publicly-available website managed by the City no later than twenty-four (24) hours after the data is available to the facility Owner or Operator.
 - ii. The Owner and Operator of any New Air Polluting Facility is responsible for data disclosure of all stack tests conducted prior to start-up and upon start-up of the facility.
- (c) All data submitted to the City's website must be supplied in formats prescribed by the City.
- (d) The City shall publicly display the data received in real-time. Data will be displayed in line charts for each pollutant, including a line showing the level of each applicable emissions limit for such pollutant, as well as a calculated line displaying rolling averages in cases where regulatory limits are based on such averages. Any changes to those application emissions limits must be incorporated within the data submittals by the effective date of the change. All data submitted to the website must be archived and made available for download in a commonly available spreadsheet or database format.
- (e) The City shall compile summary charts listing all violations of any applicable emissions limits per pollutant for each facility reporting under this ordinance. Daily, weekly, monthly and yearly summaries of emissions levels, and violations shall be made available in an easily understandable presentation format. Emissions trend data shall be presented in line charts as well, showing the totals for all reporting facilities, as well as facility-specific trends from the beginning of the reported data set through the most recent year.
- (f) Annual summary data, specifying total emissions levels of all pollutants which are regulated by local, state or federal permits, a list of exceedances for each pollutant (including the date of the exceedance, the amount of the emission and a comparison to the limit exceeded), shall be published conspicuously in the most widely-read local newspaper of general circulation within the City at the expense of the Facility Owner.

Section 3. Disclosure of Regulatory Documents

- (a) Copies of all digital files exchanged between a New Air Polluting Facility regulated under this ordinance and any state or federal environmental regulatory agencies shall be uploaded to a documents section for the facility, hosted on the City's website, regardless of where the document originated. This shall be done in a format acceptable to the City. Digital documents generated or received after the effective date of this ordinance must be uploaded within three (3) business days of when they were transmitted to the regulatory agency or received by either the Facility's Owner, Operator or any contractor acting on behalf of the Facility owner or operator. Digital documents generated or received prior to the effective date of this ordinance must be uploaded within 365 days of the effective date of this Ordinance.
- (b) Copies of inspection reports, notice of violations, penalty assessments, permit applications, required reporting, compliance certifications and any other correspondence between a New Air Polluting Facility regulated under this ordinance and any state or federal environmental regulatory agency must be uploaded to the City's website in a commonly-used document format acceptable to the City. The Facility Owner is responsible for any scanning and other actions and expenses necessary to make this information available to the City. Documents generated or received after the effective date of this ordinance must be uploaded within seven (7) days of when a document is sent to an agency or received by either the Facility's Owner, Operator or any contractor acting on behalf of the Facility owner or operator. Documents sent or received prior to the effective date of this

ordinance, if they are relevant to active permits or ongoing permitting processes must be uploaded within 90 days of the effective date of this Ordinance. Upon request of any resident of the City, any documents longer than 20 pages must also be made available at the Facility Owner's expense in paper copies in a local library, City Hall or other facility that is open to the public and available during work days and with some evening or weekend hours amounting to at least five hours per week. If such evening and weekend hours aren't available at a publicly-available facility in the City, the facility owner must provide a place where documents are made available to the general public for viewing and copying upon request.

ARTICLE V – EMISSIONS LIMITS

Section 1. Emission Limits

(a) All New Air Polluting Facilities must meet the following pollution limits:

Carbon Dioxide (CO ₂):	120.0	lbs/mmbtu
Nitrogen Oxides (NO _x):	0.18	lbs/mmbtu
Sulfur Dioxide (SO ₂):	0.01	lbs/mmbtu
Dioxins/Furans (PCDD/F):	1.5	ng TEQ _{DF} -WHO ₉₈ per kg of waste combusted

- (b) It shall be unlawful to emit more than these limits. In calculating compliance with the limits on CO₂, NO_x and SO₂, data may be averaged on a three-hour basis. In calculating compliance with the dioxin/furan limit, data may be averaged on a daily basis. Such averaging shall not include data from times when combustible materials are not being burned in the incinerator.
- (c) In cases where the average weekly emissions exceed the emissions limit, waste feed shall be cut off and operations shall be immediately ceased until corrective action is taken.

