

## **CITY OF ALLENTOWN CLEAN AIR ORDINANCE**

An ordinance of the City of Allentown, Lehigh County, Commonwealth of Pennsylvania, for the prevention and control of air pollution from the use of New Incineration or Combustion Facilities; defining certain terms used herein; providing for regulations, enforcement orders, responsibility of owners and operators, penalties, unlawful conduct, public nuisances and validity.

### **SECTION I. Title**

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

### **SECTION II. Authority**

The people of the City of Allentown, under, and by virtue of order the authority granted by the Clean Air Act (42 U.S.C. § 7416), the Pennsylvania Air Pollution Control Act (35 P.S. § 4012(a)), and the Pennsylvania Home Rule Charter and Optional Plans Law (53 Pa.C.S. § 2961 et. seq.) do hereby enact and ordain this ordinance.

### **SECTION III. Applicability**

This ordinance applies only to New Incineration or Combustion Facilities within the City of Allentown.

### **SECTION IV. Purpose, Scope and Findings**

Whereas, as required by 35 P.S. §4012(a), 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, there is no ceiling under 35 P.S. §4012(a) that limits the degree to which local governments may adopt stricter air pollution laws to provide the “additional and cumulative remedies” that the Pennsylvania General Assembly intended to authorize, as expressed in 35 P.S. § 4012(g) and 35 P.S. § 4012.1a;

Whereas, it is not the intent of this Ordinance to establish a comprehensive air pollution program or agency;

Whereas, 35 P.S. § 4012(b), which requires Department of Environmental Protection approval for the establishment of local air pollution agencies, does not apply because this ordinance does not seek to exempt the City of Allentown from state enforcement of the Air Pollution Control Act, an exemption only available to first and second class counties;

Whereas, there is no preemptive language in 35 P.S. § 4012(b) or in 35 P.S. § 4012 broadly, and thus the established law on express preemption in Pennsylvania does not apply, and the fact that the Air Pollution Control Act is not silent on the matter of preemption, having explicitly granted authority to cities to adopt stricter air pollution laws under 35 P.S. §4012(a), the doctrines of implied preemption do not apply;

Whereas, there is no conflict between enforcement of this ordinance and state enforcement of the Air Pollution Control Act;

Whereas, the people of Allentown find that air pollution from New Incineration or Combustion Facilities may be detrimental to the health, comfort, living conditions, welfare and safety of the residents of the City of Allentown, it is hereby declared to be the policy of the City of Allentown to safeguard the residents of the City from such air pollution.

## SECTION V. Definitions

The following words, terms and phrases, when used in this ordinance, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them:

*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.

*City*—The City of Allentown, Lehigh County, Pennsylvania.

*Commence*—As applied to the construction, modification or installation of an air contamination source at a Facility for which the owner or operator has obtained the necessary state or federal plan approvals or permits and has begun, or caused to begin a continuous program of actual onsite construction of the physical structure of the source, to be completed within a reasonable time. Construction is not considered to have commenced through earth-moving activities or the erection of support facilities or roads.

*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.

*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 this ordinance for the Facility, but in no case may the frequency of interval for monitoring samples be less than once per hour, except as it pertains to long-term samplers for dioxins and furans.

*Department*—The Pennsylvania Department of Environmental Protection, or any successor state agency responsible for air pollution permitting.

*Person*—Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the commonwealth or the federal government, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

*Responsible official*—Person designated by the City to be responsible for the administration and enforcement of this ordinance.

*New incineration or combustion facility*—Any facility, located in the City of Allentown, that commences construction after October 29, 2013, 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 or combusting at least 25 tons per day. This term does not apply to the use of landfill gas or digester gas or to facilities that would only meet this definition by virtue of burning gases produced off-site that are supplied commercially via pipeline supplying at least ten customers.

*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.

## SECTION VI. Regulations

On or after the effective date of this ordinance, a New Incineration or Combustion Facility may be installed, used or operated in the City only in accordance with the following provisions:

- (1) **Continuous Emissions Monitoring.** No person may install or operate a New Incineration or Combustion Facility without using continuous emissions monitors to measure carbon dioxide (CO<sub>2</sub>) stack air emissions as well as stack air emissions of all pollutants for which the Department has established emissions limits in the facility's air pollution permit. This requirement shall not apply to pollutants for which no such continuous monitoring equipment is commercially available by the time that the facility commences construction. In the case of dioxin/furan monitoring, if real-time or semi-real-time continuous monitors are not commercially available, a New Incineration or Combustion Facility must monitor these pollutants utilizing long-term samplers, taking samples back-to-back with sampling periods not to exceed fourteen days, such that emissions of dioxins and furans are monitored at all times, minus the *de minimus* time necessary to replace sample collection equipment.
- (2) **Data Disclosure.** No person may install or operate a New Incineration or Combustion Facility without making emissions data available to the public via an Internet website. The website must display all data from continuous monitors in real-time, and all data from stack tests no later than three business days after the data is available to the facility owner or operator. The website must display the emissions data in line charts along with the associated emissions limits, so that it is clear when limits are exceeded. Any exceedances shall be immediately reported, by email, to the City's responsible official, the appropriate air pollution enforcement staff at the Department of Environmental Protection, and any members of the public who sign up to receive such notices via the website, which must provide such a sign-up option. All data must be archived on the website, with the full history of data available for download in a commonly available spreadsheet format.

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 the emissions monitoring equipment is capable of reporting categories of chemicals in more detail (for example, separate readings for NO and NO<sub>2</sub> as opposed to a total reading for NO<sub>x</sub>), this increased level of detail must be reported. If dioxin/furan emissions data must be collected, that data must be reported in an internationally recognized standardized format of toxic equivalents (TEQs) as well as on a total mass basis, in order that the public can understand the toxicity of such emissions.

- (3) **Emissions Standards.** No person may install or operate a New Incineration or Combustion Facility without complying with the following emissions standards, enforceable by the City:
  - a. **Carbon dioxide:** 1,000lbs/MWh (if the facility produces electricity), or 120 lbs/mmbtu heat input (if the facility produces no electricity), in any 24-hour period ending at midnight daily
  - b. **Mercury:** 0.000114 lb/hr, 1.0 lbs/yr. in any 24-hour period ending at midnight daily

For all other pollutants for which emissions limits are set in the facility's Department-issued air pollution permit, the City adopts the same emissions limits, in order that they be independently enforced at the city level. Violations of the standards are to be determined based on 24-hour intervals ending each midnight. In the case of compliance with dioxin/furan standards, the standards

for compliance shall be every back-to-back 14-day sample if long-term samplers are used due to the unavailability of continuous monitoring technology.

#### SECTION VII. Enforcement Orders

- (1) The City of Allentown Responsible Official shall have the power and duty to enforce the provisions of this ordinance.
- (2) The City shall issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful use of a New Incineration or Combustion Facility, which is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; or orders requiring production of information. Such an order shall be issued if the City finds that any person is in violation of any provision of this ordinance.
- (3) The City shall, in its order, require compliance with this ordinance.
- (4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise.
- (5) The authority of the City to issue an order under this section is in addition to any remedy or penalty that may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

#### SECTION VIII. Responsibility of Owners and Operators

- (1) Whenever the Responsible Official finds that illegal operation of a New Incineration or Combustion Facility is occurring in the City, in contravention of the requirements of Section VI above, the Responsible Official shall order the owner or operator to take corrective action in a manner satisfactory to the City, or the Responsible Official shall order the owner or operator to allow access to the land by the Responsible Official or a third party to take such action.
- (2) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, the City shall collect the amount in the same manner as civil penalties are assessed and collected, following the process for assessment and collection of a civil penalty contained in Section X of this ordinance.

#### SECTION IX. Fines, Penalties, Remedies

- (1) The fines, civil and criminal penalties available for enforcement of a violation of any provision of this ordinance shall be identical to those set forth in the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4009, 4009.1, and 4012(g), with fines payable to the City. Any equitable remedies available under the Pennsylvania Air Pollution Control Act shall be available to the City of Allentown in addition to any existing equitable remedies.
- (2) For the purpose of this Section, violations on separate days shall be considered separate offenses. Each violation of any separate subsection or section of this Ordinance shall constitute a separate offense.
- (3) The remedies prescribed by this Ordinance shall be deemed concurrent, and the existence of or exercise of any remedy shall not prevent the City from exercising any other remedy they may have at law or in equity.

## SECTION X. Unlawful Conduct

It is unlawful to fail to comply with, or to cause or assist in the violation of any of the provisions of, this ordinance; or to fail to comply with any order or other requirement of the City; or to cause a public nuisance; or to hinder, obstruct, prevent or interfere with the City or its personnel in their performance of any duty hereunder, including denying the Responsible Official access to the source or facility.

## SECTION XI. Public Nuisances

A violation of this ordinance, or of any order issued by the City under this ordinance, will constitute a public nuisance. The City will have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the City shall recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section IX. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

## SECTION XII. Refresher Clause

In order that this ordinance remain in compliance with the requirements of 35 P.S. 4012(a) that local air pollution ordinances be no less strict than the requirements of the Air Pollution Control Act and the Clean Air Act, should the emissions standards in Section VI of this ordinance become less strict than the Air Pollution Control Act and the Clean Air Act due to the adoption of stricter state or federal standards, the standards in Section VI of this ordinance shall automatically be adjusted to match the requirements of these state and federal laws, whichever is stricter. Such stricter requirements shall only be applied to facilities that commence construction after the adjustment, unless the stricter requirements are applied to the facility in question by state or federal regulation.

## SECTION XIII. Validity

The provisions of this ordinance are severable, and if any section, clause, sentence, part or provision thereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts or provisions of this ordinance. It is hereby declared to be the intent of the people of Allentown that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included herein.

## SECTION XIV. Effective Date

This ordinance shall become effective immediately.