

INTRODUCED: 05/18/2009

REFERRED TO: Public Works Committee

SPONSOR: Councillor Evans

DIGEST: amends Chapter 511, Air Pollution Control, of the Revised Code to formally codify noxious odor emission standards and to regulate noxious odor emissions in Indianapolis and Marion County

SOURCE:

Initiated by: Councillor Evans

Drafted by: Aaron E. Haith, Minority Caucus Counsel

LEGAL REQUIREMENTS FOR ADOPTION:

Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:

Adoption and approvals

GENERAL COUNSEL APPROVAL: \_\_\_\_\_ Date: May 14, 2009

*GENERAL COUNSEL COMMENTS: This proposal is approved for introduction in the form submitted. In my opinion, the provisions for the new "Citizen's Odor Board" should be placed in a separate division of Article II and not mixed with the "Air Pollution Control Board" provision. The appointment provisions for the Citizen's Odor Board are incomplete. It is not clear who makes the appointment. "Each party of the City-County Council" is not a legal entity. The terms should be for a specific expiration date.*

CITY-COUNTY GENERAL ORDINANCE NO. , 2007

A PROPOSAL FOR A GENERAL ORDINANCE amending Chapter 511, Air Pollution Control, of the Revised Code of the Consolidated City and County to formally codify noxious odor emission standards and to regulate noxious odor emissions in Indianapolis and Marion County.

BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE  
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 511 of the Revised Code of the Consolidated City and County, is hereby amended by adding the language and figures which are underlined and by striking the language and figures which are stricken through to read as follows:

Chapter 511 AIR POLLUTION CONTROL\*

**ARTICLE I. IN GENERAL**

**Sec. 511-101. Purpose.**

In order to protect public health and welfare, property and natural resources and public enjoyment of the air, it is the purpose of this chapter and its regulations to maintain clean air in Marion County, with full consideration of maximum employment and industrial development. The pollution control board and the air pollution control division shall protect the air resource through the prevention, abatement and control of air pollution by all practical and economically feasible methods.

**Sec. 511-102. Definitions.**

As used in this chapter and its regulations, the following terms shall have the meanings ascribed to them:

*Actual emissions* means the emissions which occurred over a specified period of time based upon emission monitoring, stack testing, emission factors, or other measures acceptable to the administrator.

*Administrator* means the administrator of the environmental services office of the department of public works, Consolidated City of Indianapolis and Marion County or his/her authorized deputy, agent or representative.

*Air contaminant* means any solid, liquid or gaseous matter, or any combination thereof, that may be emitted into the ambient air in any manner which may cause or contribute to air pollution. Air contaminant shall include "regulated air pollutant" as defined in 40 CFR § 70.2.

*Air contaminant emitter* or *air contaminant source* means any vehicle, process facility or any other device that emits or is capable of emitting an air contaminant, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants and power stations, and buildings and other structures of all types, including single- and multiple-family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, other institutional buildings, automobiles, trucks, tractors, buses, other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types, indoor and outdoor, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

*Air pollution* means the presence or threatened discharge, from whatever source, of solid, semisolid, liquid or gaseous matter or any combination thereof, in the ambient air in sufficient quantities and of such characteristics and duration which:

- (1) Injures or threatens to injure human, plant or animal life; or
- (2) Damages or threatens to damage property; or
- (3) Unreasonably interferes with the comfortable enjoyment of life and property.

*Allowable emissions* means the emissions rate as established in the applicable air pollution control permit issued by the environmental services office.

*Ambient air* means any outside air.

*Asbestos abatement permit* means the written authorization that allows a person to remove asbestos materials and conduct asbestos abatement projects.

*Atmosphere* means all space outside of buildings, stacks or exterior ducts.

*Best available control technology (BACT)* means the utilization of those technologies, processes, procedures, or operating methods or alterations by an industry or other source which results in the elimination or the maximum achievable reduction of odor pollution from an odor emission point source.

*Board* means the Indianapolis Air Pollution Control Board.

*CFR* shall mean, unless otherwise indicated, the Code of Federal Regulations, edition incorporated by reference within Regulation 1-2-1 duly adopted by the Indianapolis Air Pollution Control Board.

*Citizen odor board* means the board created pursuant to Sec. 511- 208 of this Chapter.

*Clean Air Act of 1990* means the Federal Clean Air Act (42 USC 7401 et seq.) as amended by the Clean Air Act Amendments of 1990 (P.L. 101-549).

*Compliance plan* means an agreement between a significant odor generator and the Consolidated City of Indianapolis and Marion County, which contains the following elements:

- (1) An inventory of potential or identified odor emission point sources associated with the industry or source.

- (2) An engineering quality plan detailing best available control technologies and appurtenances designed to eliminate or achieve the maximum reduction of odor pollution from an emission point source inclusive of but not necessarily limited to certain processes, procedures, or operating methods intended to mitigate or control odor pollution.
- (3) A detailed explanation of the specifications and operating parameters of the best available control technologies, monitoring instrumentation and equipment, and processes and procedures intended for the mitigation or control of odor pollution.
- (4) A specification of the documentation that will be made available for the city's review which will verify the data produced by the monitoring equipment, and which will verify that processes and procedures are conducted consistent with the specifications in the facility's odor control study and plan.
- (5) An approved schedule which states, in a time certain manner, the implementation and installation of the best available control technology, processes, procedures, operating methods, and monitoring instrumentation designed to mitigate or control odors at the facility inclusive of an approved completion date.
- (6) An acknowledgment of the authority of the city and its agents to enter into the facility or its property in order to investigate complaints and to verify the facility's adherence to the compliance plan.

*Construction permit* means the written authorization that allows a person to construct, reconstruct or modify an air contaminant emitter.

*Effective date* means the date on which an action takes effect. Unless otherwise designated in the notice, the effective date is when the person subject to the action receives written notice of the action.

*Emission* means a release of air contaminants causing an odor into the outdoor atmosphere.

*Emission credit permit* means the written authorization that allows a person to claim credit for emissions not released to the ambient air.

*Enforcement official* means the officer of the Administrator of the environmental services office of the department of public works or his/her authorized deputy, agent or representative.

*Facility* means any one (1) structure, piece of equipment, installation operation that emits or is capable of emitting an air contaminant. Single pieces of equipment or installations with multiple emission points shall be considered a facility for purposes of this chapter and its regulations.

*Nonsignificant odor generator* means an industry or other source which has not been designated as a significant odor generator as defined in this section.

*Odor* means that which produces a response of the human sense of smell to an odorous substance.

*Odor pollution* means an odor emitted to the atmosphere by an industry or other source which is determined by the enforcement official to be the cause of an odor alert.

*Office* means the environmental services office of the department of public works.

*Open burning* or *open fire* means any burning of combustible matter where the products of combustion are emitted directly into the ambient air without passing through a stack or chimney.

*Operating permit* means the written authorization that allows a person to operate an air contaminant emitter.

*Person* means any individual, proprietorship, partnership, co-partnership, cooperative, firm, company, public or private corporation, association, joint venture, joint stock company, trust, trustee, estate, political or governmental unit or any other legal entity, or their legal representative, agent or assign.

*Potential emissions* means emissions of any one (1) pollutant which would be emitted from a facility if that facility were operated without the use of pollutant control equipment unless such control equipment is (aside from air pollution control requirements) necessary for the facility to produce its normal product or is integral to the normal operation of the facility. Potential emissions shall be based on maximum rated capacity unless hours of operation are limited by enforceable permit conditions and shall be calculated according to federal emission guidelines in AP 42--Compilation of Air Pollutant Emission Factors, or calculated based on stack test data or other data acceptable to the board.

*Process* means any action, operation or treatment and the equipment used in connection therewith, and all methods or forms of manufacturing or processing that emits or is capable of emitting an air contaminant.

*Regulation* means the whole or any part of a board statement of general applicability that:

- (1) Has or is designed to have the effect of law; and
- (2) Implements, interprets or prescribes:
  - a. Law or policy; or
  - b. The organization, procedure or practice requirements of the board or office.

*Significant odor generator* means an industry, facility or other source which has been identified by the environmental health officer as the cause of three odor alerts in a 60-day period inclusive of industries, facilities or sources previously found to be in compliance which, through changes in processes, technologies, growth, or from other causes, has begun to generate odors which result in three odor alerts in a 60-day period.

*Source* means one (1) or an aggregation of facilities that are located on one (1) piece of property or on contiguous or adjacent properties, and which are owned or operated by the same person, or by persons under common control.

*Title V operating permit* means the operating permit required by Title V of the Clean Air Act of 1990.

*Wood products* means dry material consisting of vegetation or wood which does not contain any other substances.

### **Sec. 511-103. Jurisdiction.**

The provisions of this chapter and its regulations shall apply within Marion County.

### **Sec. 511-104. Public records; confidentiality of information.**

All files, records and data of the board and the office shall be open to reasonable public inspection in accordance with applicable Indiana law. However, upon request by any person to the administrator and a showing satisfactory to the administrator by any person that the files, records and data (other than emissions data and the contents of a permit required by Title V of the Clean Air Act of 1990) contain information which would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the administrator shall maintain the confidentiality of the information. However, any information accorded confidential treatment under this section may be disclosed or transmitted to other officers, employees, or authorized representatives of the City of Indianapolis or Marion County, the State of Indiana or the United States concerned with carrying out or implementing this chapter or when relevant in any proceeding related to enforcement.

**Sec. 511-105. Severability.**

If for any reason, any article, division, section, subsection, paragraph, sentence, clause, phrase or word of this chapter or any regulation adopted by the board should be declared unconstitutional or invalid, the remaining portions of this chapter or the regulations shall remain in full force and effect.

**ARTICLE II. AIR POLLUTION CONTROL BOARD\***

**Sec. 511-201. Establishment of air pollution control board and the citizen odor board.**

This section establishes: (a) an air pollution control board, which consists of nine (9) members; and (b) the citizen odor board, which consists of seven (7) members. The mayor or the city-county council shall appoint the members of the board as provided in section 511-202. Each member shall serve at the pleasure of his/her appointing authority.