Section 2. Adoption and Incorporation of Other Limits and Standards

To the extent a more stringent standard, limit, or requirement for the emission of air contaminants or a standard of performance for any facility regulated by this Ordinance is not expressly set forth herein, the City adopts and incorporates by reference herein the standards, limits, and requirements for the emission of air contaminants, and standards of performance for stationary sources, as promulgated by the U.S. Environmental Protection Agency pursuant to the Clean Air Act or by the Commonwealth of Pennsylvania pursuant to the Air Pollution Control Act or any other relevant statutes. It is expressly the intent of the City in adopting these standards, limits, requirements, and standards of performance, to make them independently enforceable by the City of Allentown.

Section 3. Best Available Technology

To the extent that either the U.S. Environmental Protection Agency or the Pennsylvania Department of Environmental Protection determines that a control technology is reasonably available to reduce or minimize the emission of air contaminants from a stationary source, each stationary source within the City shall modify its facility so as to utilize the control technology within such time as the City may reasonably determine. The City shall notify the facility of the time period within which it must modify the facility to utilize the control technology. It shall be the responsibility of the facility to obtain such permits and approvals for the modification of the facility as are necessary under state and federal law.

ARTICLE VI – DECLARATION OF PUBLIC NUISANCES

The emission of pollutants into the atmosphere of the City of Allentown except in conformity with this Ordinance is hereby declared to be public nuisance, abatable in the manner prescribed by law.

ARTICLE VII – COMPLIANCE ORDERS

Whenever the City has reason to believe that there has been a violation of this Ordinance or other State or Federal Law, or any of the rules and regulations promulgated pursuant thereto or a misrepresentation of any certification, the City shall, in addition to any other remedy available to it, and in the absence of an emergency situation requiring prompt action, give written notice of such violation to, the Owner or Operators of the Facility, and therein order such corrective measures as are deemed reasonable and necessary to cure the violation. This notice shall state the nature of the violations and shall allow a reasonable time for the performance of the necessary corrective measures. If the Owner or Operator of the Facility fails to carry out the corrective measures set forth in the notice, within the time period stated therein, the City shall institute such other actions as may be deemed necessary to terminate the violation.

ARTICLE VIII – FEES

Facilities subject to this ordinance shall be obligated to pay fees to the City for the operation of the programs under this ordinance.

Section 1. Initial Licensing and Fee

All Facilities subject to this ordinance must obtain a CEMS license by submitting an application to the City providing all required information and tendering payment of \$5,000. A responsible official at the Facility must sign the application. All funds received through this Article will be placed in a dedicated account by the City to be used exclusively for the installation, operation and maintenance of all hardware, software or other equipment necessary to receive and process monitoring data and other documents from subject Facilities and post such material to the web for public access. In addition to this base fee, subject facilities must also submit \$250 per CEMS for which they will submit data to the City under this ordinance. Payment must be made 60 days prior to the date on which CEMS data submittals are scheduled to commence.

Section 2. Annual license fee

All Facilities subject to this ordinance shall pay an annual CEMS license fee, subsequent to the initial application, of \$1,000, as well as an additional \$250 per CEMS for which they will submit data to the City under this ordinance in years subsequent to the initial application. The facility shall submit a form certifying that the information in the application remains accurate or specifying any changes. Payment must be made 60 days prior to the anniversary of the date on which CEMS data submittals commenced.

ARTICLE IX – PENALTIES

In accordance with the Pa. Air Pollution Control Act, 35 P.S. 4012(g), providing that civil and criminal penalties for air pollution violations be uniform throughout the Commonwealth, and further providing that “the penalties and remedies set forth in this act be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations” the criminal and civil penalties for violation of this Ordinance shall be the following:

Section 1. Criminal Penalties

- (a) Any person, Entity, or Responsible Party who negligently violates any provision of this Ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. For purposes of this subsection, a summary offense may be prosecuted before any district justice in the county where the offense occurred. There is no accelerated rehabilitative disposition authorized for a summary offense.
- (b) Any person, Entity or Responsible Party who intentionally or willfully violates any provision of this Ordinance commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than one thousand dollars (\$1,000.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.
- (c) Any person, Entity or Responsible Party who knowingly makes any false statement or representation in any application, record, report, certification or other document required to be either filed or maintained by this Ordinance commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.
- (d) For purposes of this section, a person, Entity or Responsible Party acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