**Sec. 511-202. Composition of boards.**

(a) The membership of the air pollution control board shall consist of the following persons appointed as provided:

- (1) A member who has received a bachelor of science degree in engineering from an accredited university, knowledgeable and experienced in air pollution control, appointed by the mayor.
- (2) A physician, licensed in the State of Indiana, knowledgeable and experienced in toxicology or respiratory disease, appointed by the city-county council.
- (3) An attorney, admitted to the Indiana bar, appointed by the mayor.
- (4) A member knowledgeable and experienced in environmental matters and public health, representing the public interest, appointed by the city-county council.
- (5) A member knowledgeable and experienced in fuel technology and combustion, appointed by the mayor.
- (6) A member knowledgeable and experienced in environmental matters and representing small business, appointed by the city-county council.
- (7) A member representing industry, appointed by the mayor.
- (8) A member representing labor who is knowledgeable and experienced in public safety or emergency management, appointed by the city-county council.
- (9) A member representing the public at large, appointed by the mayor.
- ~~(10)~~ As mandated by the Clean Air Act of 1990, members representing at least a majority of the board shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits or enforcement orders under the Clean Air Act of 1990.
- ~~(11)~~ As mandated by the Clean Air Act of 1990, all members shall disclose any potential conflicts of interest relating to permits or enforcement orders under the Clean Air Act of 1990.

(b) The membership of the citizen order board shall consist of the following persons appointed as provided:

- (1) The mayor may recommend candidates to fill three (3) positions on the board and each party of the city-county council may select two (2) positions on the board.
- (2) No less than seventy five percent (75%) of the appointees shall reside in the area of the city-county generally acknowledged to experience odor problems.

**Sec. 511-203. Terms of members; vacancies.**

(a) The terms of air pollution control board members shall be four (4) years. Two (2) terms shall expire each year. Each appointing authority shall appoint one (1) member each year except that once every four (4) years three (3) terms shall expire and in that year the mayor shall appoint two (2) members and the city-county council shall appoint one (1) member. Whenever a vacancy occurs in the membership of the board, the appointing authority as provided in section 511-202 shall appoint a member for the remaining portion of the unexpired term. The terms of current board members shall not be altered by adoption of this chapter.

(b) The terms of the citizen odor board members shall be for a period of three years unless serving an unexpired term caused by a vacancy due to death, resignation or for any other reason. Whenever a vacancy occurs in the membership of the board, the appointing authority as provided in section 511-202 shall appoint a member for the remaining portion of the unexpired term.

**Sec. 511-204. Compensation of members.**

The members of the boards shall serve without compensation.

**Sec. 511-205. Officers.**

The chairperson and the vice-chairperson of the boards shall be members of the board elected by members of the board and shall serve for one (1) year. The chairperson and vice-chairperson shall have full voting rights.

**Sec. 511-206. Meetings; minutes and records.**

(a) ~~The~~ Each board shall meet at least once each month and more often if deemed necessary by the chairperson or two (2) members of the board. All members shall be notified of all meetings.

(b) ~~The~~ Each board shall keep minutes of meetings required in paragraph (a) and records of its other official proceedings, including committee meetings and hearings. The minutes of board meetings shall record the attendance of each member, and the vote or abstention of each member upon each motion. The citizen odor board may record personal testimony of reaction to the odor in respect to effects on health and the right of enjoyment of life or property.

(c) The office shall ensure that public notice for all board meetings and other official proceedings is in accordance with applicable state law.

**Sec. 511-207. Voting.**

(a) A quorum of the air pollution control board shall consist of five (5) members. In order to adopt a proposed regulation, amend an existing regulation or repeal an existing regulation, at least five (5) members must vote in favor of adoption, amendment or repeal. A majority vote of the members present is necessary for all other decisions of the board.

(b) A majority of the members serving on the citizen odor board shall constitute a quorum.

**Sec. 511-208. Duties of the boards.**

- (a) The air pollution control board shall:
- (1) Set air quality objectives and policies;
  - (2) Monitor the performance of the office;
  - (3) Review the office's budget proposal each year;

- (4) Establish a permit system pursuant to Article V;
- (5) Study or direct the office to study various air pollution problems and to publish annual reports on the quality of air in Indianapolis and other air pollution issues;
- (6) Approve or disapprove the appointment of a new administrator or acting administrator in the event of a vacancy in the office of the administrator.
- (7) Review proposed written agreements between the State of Indiana and the Consolidated City of Indianapolis and Marion County.

(b) The citizen odor board:

- (1) Set odor standards and objectives necessary for a determination that an industry, facility or other source is a significant odor generator or nonsignificant odor generator;
- (2) Monitor the performance of the odor hotline, advise the air pollution control board on matters of significant odor generation policies and budget proposals each year;
- (3) Maintain log books provided by the city recording occurrences of odor nuisances including dates, times, descriptions of the odors, wind directions and any other information deemed necessary by the enforcement official.
- (4) Submit the hotline log books to the administrator on the first day of the month regarding incidents of odor nuisance of the previous month.
- (5) May record personal testimony of reaction to the odor in respect to effects on health and the right of enjoyment of life or property.

**Sec. 511-209. Powers of the air pollution control board.**

The board may:

- (1) Adopt, amend and repeal regulations pursuant to Article IV and establish, by regulation, prima facie violations of these regulations;
- (2) Enforce this chapter and its regulations as provided in Article VI;
- (3) Initiate investigations, consider complaints and direct the office to enforce this chapter and its regulations;
- (4) Hold hearings, decide appeals, grant and deny variances and issue direct orders to comply with this chapter and its regulations;
- (5) Appoint a hearing officer or officers for public hearings required in this chapter and its regulations;
- (6) Approve or disapprove office policies submitted to the board by the administrator pursuant to section 511-303(e).

**Sec. 511-210. Reports to city-county council.**

(a) The president of the city council shall provide a report to the city council containing all data generated through the odor hotline and received from the reports of the citizen odor board.

(b) Reports on any enforcement action undertaken by the officer of Environmental Services shall also be included.

(c) Such report shall be made once a quarter.

### ARTICLE III. AIR POLLUTION CONTROL DUTIES\*

#### Sec. 511-301. Environmental services office.

a. This section establishes the environmental services office of the department of public works as the principal administrative and enforcement office for this chapter and its regulations.

b. The office shall implemented, administer, and enforce the odor pollution control program which prohibits the causing or continuing of odor only upon the finding that a source is a significant odor generator as defined in Sec. 511-102 of this chapter. In furtherance of which, the office shall:

1. establish an odor hotline, within or outside the mayor's action center (MAC), to receive and direct all complaints relating to odor pollution thereto, that, at a minimum:
  - (1) Allows records of such complaints to be maintained, which shall include names and addresses of callers, times and dates of calls and descriptions of odor nuisances; and
  - (2) Immediate notice to the administrator when an alert condition exists which notice shall include all known details regarding the odor complaint. An alert condition shall be deemed to exist upon receipt of five calls or more, within a twenty-four-hour period, relating to a single odor description.
2. shall provide a monthly report of all hotline data generated to the president of the city council for report to the city council.

#### Sec. 511-302. Administrator established; qualifications.

(a) This section establishes the administrator of the environmental services office as the manager of the air pollution and odor control functions of the office. The administrator shall be appointed by the director of the department of public works, upon concurrence of the board, and shall serve at the pleasure of the director of the department of public works.

(b) The administrator may, with the concurrence of the air pollution control board, designate an assistant administrator to be the full-time manager of the air pollution control functions of the office and, with the concurrence of the citizen odor board, designate an assistant administrator to be full-time manager of the odor control functions of the office.

(c) The administrator and the assistant administrators shall have technical expertise in air pollution control and administrative experience.

#### Sec. 511-303. General duties of the administrator.

The administrator shall:

- (1) Direct and administer the activities of the office;
- (2) Set policies consistent with the purposes of this chapter and its regulations;
- (3) Develop air pollution control strategies that achieve the purposes of this chapter and its regulations and which are consistent with local, state and federal laws and regulations;
- (4) Propose and recommend regulations and amendments to regulations for adoption by the board;
- (5) Inform the boards, created by this chapter, of significant administrative and operation office policies which affect the public such as recordkeeping, enforcement inspection and permitting;
- (6) Provide technical advice and guidance to the boards;

- (7) Implement the permit system established in Article V;
- (8) Receive and investigate complaints from the public;
- (9) Initiate enforcement actions necessary to ensure compliance with this chapter and its regulations, pursuant to Article VI;
- (10) Inspect air contaminant emitters for compliance with this chapter and its regulations;
- (11) Collect air quality data;
- (12) Report air quality data, permit issuances, enforcement actions and other activities of the office to the board;
- (13) Prepare the annual office budget proposal;
- (14) Prepare and execute public relations plans and public education programs;
- (15) Interact with federal, state and local agencies concerned with air pollution;
- (16) Perform any duties lawfully delegated to the office by the air pollution control board or any agency of the State of Indiana or federal government;
- (17) Manage the office staff according to the official policies and procedures of the Consolidated City of Indianapolis and Marion County;
- (18) Provide and maintain written qualification requirements for each of the office staff to assure technical capability and performance of the office staff to assure technical capability and performance of the office's duties under this chapter and its regulations;
- (19) Serve as secretary to the air pollution control board, without vote or membership.

**Sec. 511-304. General powers of the administrator.**

The administrator may:

- (1) At any reasonable time, obtain data or other information about any air contaminant emitter, inspect any air contaminant emitter, enter the premises of any air contaminant emitter or examine and copy the records and documents pertaining to an air contaminant emitter for purposes of assessing air contaminant emissions, determining compliance with this chapter, its regulations or enforcing this chapter, its regulations and any permit issued by the office. The administrator may apply to any judge of the municipal, circuit or superior courts of Marion County for a search warrant. The application for the warrant shall state the location of the premises, the purpose for requesting inspection, entry or examination and the facts supporting the request for inspection, entry or examination.
- (2) Require, when appropriate, the owner or operator of an air contaminant emitter to keep and submit to the office plans, drawings, specifications, reports and other records of information relating to air contaminant emissions, effectiveness of air pollution control equipment, or compliance with this chapter and its regulations.
- (3) Use all necessary equipment to evaluate air contaminant emitters for compliance with this chapter and its regulations or to collect information about the emissions of an air contaminant emitter.
- (4) Require, when appropriate, the owner or operator of an air contaminant emitter to perform reasonable tests or monitoring, including continuous emission monitoring, with the costs for the tests to be paid by the owner or operator.

- (5) Enter into or recommend that the director of the department of public works enter into agreements necessary to administer and enforce this chapter and its regulations.
- (6) Delegate responsibility and authority to an acting administrator as necessary, for a period not to exceed thirty (30) days.

#### ARTICLE IV. PROMULGATION OF REGULATIONS

##### **Sec. 511-401. General authority.**

(a) The air pollution control board shall adopt, amend and repeal regulations necessary to achieve the purposes of this chapter and its regulations. The board may adopt regulations which affect emissions from motor vehicles, facilities, sources, processes or any other air contaminant emitter. The regulations may establish emission limits or require air pollution control equipment, work practices, recordkeeping or any other standard necessary to achieve the purposes of this chapter and its regulations.

(b) It is the intent of the city-county council that the air pollution control board adopt as regulations pursuant to section 511-402 the general standards, principles and procedures embodying the purposes of this chapter and its regulations, incorporating therein the findings and recommendations of the citizen odor control board as may be deemed appropriate in further the intent of this chapter. The board or office may adopt policies, interpret law or take enforceable actions. The board shall, as soon as feasible and to the extent practicable, adopt regulations that supersede general standards, principles and procedures found in policies, interpretations and enforceable agency actions.

##### **Sec. 511-402. Procedures.**

Before a regulation, an amendment to a regulation or a repeal of a regulation becomes effective, the air pollution control board and office shall comply with the following procedures:

- (1) The board shall preliminarily adopt the regulation, appoint a hearing officer or officers and schedule the matter for public hearing.
- (2) At least ten (10) days before the public hearing, the office shall publish a notice in a newspaper of general circulation printed and published in Marion County. The notice shall state the time and place of the hearing, the subject matter of the proposed regulation and that copies of the proposed regulation are available for public examination at the office, and the office of the clerk of the city-county council.
- (3) On or before the publication date of the notice, the office shall place five (5) copies of the proposed regulation on file at the office of the clerk of the city-county council and shall keep five (5) copies on file at the office. The copies shall be available for public examination until the proposed regulation becomes effective. Any interested person may examine the proposed regulation during regular business hours. The clerk of the city-county council shall provide each member of the city-county council a copy of the proposed regulation.
- (4) Written comments may be submitted to the board prior to the public hearing. Any interested party may present oral or written data, facts, comments or argument at the public hearing either in person or by a duly authorized representative or attorney. Unless the board determines for good cause to close the comment period at the conclusion of the public hearing, written comments may be submitted up to and including seven (7) days after the conclusion of the public hearing. At the hearing the board or its hearing officer or officers may further extend the period for submitting written comments. After the conclusion of the public comment period and before the board adopts the proposed regulation, the administrator shall submit to the board written responses to the public comments. The board or its hearing officer or officers may continue the public hearing without publishing further notice if the date and time of the continued hearing is announced concurrently with the decision to continue the hearing.
- (5) Except as provided in paragraph (6) of this section, the board shall not vote on a proposed regulation until at least ten (10) days after the conclusion of the public comment period.

- (6) Upon concurrence of at least seven (7) members, the board may waive the ten-day requirement in paragraph (5) of this section.
- (7) The board shall vote on a regulation in accordance with section 511-207 of this chapter.
- (8) After the board has adopted a regulation, the office shall publish a notice, once a week for two (2) consecutive weeks, in a newspaper of general circulation printed and published in Marion County. The notice shall state that the board adopted a regulation, state the number of the regulation, describe the subject matter of the regulation, state that copies of the regulation are available for public examination at the office, and the clerk of the city-county council and state when the regulation becomes effective.
- (9) The office shall file two (2) copies of the adopted regulation, along with proof of publication, with the clerk of the city-county council and keep five (5) copies on file at the office. The clerk of the city-county council shall provide a copy of the adopted regulation to each member of the city-county council.
- (10) A regulation shall not become effective or enforceable until forty-five (45) days after the date of first publication required under section 511-402(8), unless the mayor proclaims an emergency effective date. During such forty-five-day period, the city-county council may by resolution stay, up to a maximum of ninety (90) days from the date of first publication required under section 511-402(8), the taking effect of a regulation. Before it becomes effective, the city-county council may by resolution reject a regulation. If a regulation is rejected, the regulation which was previously in effect before the rejected regulation was adopted shall remain in effect. Unless preempted by applicable law, the city-county council may also adopt ordinances on the same subject matter, thereby abrogating the agency's authority to adopt the proposed regulation. If the city-county council has not rejected a regulation or adopted an ordinance on the same subject matter within forty-five (45) days, or up to ninety (90) days if the city-council by resolution stayed the taking effect of the regulation within the forty-five (45) day period, the regulation shall become effective.
- (11) If the board amends or repeals an existing regulation, the procedures in paragraphs (1) through (10) of this section shall apply.
- (12) If the board makes substantive revisions to a proposed regulation after preliminary adoption and before final adoption, the board shall preliminarily adopt the revised proposal and follow the procedures in paragraphs (1) through (10).

**Sec. 511-403. Incorporation of regulations.**

Regulations adopted and effective pursuant to section 511-402 are expressly incorporated in this chapter, and a violation of any such regulation is a violation of this chapter and shall be enforced pursuant to Article VI of this chapter. Two (2) copies of each such regulation shall be on file at the office, and the clerk of the city-county council.

**Sec. 511-404. Introduction of proposed regulations.**

Any person or the citizen odor board may propose to the air pollution control board the adoption, amendment or repeal of a regulation.

**ARTICLE V. PERMITS AND FEES**

**DIVISION 1. PERMITS**

**Sec. 511-501. Permit system.**

(a) The air pollution control board shall adopt regulations that create a permit system, and the office shall implement the permit system. The permit system shall contain two (2) components:

- (1) The permit system mandated by Title V of the Clean Air Act of 1990, which may include permits required by Title IV of the Clean Air Act of 1990 (acid rain); and
- (2) Other permits as required by federal or state law or deemed by the board to be necessary to carry out the purposes of this chapter.

Regulations adopted by the board shall be revised in a timely manner to incorporate new requirements set forth in applicable state or federal air pollution control laws or regulations.

(b) That portion of the permit system mandated by Title V of the Clean Air Act of 1990, which shall include permits required by Title IV of the Clean Air Act of 1990 (acid rain), shall comply in all respects with that act and applicable federal regulations. In the event of a conflict between the federal regulations promulgated pursuant to Title V and those promulgated pursuant to Title IV, those federal regulations promulgated pursuant to Title IV shall govern.

(c) The permit system shall include adequate, streamlined and reasonable procedures for expeditiously administering the system.

(d) At a minimum, the permit regulations shall perform the following functions:

- (1) Require permits in order to construct new facilities or sources.
- (2) Require permits in order to modify or reconstruct existing facilities or sources.
- (3) Require permits in order to operate facilities or sources.
- (4) Require permits for processes and other air contaminant emitters including, but not limited to, asbestos abatement.
- (5) Require permits for claiming emission credits or allowances and establish procedures and requirements for obtaining and using emission credits or allowances, provided that such system shall not interfere with the federal sulfur dioxide allowance system established pursuant to Title IV of the Clean Air Act of 1990 (acid rain).
- (6) Establish minimum levels of emissions from a facility, source, process or other air contaminant emitter for which a permit and/or reporting is required.
- (7) Establish fixed terms for permits, which terms shall be as follows:
  - a. Five (5) years for permits required by Title IV of the Clean Air Act of 1990 (acid rain); and
  - b. Not to exceed five (5) years for all other permits.
- (8) Establish the information necessary for complete permit applications and the procedures and time frames by which the applications' completeness shall be determined.
- (9) Establish procedures and time frames for office review of permit applications, including initial permit issuance, modifications or revisions and renewals.
- (10) Establish procedures and time frames for notice, public comment periods and public hearings, which procedures may include providing an opportunity to comment on the draft permit before it is issued. For permits required by Title V of the Clean Air Act of 1990, such procedures shall, as provided in 40 CFR § 70.7(h), require adequate procedures for public notice, including offering an opportunity for public comment and a hearing on the draft permit, for initial permit issuance, significant modifications and renewals.
- (11) Require, when appropriate, including those subject to mandatory review or approval by other departments, for compliance with this chapter, if these projects are likely to cause odor pollution in violation of this chapter, reasonable tests and monitoring, including continuous emissions

monitoring, and creation, submission to the office and retention of reports and records of tests, monitoring, production, maintenance or other matters relating to the quantity of emissions, the effectiveness of air pollution control equipment or compliance with this chapter and its regulations.

- (12) Provide, for permits required by Title V of the Clean Air Act of 1990, if the applicant has submitted a timely and complete application for an initial or renewal permit, but no final action has been taken on the application, the applicant's failure to have a permit is not a violation of this chapter or its regulations until after the office takes final action on the permit application.
- (13) Require, when necessary, that application forms, reports and compliance certifications shall contain certification by a responsible official of truth, accuracy and completeness. For an industry, facility or other source which has been determined to be a potential odor generator by the administrator or the citizen odor control board, that industry, facility or source, may be required to commence an evaluation and analysis of all its processes and potential odor emission points to determine their degree of potential odor generation. In addition to an evaluation of the odor emission points, a final report shall provide, in engineering detail, an odor control plan utilizing the best available control technology for the mitigation and ongoing control of odor from the emission points designated and determined as a result of their study or analysis. No building permit will be issued until such time as final report and control strategy has been submitted to, reviewed, and approved by the environmental health officer. Upon receipt of a final report from an evaluation or analysis, the administrator shall:
- a. Review the document for adequacy and use of the best available odor control technology.
  - b. If deemed necessary by the administrator, the report may be submitted to a private consultant for his or her review and recommendation to the administrator; the cost of the consultant's review will be borne by the subject industry, facility or source.
  - c. The final report shall include such monitoring instrumentation and equipment as needed to ensure the maximum effective operation of best available control technology and compliance with this chapter. The final report also shall include procedures for recordkeeping of the following:
    - 1. Operation and observation of the monitoring instrumentation and equipment.
    - 2. Operation and maintenance of the technologies, processes, procedures or operating methods or alterations utilized in or by the best available control technology.
  - d. The written confirmation and acceptance of the final report by the administrator of Environmental Services shall constitute the control plan which may be modified at any time should actual operation of the industry show that the method used is insufficient or incorrect in controlling odor pollution.
- (14) For permits required by Title V of the Clean Air Act of 1990, allow issuance of a permit for a facility or source not in compliance with applicable requirements.
- (15) Require, when appropriate, submittal of a certified plan and schedule to attain and maintain compliance.
- (16) Require that no permit shall automatically issue, be renewed or modified because of failure of the office to take action on the application, or for any other reason.
- (17) Require that the office shall not issue a permit required by Title V of the Clean Air Act of 1990 if the administrator of the United States Environmental Protection Agency makes a written objection within the time allowed under applicable federal law.
- (18) For permits required by Title V of the Clean Air Act of 1990, establish, consistent with the timing and other requirements of 40 CFR § 70.4(b)3 and § 72.72(b)(5)(ii), an opportunity for judicial review of final action on a permit, by the applicant, any person who participated in the public participation process and any other affected person entitled to judicial review of such action under

state law. The opportunity for judicial review so provided shall be the exclusive means for obtaining judicial review of the terms and conditions of such permits. Procedures regarding such opportunity for judicial review may be established by this chapter or by regulation of the board.

- (19) For permits required by Title V of the Clean Air Act of 1990, and solely for purposes of obtaining judicial review to require that action be taken by the office on the application without additional delay, provide that failure of the office to act on an initial or renewal application, or modification or revision, within the time periods specified in the Clean Air Act of 1990 is a final action of the administrator appealable directly to a court of competent jurisdiction.
- (20) Establish transfer procedures and renewal procedures and, for permits required by Title V of the Clean Air Act of 1990, provide that permits being renewed are subject to the same procedural requirements that apply to initial permit issuance.
- (21) Require that permits may be terminated, modified, or revoked and reissued for cause and establish causes for such actions.
- (22) Provide, for permits required by Title V of the Clean Air Act of 1990, if the permit holder has submitted a timely and complete application for renewal, but no final action has been taken on the application, all the terms and conditions of the permit, including any application shield granted by subparagraph (12) of this paragraph (d), shall remain in effect until the renewal permit has been issued or denied.
- (23) Require that permits required by Title V of the Clean Air Act of 1990 shall be reopened and revised before expiration of the permit when the following conditions exist:
  - a. Additional federal requirements become applicable to a facility or source with a permit which allows at least three (3) more years of continued operations. However, a permit does not have to be revised if the additional requirements will not become effective until after the date the permit expires. A permit revision to address additional requirements must be completed by the office not more than eighteen (18) months after the adoption of the additional requirements; or
  - b. Additional requirements become applicable to the permit under the acid rain program. Upon approval by the United States Environmental Protection Agency, an excess emissions offset plan shall be considered to be incorporated into the permit; or
  - c. The office or the United States Environmental Protection Agency determines that:
    1. The permit contains a material mistake; or
    2. Inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; or
  - d. The office or the administrator of the United States Environmental Protection Agency determines that the permit must be revised or revoked to assure compliance with the applicable federal requirements as defined in 40 CFR § 70.2.
- (24) Require that all permits shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
- (25) Establish procedures for determining if information (other than the contents of a permit required by Title V of the Clean Air Act of 1990 or emissions data) maintained by the office, if made public, would divulge methods or processes entitled to protection as trade secrets and assuring security of information so determined to be entitled to confidentiality.
- (26) For permits required by Title V of the Clean Air Act of 1990, establish procedures allowing changes to be made without requiring a permit revision if the permit holder has been issued an

operating permit or is operating without a permit but has made a timely and complete application for a permit and if:

- a. The changes are not modifications under any provision of Title I of the Clean Air Act of 1990;
  - b. The changes do not exceed emissions allowable under the permit, whether expressed as a rate of emissions or as total emissions; and
  - c. The permit holder provides the office with written notification at least seven (7) days before the proposed changes are made. However, the board, by regulation, may provide a different time period for notifications that involve emergency situations.
- (27) For permits required by Title V of the Clean Air Act of 1990, establish procedures allowing reasonably anticipated alternate operating scenarios identified in the permit application and approved by the office.
- (28) For permits required by Title IV of the Clean Air Act of 1990 (acid rain):
- a. Establish a "permit shield" from enforcement action as provided in 40 CFR § 72.51;
  - b. Provide that a complete permit application shall be binding and enforceable as a Title IV (acid rain) permit from the date of submission of the application until issuance or denial of the permit; and
  - c. Allow exemptions for certain new units and retired units as provided in 40 CFR §§ 72.7 and 72.8.
- (29) Require that all permits be consistent with all local, state and federal air pollution control laws and regulations;
- (30) Require that all permits not interfere with attainment of local, state or federal air quality standards.
- (e) The permit regulations may:
- (1) Establish procedures for general permits covering numerous sources as provided in 40 CFR § 70.6(d).
  - (2) Establish a limited "permit shield" from enforcement action as provided in 40 CFR § 70.6(f).
  - (3) Allow changes not addressed or prohibited by a permit required by Title V of the Clean Air Act of 1990, provided such changes are not subject to any requirements under Title IV or are not modifications under any provision of Title I of that act.
  - (4) Establish procedures for trading emission increases and decreases under certain circumstances as provided in 40 CFR § 70.4(b)(12)(ii).
  - (5) Allow issuance of a permit with a future effective date.
  - (6) Perform any other function not specified in this subsection or subsection (d) if such function is reasonably necessary for efficient operation of the permit program or reasonably necessary to protect the public health or welfare or ensure compliance with local, state or federal air pollution control laws or regulations.
  - (7) Establish limited liability for failure to obtain a permit under certain circumstances, provided that any such regulation shall be consistent with, and no more permissive than, IC 13-10-4-1.
- (f) No permit required by the Clean Air Act of 1990 for a solid waste incineration unit, as that term is defined in § 129 of that act, may be issued by any agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

**Sec. 511-503. Permit conditions.**

(a) The administrator may establish or modify permit conditions on any permit issued pursuant to this chapter and its regulations. The conditions may be imposed to ensure compliance with this chapter or with any regulation adopted by the board. Conditions may take the form of emission limits or technology requirements including, but not limited to, maximum achievable control technology emission limits as provided for in the Clean Air Act of 1990 and as determined on a case-by-case basis, testing and monitoring, including continuous emissions monitoring, reporting and recordkeeping requirements, operation and maintenance programs or any other requirement necessary to ensure compliance with air pollution control laws and regulations and to protect the public health or welfare.

(b) The administrator may impose permit conditions more stringent than regulations adopted by the board or when no such regulation applies only if:

- (1) The conditions are necessary to ensure compliance with local, state or federal air pollution control laws and regulations; or
- (2) The permit holder has violated local, state or federal air pollution control laws or regulations and the conditions are consistent with the terms of a compliance program agreement, agreed order, consent decree, court order or some other enforceable mechanism used to resolve the violations; or
- (3) The conditions are reasonably necessary to protect the public health or welfare.

(c) The administrator may modify permit conditions at any time after permit has been issued only if:

- (1) The administrator has consulted with the permit holder of the modification and the reasons for modification in writing;
- (2) The administrator notifies the permit holder of the modification and the reasons for the modification in writing; and
- (3) The administrator complies with all other applicable procedures required by law or regulation.

(d) Permit conditions imposed by the administrator may be appealed to the board pursuant to section 511-801 of this chapter.

**Sec. 511-504. Enforcement of permits, permit fees and the requirement to obtain a permit.**

Failure to obtain a permit when required to do so, failure to pay a permit fee when due, violation of a permit, or violation of permit conditions imposed by the administrator are violations of this chapter and its regulations for which the division may take enforcement action as specified in Article VI of this chapter.

**DIVISION 2. FEES**

**Sec. 511-521. Permit fees.**

(a) *Purpose.* This section 511-521 establishes permit fees due to the office at levels necessary to continue the process of developing and administering for Marion County the permit program required by Title V of the Clean Air Act of 1990. This section 511-521 and section 511-523 also establish all other types of permit fees due to the office.

(b) *Application fees.* The office shall collect an application fee of one hundred dollars (\$100.00) whenever a person submits an application to:

- (1) Obtain a construction permit;
- (2) Obtain an operating permit;

- (3) Obtain an asbestos abatement permit;
  - (4) Obtain an emission credit permit;
  - (5) Change the name of the permittee on a permit issued by the administrator;
  - (6) Transfer a permit to a new owner of the air contaminant emitter subject to a permit;
  - (7) The application fee for (1) through (6) above is waived if:
    - a. A permittee has already obtained a construction permit, and is submitting an application for an initial operating permit;
    - b. A permittee is renewing an operating permit;
    - c. A permittee is renewing an asbestos abatement permit;
    - d. A permittee is renewing an emission credit permit;
    - e. A permittee has already obtained an operating permit and is submitting an application for an initial Title V operating permit.
  - (8) If a permittee is applying simultaneously for permits for several facilities at the same source, the permittee shall pay a single application fee.
- (c) *Construction permits.* The office shall collect a fee for reviewing plans and issuing a construction permit.
- (1) *Base fees.*
    - a. The fee for each facility with potential emissions of any one (1) pollutant less than ten (10) tons per year shall be eight hundred dollars (\$800.00).
    - b. The fee for each facility with potential emissions of any one (1) pollutant of ten (10) tons per year or greater but less than twenty (20) tons per year shall be twelve hundred dollars (\$1,200.00).
    - c. The fee for each facility with potential emissions for any one (1) pollutant of twenty (20) tons per year or greater but less than twenty-five (25) tons per year shall be one thousand eight hundred dollars (\$1,800.00).
    - d. The fee for each facility with potential emissions of any one (1) pollutant of twenty-five (25) tons per year or greater but less than one hundred (100) tons per year shall be four thousand five hundred dollars (\$4,500.00).
    - e. The fee for each facility with potential emissions of any one (1) pollutant of one hundred (100) tons per year or greater shall be six thousand five hundred dollars (\$6,500.00).
    - f. Facilities which elect to be subject to board Regulation IX-2 (Enhanced New Source Review) shall not be subject to the fees in subsections a. through e., but instead shall pay a fee of three thousand five hundred dollars (\$3,500.00).
  - (2) *Additional fees.* In addition to fees collected under paragraph (1) above, the office shall collect all applicable fees specified in a. through g. below.
    - a. The fee for each review involving a facility or facilities subject to federal, state, or local new source performance standards shall be five hundred dollars (\$500.00) per standard.

- b. The fee for each review involving a facility or facilities subject to federal, state, and local national emission standards for hazardous air pollutants shall be five hundred dollars (\$500.00) per pollutant.
- c. The fee for each public notice required as a part of a construction permit review shall be three hundred dollars (\$300.00).
- d. The fee for each facility subject to best available control technology (BACT), maximum achievable control technology (MACT) or lowest achievable emission rate (LAER) shall be three thousand dollars (\$3,000.00) per pollutant for each applicable pollutant.
- e. The fee for each facility subject to generally achievable control technology (GACT) shall be one thousand dollars (\$1,000.00) per pollutant for each applicable pollutant.
- f. The fee for each facility subject to modeling analysis shall be four thousand dollars (\$4,000.00) per pollutant for each applicable pollutant, except where such analysis is performed by the office, in which case the fee shall be six thousand dollars (\$6,000.00) per pollutant for each applicable pollutant.
- g. The fee for each facility which has federally enforceable permit restrictions to allow the facility to be exempt from federal prevention of significant deterioration or nonattainment new source review requirements shall be one thousand dollars (\$1,000.00) per permit.

(d) *Operating permits.* This part (d) shall not apply to gasoline dispensing facility operating permits and sources which are required to pay Title V operating permit fees pursuant to subsection (e) or opt-out fees pursuant to subsection (f).

(1) *Initial and annual fee.* The office shall collect a fee for the initial issuance of an operating permit and an annual administrative fee for each succeeding year for the maintenance and renewal of an operating permit. The total fee shall be the per facility fee specified in subpart (2) below, plus the source category fee or fees specified in subpart (3) below, if applicable. The total fee, exclusive of the source category fees in subparts (3)c. and (3)d., shall not exceed three thousand three hundred dollars (\$3,300.00).

(2) *Per facility fees.*

- a. The fee for each facility with allowable emissions of any one (1) pollutant less than twenty-five (25) tons per year shall be two hundred fifty dollars (\$250.00).
- b. The fee for each facility with allowable emissions of any one (1) pollutant of twenty-five (25) tons per year or greater, but less than one hundred (100) tons per year, shall be nine hundred fifty dollars (\$950.00).

(3) *Source category fees.*

- a. The fee for each source with actual emissions of seventy-five (75) tons per year or greater shall be one thousand five hundred dollars (\$1,500.00).
- b. The fee for each source with actual emissions of twenty-five (25) tons per year or greater but less than seventy-five (75) tons per year shall be one thousand dollars (\$1,000.00).
- c. The fee for each source subject to federal, state or local national emission standards for hazardous air pollutants shall be two thousand dollars (\$2,000.00).
- d. The fee for each source subject to federal, state or local new source performance standards shall be two thousand dollars (\$2,000.00) per standard.

- (4) *Annual adjustment.* The fees set forth in subsection (d)(2) and (3)a. and b. shall automatically be adjusted annually by the Consumer Price Index (CPI) using the revision of the CPI which is most consistent with the CPI for the preceding year.
- (e) *Fees for 1995, 1996 and subsequent years for sources required to obtain Title V operating permits.*
  - (1) Beginning in calendar year 1995, sources which, according to 40 CFR § 70.3 and applicable state and local regulations, will be required to obtain a Title V operating permit under a United States Environmental Protection Agency approved Title V operating permit program applicable to Marion County, shall pay an annual fee as set forth in subsection (2) of this section.
  - (2) A source's annual fee shall be calculated as follows:
    - a. Each source shall pay a base fee of two thousand five hundred dollars (\$2,500.00) and shall pay an additional fee of thirty-seven dollars (\$37.00) per ton for each ton of regulated pollutant emitted, provided that, no source shall pay more than one hundred fifty thousand dollars (\$150,000.00), or, if a source emits more than one hundred (100) tons per year of NO<sub>x</sub> and more than one hundred (100) tons per year of VOC and is located in an area designated as serious or severe nonattainment for ozone in accordance with the Clean Air Act of 1990, the source shall pay no more than two hundred thousand dollars (\$200,000.00). The administrator shall exclude from the fee calculation the amount of each source's actual emissions of any regulated pollutant that the source emits in excess of four thousand (4,000) tons per year. As used in this section, "regulated pollutant" shall have the meaning set forth in board Regulation 2-7, Section 1.
    - b. During the years 1995 through 1999 inclusive, any affected unit under Section 404 of the Clean Air Act of 1990 shall be exempted from the fees established under subsection (2)(i) and shall instead pay the following: Fifty thousand dollars (\$50,000.00) shall be submitted upon billing for an electric power plant containing a Phase I affected unit, as identified in Table A of Section 404 of the Clean Air Act of 1990 or for a substitution unit as determined by U.S. EPA in accordance with Section 404 of the Clean Air Act of 1990.
    - c. Municipal solid waste incinerators with a capacity greater than two hundred fifty (250) tons per day shall be exempted from the fees established under subsection (2)(i) and shall instead pay the following: Twenty-five thousand dollars (\$25,000.00) shall be submitted upon billing.
    - d. In addition to the fees established under subsection (2)(i), coke oven batteries shall pay the actual cost incurred in performing inspections required by 40 CFR § 63, Subpart L, not to exceed one hundred twenty-five thousand dollars (\$125,000.00). As used in this subsection, "coke oven battery" shall have the meaning set forth in board Regulation 1.
  - (3) The annual emission statement submitted during the previous calendar year as required by 326 IAC 2-6 or an equivalent board regulation shall be the basis for determining total tons of actual emissions of each regulated pollutant. If an annual emission statement is not required or if more information is needed to accurately determine a source's emissions for a regulated pollutant, the administrator may require that the source report annual emissions using procedures acceptable to the administrator.
  - (4) After review of a source's annual emission statement and all other available information, the administrator shall calculate the total emissions to be included in the fee. No source shall be required to pay more than a single dollar-per-ton fee during any billing period for any one (1) ton of pollutant emitted. If the source disputes the calculation of total actual emissions used to determine the fee, the source shall remit the total fee billed, less the amount attributable to the disputed emissions and shall provide calculations or other data supporting the disputed emissions within thirty (30) days of receipt of the billing. The administrator shall review the information submitted and make a final determination of the total fee due. The source shall pay any remaining fee due within fifteen (15) days of receipt of the revised billing.

- (5) The fees set forth in section (2)a. shall automatically be adjusted annually by the Consumer Price Index (CPI) using the revision of the CPI which is most consistent with the CPI for the preceding calendar year.
- (6) Beginning in 1995, the administrator shall present a report to the board by August 15 of each calendar year. The report shall include the following information regarding the Title V permit program for the previous year:
  - a. The number of sources in Marion County required to obtain Title V operating permits, including those choosing to opt-out of the requirement to obtain a Title V operating permit by accepting in a federally enforceable permit physical or operational limits on the source's capacity to emit air pollutants;
  - b. The number of such permit applications received by the office;
  - c. The number and timeliness of final permit actions taken by the office;
  - d. The adequacy of the fees collected by the office to fund the Title V operating permit program;
  - e. An accounting of the monies deposited in the Air Pollution Control Program Fund, distinguishing fees used to fund the Title V operating permit program from other monies.

Based upon the report, the board may recommend that this section be amended to revise the fees to ensure that the fees collected are sufficient to cover the direct and indirect costs of the Title V operating permit program, and are used for no other purpose.

- (7) Pursuant to an enforceable written agreement with the Indiana Department of Environmental Management (IDEM) documenting the office's and IDEM's relative Title V operating permit program roles and responsibilities, a portion of the fees collected by the division may be transmitted to IDEM to recover costs incurred by IDEM in connection with Marion County Title V operating permit program responsibilities performed by IDEM.

(f) *Fees for sources "opting-out" of requirement to obtain Title V operating permits.* Notwithstanding section (e), sources which according to 40 CFR § 70.3 and applicable state and local regulations will be required to obtain a Title V operating permit under a United States Environmental Protection Agency approved Title V operating permit program applicable to Marion County may opt-out of the requirements to obtain a Title V operating permit and to pay the Title V fees set forth in section (e) by: 1) accepting in a federally enforceable state or local operating permit ("FESOP") limits on the source's capacity to emit air pollutants, or 2) electing to be subject to federally enforceable state or local rules limiting the source's capacity to emit air pollutants ("Source Specific Operating Agreements"). The board shall adopt regulations establishing procedures for obtaining FESOP permits and Source Specific Operating Agreements. Pursuant to an enforceable written agreement with the Indiana Department of Environmental Management (IDEM) documenting the office's and IDEM's relative Title V operating permit program rules and responsibilities, a portion of the fees collected by the office may be transmitted to IDEM to recover costs incurred by IDEM in connection with Marion County Title V operating permit program responsibilities performed by IDEM.

- (1) *FESOP permit fees.* An application fee of three thousand five hundred dollars (\$3,500.00) and an annual administrative fee of one thousand five hundred dollars (\$1,500.00) shall be due to the office from sources which file FESOP applications and are issued FESOP permits as set forth in the FESOP regulation adopted by the board. A source's obligation to pay operating permit fees set forth in section (d) or Title V operating permit fees set forth in section (e) and/or (f) pending issuance of the FESOP permit, or upon denial of the FESOP application, shall be as set forth in such regulations.
- (2) *Source specific operating agreement fees.* An application fee of five hundred dollars (\$500.00) shall be due to the office from sources electing to be subject to the source specific operating agreement regulation adopted by the board.

(g) *Gasoline dispensing facility operating permits.* The office shall collect a fee for the initial issuance of a gasoline dispensing facility operating permit and an annual administrative fee for each succeeding year for the maintenance and renewal of an operating permit. As used in this subpart "gasoline dispensing facility" shall have the meaning set forth in board Regulation 8-4-1, Section 6.

- (1) The fee for each gasoline dispensing facility with allowable emissions of any one (1) pollutant less than twenty-five (25) tons per year shall be seventy-five dollars (\$75.00).
- (2) The fee for each gasoline dispensing facility with allowable emissions of any one (1) pollutant of twenty-five (25) tons or greater per year shall be two hundred dollars (\$200.00).

(h) *Emission credit permits.* The office shall collect a fee of five hundred dollars (\$500.00) for the initial issuance of an emission credit permit and an annual administrative fee for each succeeding year of two hundred dollars (\$200.00) for the maintenance of an emission credit permit.

(i) *Asbestos abatement permits.* The office shall collect a fee of four hundred fifty dollars (\$450.00) for the initial issuance of an asbestos abatement permit and an annual administrative fee for each succeeding year of four hundred fifty dollars (\$450.00) for the maintenance and renewal of an asbestos abatement permit.

**Sec. 511-522. Permit fees payment due.**

(a) *Payment due.* Application fees shall be paid at the time the application is submitted. Fees for construction permits or the initial issuance of an operating permit, emission credit permit or asbestos abatement permit shall be paid before the administrator issues the permit. Annual administrative fees shall be paid by January 31 of each year for all air contaminant emitters which have operating permits as of January 1 of each year.

**Sec. 511-523. Testing and monitoring fees; amount; payment due.**

- (a) *Fees.* The office shall collect a fee for reviewing testing and monitoring data and results.
- (1) The fee for each stack test conducted for the purpose of demonstrating compliance with this chapter, any regulation adopted by the board, or any permit issued by the office shall be seven hundred dollars (\$700.00).
  - (2) The fee for continuous emission monitor(s) required by this chapter, any regulation adopted by the board, or any permit issued by the office shall be two hundred dollars (\$200.00) per facility.
  - (3) The fee for air quality monitoring network(s) required by this chapter, any regulation adopted by the board, or any permit issued by the office shall be fourteen hundred dollars (\$1,400.00) per source.

(b) *Payment due.* Stack test fees shall be paid upon submission of stack results to the office. Continuous emission monitor fees and air quality monitoring network fees shall be paid by January 31 of each year.

**Sec. 511-524. Air pollution control program fund.**

(a) Effective in fiscal year 1993, there is hereby created a special fund to be designated as the "air pollution control program fund," in the division of finance, under the controller.

(b) This fund shall be a continuing fund, with all balances remaining therein at the end of each calendar year; and no such balances shall lapse into the city or county general funds or ever be diverted, directly or indirectly, in any manner, to any other uses than developing and administering the operating permit program requirements of Title V of the Clean Air Act of 1990, performing ambient air quality monitoring, evaluating compliance with requirements of this chapter, any regulation adopted by the board

or any permit issued by the office and other uses related to prevention, abatement and control of air pollution as authorized by this chapter.

(c) The fund shall include one hundred fifty thousand seven hundred dollars (\$150,700.00) from consolidated county in calendar year 1995, all permit fees and testing and monitoring fees, including any penalties and interest thereon, required to be collected by the office by section 511-521 and section 511-523, any grants from state or federal governmental agencies, any gifts and donations intended for the fund and monies recovered, exclusive of court costs, from enforcement actions brought pursuant to Article VI of this chapter.

(d) The office shall provide a separate accounting for those permit fees in the fund required to be collected by the office by Title V of the Clean Air Act of 1990 (Title V operating permit program fees). The accounting shall be sufficient to demonstrate that such permit fees are being used solely to cover the reasonable, direct and indirect costs of the Title V operating permit program. Such costs may include, but are not limited to the following activities:

- (1) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- (2) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- (3) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- (4) Implementing and enforcing the terms of any permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- (5) Emissions and ambient monitoring;
- (6) Modeling analyses, or demonstrations;
- (7) Preparing inventories and tracking emissions; and
- (8) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program as required by Section 507 of the Clean Air Act of 1990.

(e) Monies from this reserve fund shall be appropriated in accordance with the procedures for expenditure of public funds.

**Sec. 511-525. Fees payable to controller; nonrefundable; waiver; unpaid fees.**

(a) All fees established pursuant to this chapter and its regulations shall be payable to the Indianapolis City Controller and shall become a part of the "Air Pollution Control Program Fund" created by section 511-524.

(b) All fees established pursuant to this chapter are nonrefundable. If the permit is denied or revoked or the plant or facility is shut down, the fees shall neither be refunded nor applied to any subsequent application or reapplication. Fees paid annually may be prorated by the office on a monthly basis.

(c) If a permit applicant or holder of a permit appears before the board and demonstrates that payment of applicable fees established by this chapter will cause undue economic hardship, the board may waive the fees for a period deemed appropriate by the board. The board may reduce any fee required to be paid to the office in connection with an operating permit required by the Clean Air Act of

1990 to take into account the financial resources of small business stationary sources as defined in Section 507(c) of that Act.

(d) All fees established pursuant to this chapter and its regulations shall constitute a debt due to the Consolidated City of Indianapolis and Marion County. Failure to pay fees when due is a violation of this chapter and its regulations for which the office may take enforcement action as specified in Article VI of this chapter. At the request of the administrator, the corporation counsel may institute a civil suit in the name of the Consolidated City of Indianapolis and Marion County to recover any unpaid fee. In addition, the administrator, pursuant to section 511-602 of this chapter, may revoke a permit for failure to pay fees as required in this chapter.

## **ARTICLE VI. ENFORCEMENT**

### **Sec. 511-601. Notice of violation.**

(a) Whenever the administrator has cause to believe that a person has violated this chapter, a regulation adopted by the board, or a permit issued by the office, the administrator shall notify the person. A written notice of violation shall be delivered personally or by registered, certified or first class mail to the person.

(b) The notice of violation should contain the following information:

- (1) When the violation occurred;
- (2) The location where the violation occurred;
- (3) A reference to and description of the provision of this chapter, regulation adopted by the board or permit issued by the office that was violated;
- (4) A statement of the facts which constitute a violation;
- (5) A brief description of the enforcement procedure initiated by the administrator;
- (6) A statement describing the procedures available to contest the administrator's actions.

(c) For purposes of assessing a penalty pursuant to paragraph (a) of section 511-607 of this chapter, a notice of violation is not a finding that a violation has occurred.

### **Sec. 511-602. Orders.**

(a) When the administrator issues a notice of violation pursuant to section 511-601 of this chapter, the administrator may include an order as prescribed in paragraphs (b), (c) or (d) of this section.

(b) The administrator may order all actions necessary to remedy a violation. The order shall allow a reasonable time to implement the actions. Such orders may:

- (1) Require specific action necessary to abate continuing or future violations;
- (2) Prohibit an action that is causing a violation;
- (3) Require submittal of information including, but not limited to, operating data and stack test results;
- (4) Require submittal of a program to attain and maintain compliance. Such a program must be approved in writing by the administrator or incorporated into an agreement pursuant to section 511-606 of this chapter.

(c) The administrator may revoke a permit or permits specified in the notice of violation. The order shall state the effective date of the revocation and the actions which are necessary for the administrator

to reissue the permit. The order may prohibit further installation, construction, modification or operation of the air contaminant emitter in violation.

(d) The administrator may issue an order in accordance with powers and procedures established in a regulation adopted by the board.

(e) The administrator may modify the terms of an order or extend the time allowed to comply with the order.

(f) Procedure when a designation as significant odor generator has been made.

(1) Upon a determination that an industry, facility or other source is a significant odor generator, the administrator shall notify the industry, facility or source that it has been found to be a significant odor generator. Appeal regarding such notice may be made by the industry, source or facility as provided in section 511-801 of this article.

(2) In preparation for the submission of a compliance plan, the administrator shall require that, within 30 days of such notification to an industry, facility or source, an evaluation and analysis is commenced, including pilot studies when deemed necessary by the administrator, of all its processes and potential odor emission points to determine their degree of odor generation. The industry or source shall submit such documentation as may be required by the administrator to prove the commencement of the evaluation or analysis and shall provide periodic updates as may be required by the environmental health officer. In addition to an evaluation of the odor emission points, the final report shall provide, in engineering detail, a compliance plan utilizing the best available control technology for the mitigation and ongoing control of odor from the emission points designated and determined by the administrator. The period of time permitted for this evaluation and analysis and the date for submission of a final report shall be determined by the administrator.

(3) Upon receipt of a final report from an evaluation or analysis, the administrator shall review the document for adequacy and use of the best available odor control technology in accordance with the following:

(a) If deemed necessary by the administrator, the report may be submitted to a private consultant for review and recommendation to the environmental health officer; the cost of the consultant's review will be borne by the subject industry, facility or source.

(b) The final report shall also include such monitoring instrumentation and equipment as needed to ensure the maximum effective operation of best available control technology and compliance with this article. The final report also shall include procedures for recordkeeping of the following:

(1) Operation and observation of the monitoring instrumentation and equipment.

(2) Operation and maintenance of the technologies, processes, procedures or operating methods or alterations utilized in or by the best available control technology.

(3) The written confirmation and acceptance of the final report by the administrator shall constitute the compliance plan.

(4) Compliance for a period of three years with the compliance plan submitted by an industry, facility or source found to be a significant odor generator shall remove such industry, facility or source from the classification as a significant odor generator.

(4) Notice by industry.

(a) Violation of this article shall not be found if the person emitting the odor shall notify the enforcement official that it is or will be involved in the startup, shutdown, cleaning, maintenance or testing of machinery or equipment:

(1) Causing the emission; or

(2) Designated to control, reduce or eliminate emissions.

If feasible for the industry, ordinary maintenance procedures shall be scheduled at such times during the year when it will cause the least odor pollution.

(b) The notice required in this section shall be given in writing, and if given by oral communication due to an emergency situation, confirmed in writing. The notice shall include the date, duration, and approximate time that the repair or maintenance shall be engaged in.

(c) Except in emergencies, this notification shall be made no later than 24 hours nor earlier than seven days prior to the scheduled repair or maintenance.

(d) The enforcement official may confirm such report by inspection of the premises.

(e) If the time requested for such action is considered unreasonably prolonged, the enforcement official may direct that the activity engaged in be conducted in a shorter period of time.

(f) After receipt of such notice, the administrator may, if deemed necessary, issue public service advisories that odor conditions may exist.

(5) Limitations.

(a) Nothing contained in this article shall be deemed to grant to the enforcement official any authority or jurisdiction with respect to odorous air contaminants existing solely within residences or solely within commercial and industrial plants, works, or shops or to affect the relations between employers and employees with respect to or arising out of any condition of air pollution, provided that such odors do not penetrate the atmosphere so as to become a public nuisance.

(b) Information received by the enforcement official or other city employees and agents through filed reports, inspections, or as otherwise authorized in this article that are denoted as confidential records under the relevant section of this code and

(c) shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of this article. Nothing in this subsection shall be construed to prevent the enforcement official from compiling or publishing analyses or summaries relating to the general condition of the atmosphere, provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

(g) Procedure when a designation as non significant odor generator has been made:

(1) Upon notification of an odor alert condition by the odor hotline operator, the administrator shall:

a. Determine the location of the complaints which result in the establishment of the odor alert condition.

b. Prepare a summary of the odor descriptions contained in the establishment of the odor alert condition.

c. Determine the prevailing weather condition at the time of the alert indicating wind direction, temperature, wind velocity, humidity, and general weather conditions.

d. Visit the general area from which the majority of complaints were generated in order to characterize the nature of the complaint.

(2) Based on the parameters in subsection (1)(a) of this section, the administrator shall attempt to make a determination as to the industry or source of origin of the odor alert.

(3) If the determination is made as to the origin of the odor, administrator shall notify the owner, operator, or manager of the facility or other responsible party that the facility has been designated as the point source or origin of the odor alert.

(4) Such notification shall contain the following:

a. The date, times, and locations of the occurrence of the odor nuisances.

b. The potential for the industry or source to be designated as a significant odor generator, and the potential for enforcement action.

(fh) A violation of an order is a violation of this chapter and its regulations.

### **Sec. 511-603. Civil enforcement.**

(a) The administrator may initiate a civil action to assess and recover civil penalties and/or for a temporary or permanent injunction whenever:

(1) A person violates the terms of an order issued pursuant to sections 511-602, 511-606, or 511-608 of this chapter; or

(2) The administrator has issued a notice of violation to a person and:

a. The person is an owner or operator of a major source in violation of a provision of a state implementation plan approved by the United States Environmental Protection Agency; or

b. The person is an owner or operator of a facility or source in violation of a permit issued in accordance with Title V, Title IV, or Part C or D of Title I of the Clean Air Act of 1990; or

c. The person is an owner or operator of a stationary source in violation of a provision of new source performance standards or national emission standards for hazardous air pollutants, as adopted by the board; or

d. The person has violated a provision of regulations adopted by the board governing asbestos abatement or motor vehicle tampering; or

e. The person has engaged in an activity without a necessary permit issued by the office; or

f. The administrator determines that the violation substantially impairs public health or welfare.

(b) The administrator shall initiate civil enforcement by submitting a written request to the corporation counsel to file a complaint of ordinance violation and/or to seek an injunction. The administrator shall send notice of the written request to the person subject to the action.

### **Sec. 511-604. Administrative adjudication.**

The administrator may enforce violations of this chapter, including its permits and regulations, by following the procedures set forth in Chapter 103, Article V, to assess and recover civil penalties.

### **Sec. 511-605. (Reserved for ticket enforcement procedures).**

### **Sec. 511-606. Compliance agreements.**

(a) Whenever the administrator issues an order pursuant to section 511-602 of this chapter, the administrator and the person subject to the order may enter into an agreement which establishes a

program and schedule to attain and maintain compliance. Upon written approval of the agreement by both parties, the agreement shall be issued as an order pursuant to section 511-602 of this chapter, and the original order shall be vacated. If the parties cannot agree to the terms of an agreement, the terms of the original order shall remain in effect, unless modified by the administrator.

(b) Whenever civil enforcement is taken pursuant to section 511-603 of this chapter, the administrator and the person subject to the action may negotiate an agreement which establishes a program and schedule to attain and maintain compliance, penalties and other provisions necessary to ensure compliance. The agreement shall take effect upon approval by the court.

(c) Whenever administrative adjudication is instituted pursuant to section 511-604 of this chapter, the administrator and the person subject to the action may negotiate an agreement which establishes a program and schedule to attain and maintain compliance, penalties and other provisions necessary to ensure compliance. The agreement shall take effect upon approval by the hearing officer.

**Sec. 511-607. Penalties.**

(a) Any person found in violation of any provision of this chapter, any regulation adopted by the board or any permit issued by the office as part of the office's program approved or conducted pursuant to an agreement with the Indiana Department of Environmental Management may be fined an amount not to exceed ten thousand dollars (\$10,000.00) for each violation. Any person found in violation of any other provision of this chapter, any other regulation adopted by the board or any other permit issued by the office may be fined an amount not to exceed two thousand five hundred dollars (\$2,500.00) per violation. Each day in violation shall be considered a separate violation.

(b) Notwithstanding section 103-3 of this Code or paragraph (a) of this section, either a court acting pursuant to section 511-606(b) or a hearing officer acting pursuant to section 511-606(c) may accept a compliance agreement without finding that a violation occurred or an admission that a violation occurred if the person subject to the penalty agrees to pay the penalty pursuant to such agreement.

(c) A court order, whether issued unilaterally by the court or pursuant to an agreement under section 511-606(b) of this chapter, or an order issued as a result of administrative adjudication under Article V, Chapter 103, may require the payment of stipulated penalties in the event the terms of such order are violated. The stipulated penalties shall not exceed the amounts as described in paragraph (a) of this section 511-607 for each violation. Each day in violation shall be considered a separate violation.

(d) Nothing in this section 511-607 or any other section of this chapter shall limit the office's referral of violations to other appropriate agencies for investigation of potential violations of state or federal law.

**Sec. 511-608. Emergency enforcement procedures.**

(a) Notwithstanding any other provision of this chapter or its regulations, if the administrator determines that emissions from an air contaminant emitter are presenting imminent and substantial danger to the public health or welfare, or to the environment, the administrator may order an immediate reduction or cessation of the emissions or other actions necessary to abate the hazard. Such order shall be effective for not more than forty-eight (48) hours, unless affirmed pursuant to paragraph (b) of this section. A violation of the order shall be a violation of this chapter and its regulations.

(b) The administrator shall request the corporation counsel to initiate a civil action to affirm the administrator's order and to abate the hazard.

(c) Nothing in this section limits any power which the mayor or any other official may have to declare an emergency and act on the basis of such declaration.

(d) Nothing in this section precludes civil or criminal enforcement against the owner or operator of the air contaminant emitter for violations of any applicable law.

**Sec. 511-609. Other enforcement provisions.**

Notwithstanding any other provision of this chapter or its regulations, the administrator may request the corporation counsel to initiate other civil actions authorized by Indiana law, including, but not limited to, injunctive relief.

**Sec. 511-610. Board enforcement.**

Whenever the board determines that the administrator has not initiated enforcement procedures within a reasonable time or taken appropriate enforcement action, the board may enforce this chapter and its regulations pursuant to the powers conferred upon the administrator in this article.

**ARTICLE VII. GENERAL PROHIBITIONS\***

**Sec. 511-701. Air pollution.**

Any person who causes or creates air pollution, as defined in section 511-102 of this chapter, shall be in violation of this chapter and its regulations and is subject to the enforcement procedures in Article VI.

**Sec. 511-702. Open burning restricted; general prohibitions.**

It shall be unlawful at all times to cause, suffer or allow any open burning at any place within Marion County except as permitted by sections 511-703 through 511-706; provided, no person shall cause, suffer, allow or permit the emission into the atmosphere of any substance or combination of substances from the burning of wood products as allowed therein in such quantities as to cause annoyance or constitute a nuisance so as to interfere with the health or well-being of any individual in his/her home or place of employment or recreation or as to interfere with the normal use and enjoyment of any such place.

**Sec. 511-703. Limited burning for special purposes.**

The open burning of wood products which does not create a nuisance or a fire hazard and which is attended by a responsible person at all times until completely extinguished is allowed for the following purposes:

- (1) *Ceremonial fires and bonfires.* A bonfire in connection with a religious ceremony, school pep rallies, scouting activities and similar purposes.
- (2) *Camp fires and fires for cookouts.*
- (3) *Fire for personal comfort:*
  - a. Fires required for personal comfort;
  - b. A bonfire in connection with recreational activities including, but not limited to, sledding and ice skating.
- (4) *Open burning of agricultural wastes:*
  - a. Open burning of plant life grown on the premises in the course of agricultural operations, when it can be shown that such open burning is necessary and that no fire hazard will occur, provided the person intending to dispose of plant life by open burning shall obtain approval from the fire department which has jurisdiction and from the Indianapolis Air Pollution Control Division.
  - b. Any open burning permitted under the provision of this subsection shall be allowed only between the hours of 10:00 a.m. and 7:00 p.m., and only at times when the actual or forecast

wind speed as given by the local National Weather Service is greater than five (5) miles per hour and less than twenty (20) miles per hour. Such fires shall consist of plant life only.

- (5) *Stoves for heating and fireplaces.* Fires shall be permitted in wood stoves for heating and fireplaces if such fire does not create an air pollution problem or a fire hazard.
- (6) *Limbs, twigs, and branches.* Residents of single- or double-family dwellings located on one (1) or more residential lots shall be allowed to burn only dried limbs, twigs and branches (but not leaves) originating on their or contiguous premises, but only between the hours of 10:00 a.m. and 3:00 p.m. Burning shall be more than fifteen (15) feet from any structure, in a noncombustible container, sufficiently vented to induce adequate primary combustion air, with enclosed sides, a bottom and a mesh covering with openings no greater than one-fourth ( 1/4) inch. If such fire creates a health hazard, it shall be extinguished.

**Sec. 511-704. Fire training.**

(a) The administrator may authorize the intentional and controlled burning of actual or simulated structures in Marion County for the exclusive purpose of training fire department personnel concerning firefighting and fire prevention. Persons responsible for burning as authorized hereunder shall be consistent with the purpose and adequacy of the training involved and remove such contents or portions of any structure or structures which may cause excessive or hazardous emissions of air contaminants. Authorization by the administrator shall be given only upon the basis of certification to the administrator of the necessity of such training as would be permitted hereunder.

(b) The administrator may authorize intentional and controlled burning at facilities which are designed for the training of firefighting or fire prevention personnel for the exclusive purpose of training fire department personnel concerning firefighting, fire rescue and survival, and fire prevention.

(c) The administrator may authorize industrial fire training where such fires are properly supervised by a responsible person; provided, however, that the administrator may require compliance with such general or special restrictions, standards and qualifications as in the discretion of the administrator are deemed advisable.

**Sec. 511-705. Emergency burning.**

(a) The administrator may allow emergency burning of petroleum products, high explosives or other dangerous materials where such fires are properly controlled by a responsible person and are deemed necessary in the public interest.

(b) The administrator may allow open burning of refuse consisting of material resulting from a disaster if the mayor has declared such a disaster in the area.

**Sec. 511-706. Variances for open burning.**

Open burning not otherwise allowed by this regulation may be allowed for air curtain incinerators with prior receipt of a variance application and approval by the administrator. A person or persons may request permission from the administrator to burn wood or wood products on any property using an air curtain incinerator. The board shall, by regulation, establish guidelines for approval or denial of such requests. The petitioner may appeal a denial of a variance request to the board, pursuant to section 511-801 of this chapter.

**Sec. 511-707. Liability.**

(a) Any person who allows the accumulation or existence of combustible material which constitutes or contributes to a fire causing air pollution shall not be excused from responsibility therefor on the basis that such fire was accidental or an act of God.

(b) The owner of property, as appearing in the latest records of the appropriate township assessor, where open burning in violation of this article and its regulations occurs, shall be prima facie liable for the violation.

**Sec. 511-708. Enforcement of open burning.**

The open burning provisions of this article are enforceable by the department of public works of the consolidated City of Indianapolis and Marion County, the authorized designee of the director of the department of public works, and any duly appointed fire prevention or law enforcement officer within Marion County (including the excluded cities of Beech Grove, Lawrence, Southport and Speedway), acting on his/her own initiative or at the request of the department of public works.

**Sec. 511-709. Penalties for open burning.**

(a) A person violating open burning provisions of this article may be served by an authorized enforcement person with a notice of violation as provided in Article III, Chapter 103 of this Code, Enforcement Procedures-Ordinance Violations Bureau. The person upon whom a notice of violation is served may admit liability to the violation as provided in the above sections and pay a civil penalty of fifty dollars (\$50.00).

(b) If, in the opinion of the authorized enforcement person, the violation is so substantial as to warrant a more severe penalty, the authorized enforcement person may issue a notice of violation and notify the administrator, who may initiate administrative adjudication by following the procedures set forth in Article V, Chapter 103 of this Code, or who may initiate civil enforcement by submitting a written request to the corporation counsel to file a complaint of ordinance violation and/or to seek an injunction. The administrator shall send notice of the written request to the person subject to the action.

(c) Except as otherwise provided herein, any person found in violation of the open burning provisions of this article shall be fined an amount not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day in violation shall be considered a separate violation.

**ARTICLE VIII. APPEALS, VARIANCES AND WAIVERS**

**Sec. 511-801. Appeals of administrative actions.**

(a) *Right of appeal.* Any person affected by an action of the administrator defined by paragraph (b) of this section as an action which must be appealed to the board, may appeal directly to the board for relief from the action, or intervene in such appeal brought by another affected person. An appeal directly to the board is a prerequisite to judicial review for all actions defined by paragraph (b) as actions which must be appealed directly to the board.

(b) *Actions which must be appealed to the board.* Any action of the administrator, except actions described in paragraphs (c) and (d) below, if appealed, must be appealed directly to the board. For a notice of violation (issued pursuant to section 511-601 of this chapter) which is referred to the corporation counsel for civil enforcement (pursuant to section 511-603 of this chapter) or to administrative adjudication (pursuant to section 511-604 of this chapter), a person may appeal to the board only for an interpretation of the regulation, permit or order allegedly violated.

(c) *Actions for which judicial review may be sought directly.* Judicial review by a court of competent jurisdiction may be sought directly from the following actions of the administrator:

- (1) An emergency order issued pursuant to section 511-608 of this chapter.
- (2) Pursuant to IC 13-15-6-4 and 13-15-6-5, for permits required by Title V of the Clean Air Act of 1990, failure of the administrator to act on an initial or renewal application, or modification or revision, within the time periods specified in that act is an action considered to be a final permit action and may be appealed directly to a court of competent jurisdiction, solely for the purpose of obtaining judicial review to require that action be taken on the application without further delay.

(d) *Actions which must be appealed to the state Office of Environmental Adjudication.* Appeal from the following actions must be sought pursuant to IC 4-21.5-3 and IC 13-15-6-1 by filing a petition for administrative review with the state Office of Environmental Adjudication. However, if the appeal involves a permit term characterized in the permit as "local enforceable only," a person may appeal to the board seeking from the board a decision concerning the "local enforceable only" term.

- (1) Issuance or denial, modification or renewal of a Title V operating permit.
- (2) Issuance or denial, modification or renewal of a Federally Enforceable State Operating Permit (FESOP).

(e) *Participation by office.* The office may participate as an interested party in permit appeals brought before the state Office of Environmental Adjudication pursuant to subsection (d).

(f) *Procedures for making an appeal to the board.*

- (1) Within fifteen (15) days of the effective date of the administrator's action, the appellant shall submit to the administrator a written request to appeal to the board. The request shall be addressed to the board and shall state the basis for the appeal and the relief desired.
- (2) At the time of filing, the appellant shall post a fee of twenty-five dollars (\$25.00) to cover the administrative cost of the hearing. The fee shall be refunded only if the appeal is sustained. The board may waive the fee upon a showing of economic hardship.
- (3) Submitting a request to appeal stays the administrator's action until the board renders a final decision on the appeal.

(g) *Hearing.*

- (1) No later than fifteen (15) days after the request to appeal is filed, the administrator shall schedule a hearing before the board. The hearing shall be not later than sixty (60) days after the request to appeal is filed, unless the board grants a continuance. The administrator shall notify the appellant of the hearing date in writing.
- (2) At the hearing the parties to the appeal may present evidence and cross-examine witnesses. The board may establish time limits and procedures for presenting evidence, cross-examination and argument. The appellant has the burden of proving that the administrator's action should be modified or reversed. Upon hearing the evidence presented, and no later than sixty (60) days after the hearing is concluded, the board shall affirm, modify or reverse the administrator's action. The board may order either party to act in accordance with its decision.

(h) *Effect of the board's decision.* The decision of the board shall be binding on the parties unless reversed or otherwise modified by a court of competent jurisdiction.

#### **Sec. 511-802. Variances.**

(a) *Grounds.* If a person demonstrates to the board that compliance with the provisions of this chapter or of its regulations would cause:

- (1) An arbitrary and unreasonable taking of property; or
- (2) A practical closing and elimination of lawful business, occupation or activity; or
- (3) An undue hardship upon any person;

without a sufficient corresponding benefit or advantage to the public in the reduction of air pollution, the board may grant a variance to that person. Before it may grant a variance, the board shall hold a public hearing on the matter.

(b) *Notice of hearing.*

- (1) *Notice by publication.* At least fifteen (15) days before the hearing, notice of the hearing shall be published in a newspaper of general circulation printed and published in Marion County. The notice shall state the time and place for the hearing and the subject matter of the hearing.
- (2) *Notice to neighborhood organizations.* At least fifteen (15) days before the hearing, the person requesting the variance shall notify each neighborhood organization whose area (as delineated upon the neighborhood organization map of the department of metropolitan development) includes or is within one (1) mile of the property which contains the air contaminant emitter subject to the proposed variance. The notice shall be written and delivered personally or by registered, certified or first class mail. The notice shall state the name of the person requesting the variance, the time and place of the hearing, a general description of the air contaminant emitter for which the variance is sought and the nature of the variance sought.
- (3) *Personal notice.* At least fifteen (15) days before the hearing, the person requesting the variance shall notify the owners (as appearing in the latest records of the appropriate township assessor) of all real estate located within six hundred sixty (660) feet of the property which contains the air contaminant emitter subject to the proposed variance. If the property owner's address is different than the address of the property, the person requesting the variance shall also direct the notice to the property address. The notice shall be written and shall be delivered in person or by registered, certified or first class mail. The notice shall state the name of the person requesting the variance, the time and place of the hearing, a general description of the air contaminant emitter for which the variance is sought and the nature of the variance sought.
- (4) *Affidavit of notice.* At least five (5) days before the hearing, the person requesting the variance shall furnish to the board proof of compliance with the above notice requirements. Such proof shall be in the format or on such forms as the board may designate.

(c) *Hearing.* At the hearing, the person requesting the variance, the administrator and any person affected by the proposed variance may appear to present evidence. The board may establish time limits and procedures for presenting evidence, cross-examination and argument. No later than sixty (60) days after the hearing is concluded, the board shall render its decision to grant or deny the variance.

(d) *Terms of variance.* A variance shall prescribe terms other and different, but not more burdensome, from the requirements of this chapter and its regulations. No variance may allow a person to cause or create air pollution as defined in section 511-102 of this chapter. The board may limit the duration of the variance.

(e) *Revocation or modification of variances.* The board may revoke or modify any variance it has granted. If the modification to the variance is de minimis or nonsubstantive, the board shall deliver written notice to the person subject to the variance in person or by registered, certified or first class mail at least fifteen (15) days before modifying the variance. If the board is revoking a variance or making substantive modifications to the variance, the board shall allow the procedures outlined in paragraphs (b), (c) and (d) of this section, except the burden of notification shall be upon the administrator.

**Sec. 511-803. Delegation of waiver authority to administrator.**

(a) The board, by regulation, may establish criteria and procedures which authorize the administrator to waive the requirements of a regulation, provided public health and welfare are protected and such action does not create air pollution as defined in section 511-102 of this chapter.

(b) The administrator may authorize waivers which allow the use of alternative air pollution control measures which are at least as effective as the measures established by regulation. At least once per year the administrator shall report to the board each waiver which allows the use of alternative air pollution control measures.

SECTION 2. This resolution shall be in full force and effect upon adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this \_\_\_\_ day of \_\_\_\_\_, 2009, at \_\_\_\_ p.m.

ATTEST:

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Bob Cockrum  
President, City-County Council

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Melissa Thompson  
Clerk, City-County Council

Presented by me to the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2009, at 10:00 a.m.

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Melissa Thompson  
Clerk, City-County Council

Approved and signed by me this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Gregory Ballard, Mayor