Section 2. Civil Penalties

- (a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this Ordinance, the City may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed Twenty-five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the City shall consider the willfulness of the violation; damage to air, soil, water or other natural resources or their uses; financial benefit to the person, Entity or Responsible Party in consequence of the violation (hereinafter “violator”); deterrence of future violations; cost to the City, the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which

compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the Owners or Operator of the source or facility; and other relevant factors.

- (b) In accordance with the Air Pollution Control Act, 35 P.S. §4012(g), which provides that “any action for the assessment of civil penalties brought for the enforcement of a municipal air pollution ordinance or regulation shall be brought in accordance with the procedures set forth in such ordinance,” an action for the assessment of a civil penalty under this section of this Article shall be brought in accordance with the following procedures:

When the City proposes to assess a civil penalty, it shall inform the violator of the proposed amount of the penalty. Such assessment shall be a final action of the City, appealable in the manner provided by law. The violator charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or, if the violator wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the violator shall forward the proposed amount of the penalty to the City within the thirty (30) day period for placement in an escrow account or post an appeal bond to the City within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the City. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the City shall, within thirty (30) days after such determination, remit the appropriate amount to the violator with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. Appeals from the assessment of a civil penalty shall be as provided by law. If any violator liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such violator and shall constitute a lien on all property owned by said violator when a notice of lien incorporating a description of the property of the violator subject to the action is duly filed with the Prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, the name and address of the violator, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the violator, whether or not the violator is solvent. The notice of lien, filed pursuant to this subsection, which affects the property of the violator shall create a lien with priority over all subsequent claims or liens which are filed against the violator, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.

Section 3. Determination of Penalties for CEMS Reporting and Emission Limit Violations

- (a) On a quarterly basis, an environmental engineer retained by the City at the expense of the Owners of the Facilities regulated under this ordinance, shall review the data reported to the City and recommend appropriate penalties for non-compliance with CEMS reporting requirements and any emission limits established in accordance with this ordinance.
- (b) Penalties shall be assessed for any gaps in CEMS data availability as well as for any exceedances of emissions limits. The engineer may use Department CEMS and emissions limit penalty assessment procedures as a guide, but shall not allow exceptions for excess emissions during soot blowing, start-up, shutdown, or malfunctions. The engineer shall review any stated reasons for each exceedance or data unavailability and take this into consideration when recommending appropriate penalties.

ARTICLE X – ABATEMENT AND INJUNCTIONS

Notwithstanding any other provision herein, if the City finds any person or Entity is operating a New Air Polluting Facility without complying with the requirements of this Ordinance, or any of the rules and regulations promulgated thereunder, the City shall, in addition to other remedies that may be available to the City, order the immediate discontinuance of such violations, or order other compliance. Failure to comply with such an order of discontinuance, or any other order of compliance issued by the City, shall constitute a violation of this Ordinance. In addition to all other remedies, upon a failure to comply with such order the City shall secure a temporary restraining order, a preliminary injunction, a permanent injunction or other appropriate relief or declare the operation a public nuisance, and order the immediate abatement of same, with the costs of such abatement to be borne and assessed in accordance with law.

ARTICLE XI – CITIZEN ENFORCEMENT

Any City resident shall have standing and authority to bring an action to enforce this Ordinance’s provisions.

ARTICLE XII – SEVERABILITY

Each separate provision of this Ordinance shall be deemed independent of any other provision of this Ordinance, and if any provision, sentence, clause, section or part hereof is held to be illegal, invalid or unconstitutional or inapplicable to any person, Entity or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and as if the person, Entity or circumstances to which this Ordinance, or any part hereof is inapplicable had been specifically exempted therefrom.

ARTICLE XIII – EFFECTIVE DATE

That this Ordinance shall become effective immediately.

ORDAINED AND ENACTED THIS _____ DAY OF _____ 2013.

ATTEST: