

**COUNTY OF ALLEGHENY, PENNSYLVANIA
ORDINANCE NO. 16782, and**

**ALLEGHENY COUNTY HEALTH DEPARTMENT
RULES AND REGULATIONS,
ARTICLE XXI
AIR POLLUTION CONTROL**

ASBESTOS ABATEMENT EDITION

Amended as noted, through November 28, 2017, Effective December 8, 2017

Contents

NOTE: The contents of this “Asbestos Abatement” Edition of Article XXI include the four sections of Article XXI that deal with asbestos (§2105.60 to §2105.63), any other sections of Article XXI referenced in those four sections, as well as the definitions of Section 2101.20 that relate to asbestos.

Part Section

A General

- §2101.01 Short Titles
- §2101.02 Declaration of Policy and Purpose
- §2101.06 Construction and Interpretation
- §2101.11 Prohibition of Air Pollution
- §2101.13 Nuisances

E Source Emission and Operating Standards

Subpart 6 - Asbestos Sources

- §2105.60 Asbestos Abatement Contractor Licenses
- §2105.61 Asbestos Abatement Accreditation Requirements
- §2105.62 Asbestos Abatement Applicability, Federal Requirements, Notices, and Permits
- §2105.63 Asbestos Abatement Procedures

H Reporting, Testing, & Monitoring

- §2108.01 Reports Required
 - c. Breakdowns

I Enforcement

- §2109.01 Inspections
- §2109.02 Remedies
- §2109.03 Enforcement Orders
- §2109.04 Orders Establishing an Additional or More Restrictive Standard
- §2109.05 Emergency Orders
- §2109.06 Civil Proceedings
- §2109.07 Penalties, Fines, and Interest
- §2109.10 Appeals

PART A - GENERAL

§2101.01 SHORT TITLES {effective February 1, 1994}

This ordinance and these rules and regulations shall be known and may be cited as the "Air Pollution Control Regulations" or "Article XXI."

§2101.02 DECLARATION OF POLICY AND PURPOSE

- a. In recognition of the constitutional right of the citizens of Pennsylvania to clean air and to the preservation of the natural, scenic, historic and aesthetic values of the environment and in recognition of the constitutional duty of the Commonwealth to conserve and maintain Pennsylvania's natural resources for the benefit of all people, it is hereby declared to be the policy of the County of Allegheny to protect the air resources of the County by pollution prevention and pollution control to the degree necessary for the:
 1. Protection of the health, safety and welfare of all its citizens;
 2. Prevention of injury to plant and animal life and to property;
 3. Protection of the comfort and convenience of the public and the protection of the recreational resources of the County; and
 4. Development, attraction and expansion of industry, commerce and agriculture.
- b. Pollution prevention is recognized as the preferred strategy (over pollution control) for reducing risk to air resources. Accordingly, pollution prevention measures will be integrated into air pollution control programs wherever possible, and the adoption by sources of cost-effective compliance strategies, incorporating pollution prevention, will be encouraged.
- c. When pollution prevention measures are not feasible, it is therefore, the purpose of this Article to establish rules and regulations governing air pollution control in order to:
 1. Protect the health, safety and welfare of the citizens of Allegheny County;
 2. Achieve and maintain the ambient air quality standards established by this Article;
 3. Provide a mechanism to obtain such information as is necessary to determine the current air quality of the County, the factors contributing to that air quality and the current compliance status of any source of air contaminants as it relates to this Article;
 4. Require the implementation of Reasonably Available Control Technology on all existing sources of air contaminants as expeditiously as practicable and the application of Best Available Control Technology on all new sources;
 5. Establish permit and license procedures for sources of air contaminants which will ensure compliance with this Article and will maximize the potential for continued industrial and economic growth within the County in order to:
 - A. Ensure the attainment and maintenance of the ambient air quality standards established by this Article, the protection of the public health, safety and welfare, and the preservation of the air resources of the County;

- B. Ensure compliance with the requirements of this Article by preconstruction review of new and modified sources of air contaminants and periodic review of existing sources;
 - C. Ensure that the Department has adequate current information on proposed new and modified and existing sources of air contaminants so that the air pollution control program established by this Article can be efficiently and effectively administered; and
 - D. Ensure that the requirements of the Clean Air Act and the Air Pollution Control Act concerning sources of air contaminants are met, so as to maximize the potential for continued industrial and economic growth within the County.
6. Ensure that sources of air contaminants located within Allegheny County will not unreasonably interfere with air pollution control programs of other jurisdictions;
 7. Maximize public and governmental understanding of, and participation in, efforts to improve and maintain the air resources of Allegheny County;
 8. Provide a mechanism for revising this Article as necessary in light of changed circumstances; and,
 9. Establish an air pollution control program which is consistent with the requirements of the Air Pollution Control Act and the Clean Air Act.

§2101.06 CONSTRUCTION AND INTERPRETATION

- a. **Liberal Construction.** This Article is adopted pursuant to the police and Health Department powers of the County of Allegheny and is intended to protect the health, safety and welfare of the citizens of Allegheny County. Therefore, the provisions of this Article shall be liberally construed to give full effect to the purposes of this Article.
- b. **Provisions Cumulative.** The provisions of this Article shall be cumulative. Therefore, except as may be otherwise explicitly provided for in this Article, compliance with any provision of this Article shall in no manner relieve any person of the duty to fully comply with any other provision of this Article.
- c. **Conflict.** In the event that the provisions of this Article conflict, the provision which results in the lowest permissible emission rate shall prevail, absent clear and convincing evidence that a different provision is intended to prevail.
- d. **Ambiguity.**
 1. In the event that more than one interpretation is reasonably possible as to which of two or more provisions of this Article apply, the provision which results in the lowest permissible emission rate shall prevail, absent clear and convincing evidence that a different provision is intended to prevail.
 2. In the event that more than one interpretation is reasonably possible as to any provision of this Article, the interpretation which results in the lowest permissible emission rate shall prevail, absent clear and convincing evidence that a different interpretation is intended to prevail.

- e. **Provisions Severable.** The provisions of this Article shall be severable. If any provision of this Article is found by a court to be unconstitutional or otherwise void, the remaining provisions of this Article shall remain valid unless the court finds that such remaining provisions are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the Commissioners would have enacted such provisions without the void provision, or unless the court finds that such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the Commissioners' intent.
- f. **Burden of Proof.** In any proceeding arising out of the provisions of this Article, or arising out of an order issued or action taken pursuant to this Article, any person who claims entitlement to any exemption which may be provided for in this Article, or in an order issued pursuant to this Article, or who claims that a provision or interpretation other than the one resulting in the lowest permissible emission rate was intended to prevail pursuant to this Section shall bear the burden of proof and the burden of going forward with respect to such claim.
- g. **Separate Offenses.**
 - 1. Violations of any requirement of this Article, or any order or permit issued pursuant to this Article, occurring on separate days shall be considered separate offenses.
 - 2. Violations of any ambient air quality standard established by this Article occurring on the same day but at separate locations shall be considered separate offenses.
- h. **Absolute Liability.** Insofar as permitted by law, this Article is intended to impose absolute liability for violations of the provisions of this Article.

§2101.11 PROHIBITION OF AIR POLLUTION

- a. It shall be a violation of this Article to fail to comply with, or to cause or assist in the violation of, any requirement of this Article, or any order or permit issued pursuant to authority granted by this Article. No person shall willfully, negligently, or through the failure to provide and operate necessary control equipment or to take necessary precautions, operate any source of air contaminants in such manner that emissions from such source:
 - 1. Exceed the amounts permitted by this Article or by any order or permit issued pursuant to this Article;
 - 2. Cause an exceedance of the ambient air quality standards established by §2101.10 of this Article; or
 - 3. May reasonably be anticipated to endanger the public health, safety, or welfare.
- b. It shall be a violation of this Article for any person to:
 - 1. Operate, or allow to be operated, any source in such manner as to allow the release of air contaminants into the open air or to cause air pollution as defined in this Article, except as is explicitly permitted by this Article;
 - 2. In any manner hinder, obstruct, delay, resist, prevent, or in any way interfere or attempt to interfere with the Department or its personnel in the performance of any duty hereunder, including the Department's inspection of any source;

3. Violate the provisions of 18 Pa.C.S. §4903 (relating to false swearing) or §4904 (relating to unsworn falsification to authorities) in regard to any submittals to the Department under this Article; or
 4. Submit any application form, report, compliance certification, or any other submittal to the Department under this Article which is, in whole or in part, false, inaccurate, or incomplete.
- c. It shall be a violation of this Article for any person to cause a public nuisance, or to cause air, soil, or water pollution resulting from any air pollution emission. No person who operates, or allows to be operated, any air contaminant source shall allow pollution of the air, water, or other natural resources of the Commonwealth and the County resulting from such source.

§2101.13 NUISANCES

Any violation of any requirement of this Article shall constitute a nuisance.

§2101.20 DEFINITIONS {unless specifically indicated, all definitions effective October 20, 1995}

Whenever used in this Article, or in any action taken pursuant to this Article, the following words and phrases shall have the meanings stated, unless the context clearly indicates otherwise. Except as specifically provided in this Article, terms used in this Article retain the meaning accorded them under the applicable provisions and requirements of the Clean Air Act.

"Abatement", for purposes of asbestos abatement, means procedures designed to reduce the potential for fiber release from asbestos-containing materials (ACM). These include removal, encasement, and encapsulation of ACM in any facility.

"ACM" {see Asbestos-Containing Material}.

"Adequately wetted", for purposes of asbestos abatement, means sufficiently mixed or penetrated with amended water to prevent the release of particulates.

"Aggressive sampling", for purposes of asbestos abatement, means a method of sampling by which the person collecting the air sample creates activity during the sampling period to stir up settled dust and to simulate a degree of activity typical of that area of the facility.

"Airless spray" means a spray coating method in which the coating is atomized by forcing it through a small nozzle opening at high pressure. The coating is not mixed with air before exiting from the nozzle opening. *{effective July 10, 2003}*

"Airlock", for purposes of asbestos abatement, means a system for permitting entrance and exit with minimum air movement between areas consisting of three curtained doorways separated by a distance of at least three (3) feet, such that a person passes through the first doorway into the airlock and allows the doorway sheeting to overlap and close off the opening before proceeding through the second doorway, thereby preventing the flow-through of air.

"Air sampling", for purposes of asbestos abatement, means the process of measuring the fiber content of a known volume of air collected during a specific period of time. In addition, transmission electron microscopy methods may be required when the Department determines that lower detectability or specific fiber identification are necessary.

"Amended water", for purposes of asbestos abatement, means water to which a chemical wetting agent has been added in accordance with the recommendations of the manufacturer in order to improve the penetration of the water into ACM.

"Applicable requirement" means, unless otherwise expressly excluded, all of the following applicable to a source (including requirements that have been promulgated or approved by the County or the EPA at the time of action or issuance but have future-effective compliance dates):

- a. All provisions of this Article;
- b. All provisions of the Clean Air Act and the Air Pollution Control Act;
- c. All provisions of all regulations approved or promulgated by EPA through rulemaking under the Clean Air Act; and
- d. All terms and conditions of any permit, license, or order issued pursuant to this Article, the Clean Air Act, the Air Pollution Control Act, or any regulations approved or promulgated by EPA through rulemaking under the Clean Air Act.

"Approved landfill", regarding asbestos abatement, means a landfill which is licensed or permitted by the appropriate regulatory authority to accept asbestos-containing waste materials and which is operated in accordance with the requirements set forth in 40 CFR Part 61, Subpart M.

"Article" means Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control, and Allegheny County Ordinance No. 16782.

"Asbestiform fibers" means fibers at least five (5) micrometers in length, with a length-to-diameter ratio of at least 3 to 1, and with a maximum diameter of three (3) micrometers.

"Asbestos" means the asbestiform varieties of a group of naturally occurring minerals that readily separate into fibers, including serpentinite (chrysotile), amosite, riebeckite (crocidolite), cummingtonite-grunerite, anthophyllite, and actinolite-tremolite.

"Asbestos-Containing Material" (ACM) means any material that contains more than one percent (1%) asbestos by weight or area.

"Asbestos-containing waste material" means any waste from sources subject to Subpart E-6 of this Article, including, but not limited to, ACM and all asbestos-contaminated objects requiring disposal, including, but not limited to, such things as filters from control devices, bags and other similar packaging contaminated with asbestos, and disposable equipment and clothing.

"Authorized representative" means any person who has authority to act on behalf of another person in matters pertaining to this Article. For any actions on behalf of a corporation, the authorized representative's authority must be documented in writing to the Department by a certificate of corporate authority executed by the secretary of the corporation.

"Breakdown" means any sudden or unexpected event which has the effect of causing any air pollution control equipment, process equipment or any other potential source of air contaminants to fail, malfunction or otherwise abnormally operate in such manner that emissions into the open air are, or may be, increased.

"CFR" means the Code of Federal Regulations.

"Clean room", for purposes of asbestos abatement, means an uncontaminated area or room in the decontamination enclosure system which has provisions for the storage of workers' non-work clothing and clean protective equipment.

"Clearance air sampling" means the employment of aggressive sampling techniques during air monitoring to determine the airborne concentration of residual fibers at the conclusion of an asbestos abatement project.

"Commonwealth" means the Commonwealth of Pennsylvania.

"Containment barrier", for purposes of asbestos abatement, means a temporary, air-tight barrier consisting of minimum six (6) mil plastic sheeting used to seal off all openings into the work area, including but not limited to windows, doorways, corridors, skylights, ducts and grilles.

"County" means Allegheny County, Pennsylvania.

"County Council" means the Council of Allegheny County, Pennsylvania. *{Added by August 29, 2013 amendment, effective September 23, 2013.}*

"County Executive" means the Chief Executive of Allegheny County, Pennsylvania, as defined in the Allegheny County Home Rule Charter. *{Added by August 29, 2013 amendment, effective September 23, 2013. Amended May 8, 2015, effective June 19, 2015.}*

"Decontamination enclosure system", for purposes of asbestos abatement, means a series of connected chambers, separated from the work area and from each other by airlocks, which is for the decontamination of workers, materials and equipment.

"Demolition", for purposes of asbestos abatement, means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

"Department" means the Allegheny County Health Department established pursuant to the Pennsylvania Local Health Administration Law, Act of August 24, 1951, P.E. 1304, as amended, 16 P.S. §12001 et seq.

"Deputy Director" means the Deputy Director, Allegheny County Health Department Bureau of Environmental Quality.

"Director" means the Director of the Allegheny County Health Department or his designated representative, except that for purposes of the filing of disclosure statements and the issuance of orders and permits, it shall mean the Director of the Allegheny County Health Department only.

"Encapsulant" means a liquid material which can be applied to ACM to temporarily control the potential release of asbestos fibers from the material either by creating a membrane over the surface (bridging encapsulant) or by penetrating into the material and binding its components together (penetrating encapsulant).

"Encapsulation" means the coating or spraying of ACM with an encapsulant in order to temporarily control the potential release of asbestos fibers from said material.

"Encasement" means any process or application that involves the direct application of any liquid or solid material onto, and in direct contact with, ACM, including but not limited to the application of multi-port self-curing resin systems, in order to totally confine or seal such ACM for purposes of abatement of the potential release of asbestos fibers.

"EPA" means the Administrator of the United States Environmental Protection Agency or his designee.

"Equipment room", for purposes of asbestos abatement, means a contaminated area or room in the decontamination enclosure system which has provisions for the storage of contaminated clothing and equipment.

"Facility", for purposes of asbestos abatement, means any institutional, commercial, public, or industrial structure, installation or building, and any residential structure, installation, or building consisting of more than four (4) dwelling units.

"Facility component" means any part of a facility, including, but not limited to, pipes, ducts, boilers, tank reactors, turbines, furnaces, any other equipment in a facility, or any structural member of a facility.

"Glovebag technique" means a method for removing ACM from heating, ventilation, and air conditioning (HVAC) ducts, short pipe runs, valves, joints, elbows, and other nonplanar surfaces in a noncontained work area. The glovebag assembly is a manufactured device consisting of a bag (constructed of six (6) mil transparent plastic), two inward-projecting long-sleeve rubber gloves, one inward-projecting waterwand sleeve, an internal tool pouch, and an attached labeled receptacle for asbestos waste. The glovebag is constructed and installed in such a manner that it surrounds the object or area from which ACM is to be removed and contains all asbestos fibers released during the removal process.

"HEPA filter" means a high efficiency particulate absolute air filter capable of trapping and retaining 99.97 percent of fibers greater than 0.3 micrometers in mass median aerodynamic diameter equivalent.

"HEPA vacuum equipment" means vacuuming equipment equipped with a HEPA filter system.

"Independent consulting company", for asbestos abatement purposes, means a company which has no financial interest in, or personal association with, the facility owner or operator, the general contractor, or the asbestos abatement contractor or subcontractor.

"Independent laboratory", for asbestos abatement purposes, means a laboratory which has no financial interest in, or personal association with, the facility owner or operator, the general contractor, or the asbestos abatement contractor or subcontractor.

"Leak-tight container" means, at a minimum, double six (6) mil polyethylene bags inside a fiber or steel drum capable of being sealed at the top with an adjustable seal ring, labeled in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).

"Negative air pressure equipment", for purposes of asbestos abatement, means a portable exhaust system equipped with HEPA filters. The system shall be capable of maintaining a constant, low velocity, clean air flow out of contaminated areas, creating a negative pressure differential between the outside and inside of the contaminated work area.

"NIOSH" means the National Institute for Occupational Safety and Health CDC - NIOSH, Building J. N.E., Room 3007, Atlanta, GA 30333.

"Occupied facility" means any facility which has not been evacuated for the duration of the asbestos abatement activity of all persons other than those directly involved with said abatement activity.

"Operating & Maintenance Plan", for purposes of asbestos abatement, means a plan for conducting, in accordance with 40 CFR §61.145(c), a number of renovation/maintenance operations in which the amount of ACM that will be removed or encapsulated within a one year period can reasonably be predicted to exceed at least 160 square feet on facility components.

"Outside air", for purposes of asbestos abatement, means the air outside the work area.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source. *{amended September 6, 1995, effective October 20, 1995}*

"Person" means any individual, natural person, syndicate, association, partnership, firm, corporation, institution, agency, authority, department, bureau, or other instrumentality of federal, state, local, or regional government, or other entity recognized by law as the subject of rights and duties.

"Removal", for asbestos abatement purposes, means the stripping or taking off of any ACM from surfaces or facility components.

"Shower room", for purposes of asbestos abatement, means a room between the clean room and the equipment room in the worker decontamination enclosure system with hot and cold running water controllable at the tap and suitably arranged for complete showering during decontamination.

"Structural member", for purposes of asbestos abatement, means any load-supporting or non-load supporting member of a facility, such as beams, walls, and ceilings.

"Wet cleaning" means the process of eliminating asbestos contamination from building surfaces and objects by using cloths, mops, or other cleaning tools which have been dampened with water.

"Work area" means designated rooms, spaces, or areas in which asbestos abatement actions are to be undertaken or which may become contaminated as a result of such abatement actions.

"Worker decontamination enclosure system", for purposes of asbestos abatement, means that portion of a decontamination enclosure system designed for controlled passage of workers, and other authorized persons, consisting of a cleanroom, a shower room, and an equipment room separated from each other and from the work area by airlocks.

"Working days", for purposes of asbestos abatement, means each day before, but not including, the proposed day on which a demolition or asbestos abatement project is proposed to begin except for Saturdays, Sundays, and official County of Allegheny holidays (excluding Flag Day).

SUBPART 6 - ASBESTOS SOURCES

§2105.60 ASBESTOS ABATEMENT CONTRACTOR LICENSES *{Paragraph c amended July 16, 2009, effective July 26, 2009.}*

- a. **General.** In addition to the accreditation and permit requirements under §§2105.61 and 2105.62, respectively, of this Article, no person shall remove, encase, or encapsulate, or allow the removal, encasement, or encapsulation of, ACM in any facility subject to §2105.62 of this Article unless the person engaged in the removal, encasement, or encapsulation has been issued and currently holds a valid Annual Asbestos Abatement Contractor License, hereinafter referred to as License, issued by the Department under this Section.
- b. **License Applications.**
 1. Properly completed applications for Licenses under this Section, along with the appropriate fees, shall be submitted to, and received by, the Department, on forms approved by the Department, no later than 45 days prior to the proposed date of commencement of any proposed asbestos abatement activities proposed to be conducted by the applicant.
 2. Properly completed applications for the annual renewal of Licenses under this Section, along with the appropriate fees, shall be submitted to, and received by, the Department no later than 30 days prior to the date of expiration of the License proposed to be renewed.
 3. License applications under this Section shall be made on forms approved by the Department, signed by the applicant, and submitted in duplicate to: Asbestos Contractor License Applications, Allegheny County Health Department, Bldg. 3, 3901 Penn Ave., Pittsburgh, PA 15224-1345.
 4. License applications under this Section shall include all information necessary for the Department to determine full compliance with this Article, including, but not limited to:
 - A. Name, mailing and street address, telephone number, and contact person of the applicant;
 - B. Verification that all employees of the applicant to be engaged in asbestos abatement have successfully complied with the accreditation requirements set forth in §2105.61 of this Article within the past 12 months;
 - C. Written standard operating procedures and employee protection plans implemented by all employees engaged in asbestos abatement activity;
 - D. Certification that employees engaged in asbestos abatement have been and will continue to be supplied with protective clothing and equipment, including but not limited to disposable whole body coveralls, hoods and boots, and respirators approved for asbestos protection; and
 - E. Citations or notices of violation issued or levied against the applicant by any federal, state, or local government agency for violations during or related to asbestos abatement activity in any jurisdiction during the prior three years.
- c. **License Application Fees.** For each initial and annual renewal License application required under this Section, the applicant shall submit to the Department a License application fee payable to the Allegheny County Air Pollution Control Fund. The amount of the fee shall be set by the Board of Health. Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.

- d. **Application Amendments.** During the Department review of an application under this Section or the term of a License issued under this Section, the applicant or License holder, as the case may be, shall notify the Department of any changes in the information provided to the Department in such application by no later than 30 days after such changes are effective.
- e. **Action on License Applications.**
1. Within 30 days after receiving an initial License application under this Section, the Department will acknowledge receipt of the application and notify the applicant of all deficiencies in the application. A failure by the Department to acknowledge receipt or provide notice of completeness within such 30 days shall not prevent the Department from finding such application incomplete or from rejecting the application as failing to meet the requirements of this Article.
 2. Within 45 days after receiving a properly completed application under this Section, including the appropriate fee, and all additional information subsequently required by the Department, the Department will take final action on such application. No license under this Subpart shall be issued after a certain time because the Department has failed to take action on the application, nor shall any such license be issued by default.
 3. **Standards for Issuance.** The Department shall not issue an initial License or renew a License under this Section unless a properly completed application, with the appropriate fee, has been submitted to, and received by the Department in accordance with this Section, and such application demonstrates to the Department's satisfaction that the applicant has fully complied with, and has the ability to fully comply with, all applicable requirements under this Article.
- f. **License Term.** Unless revoked by the Department under this Article, a License issued under this Section shall expire on either any expiration date identified on the issued License, or on December 31 of the year of issuance, whichever is later.
- g. **Rejection, Suspension, and Revocation.**
1. The Department may, at any time, reject a License application under this Section or suspend or revoke a License issued under this Section if it determines that:
 - A. Any statement made in the License application or any submittal by the applicant to the Department is not true, or that material information has not been disclosed in the application or any such submittal;
 - B. The applicant or License holder has failed to comply with any requirements of this Article, any requirements of any order issued under this Article, or the terms and conditions of any permit under this Article;
 - C. Any permit under which the applicant or License holder is conducting asbestos abatement activity has been revoked under this Article based in whole or in part on actions, or a failure to act, on the part of the applicant or License holder; or
 - D. It has been denied lawful access to any premises upon which the applicant or License holder is engaged in asbestos abatement activity or to any records of the License holder to which it is authorized by §2109.01 of this Article.
 2. Rejected applications and revoked licenses can not be reconsidered or reissued. Consideration and issuance of new applications and licenses can only occur after submittal of a new application and fee in accordance with this Section.

3. Reinstatement of a suspended license can only occur after the owner has, to the Department's satisfaction, corrected all problems and demonstrated an ability and willingness to comply with all requirements, and documented such corrections and demonstration to the Department.

§2105.61 ASBESTOS ABATEMENT ACCREDITATION REQUIREMENTS

a. Certification.

1. No person shall:
 - A. Inspect for ACM;
 - B. Prepare an asbestos management plan;
 - C. Design or conduct an asbestos response action;
 - D. Conduct or supervise the removal, encasement, or encapsulation of asbestos,
2. Unless such person is in full compliance with all applicable accreditation requirements set forth in:
 - A. §206 of the federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2646, and the federal regulations promulgated thereunder at 40 CFR Part 763 Subparts E, F, and G, §763.80 et seq., and appendices; and
 - B. §§2104 and 2105 of the Pennsylvania Asbestos Occupations Accreditation and Certification Act, 63 P.S. §§2104 - 2105, and the state regulations promulgated thereunder by the Pa. Dept. of Labor and Industry (DOLI),

all of which are hereby incorporated into this Article by reference. Additions, revisions, or deletions to such federal and state regulations are incorporated into this Article and are effective on the date established by the respective regulations, unless otherwise established by regulation under this Article.

- b. **Documentation.** No person shall engage in the removal, encasement, or encapsulation of ACM, or in the supervision of workers engaged in the removal, encasement, or encapsulation of ACM, for which a permit is required under this Article unless said person has in their possession or at the asbestos abatement site office, and available for inspection upon request by any Health Department representative or law enforcement officer, during any asbestos abatement activity:
 1. An original printed photocard issued by DOLI under Subparagraph a.2.B of this Section, or an original card or certificate issued by a course pursuant Subparagraph a.2.A. or B of this Section which indicates the name and accreditation status of the training organization, the name of the certified worker or supervisor, the status and date of certification, and a certification number, all of which indicate compliance with Subsection a above; and
 2. A photo identification card (e.g. PA drivers license) if the documentation required by Paragraph b.1 above is not a photo I.D.

§2105.62 ASBESTOS ABATEMENT APPLICABILITY, FEDERAL REQUIREMENTS, NOTICES, AND PERMITS *{Paragraph h amended July 16, 2009, effective July 26, 2009.}*

- a. **Applicability.** This Section and Section 2105.63 apply to:
 - 1. The removal, encasement, or encapsulation of ACM at a facility; and
 - 2. The demolition of any facility.
- b. **Incorporation by Reference - Federal Regulations.** All federal asbestos abatement regulations adopted at Title 40, Code of Federal Regulations, Part 61, Subpart M, NESHAP's, 40 CFR §61.140 et seq. by the EPA are hereby incorporated into this Article by reference. Additions, revisions, or deletions to such regulations adopted by the EPA are incorporated into this Article and are effective on the date established by the Federal regulations, unless otherwise established by regulation under this Article. Notwithstanding the applicability provisions of the regulations incorporated under this Subsection, the substantive requirements of this Subsection apply to all activities that are subject to this Section as set forth under Subsection a above.
- c. **Asbestos Bulk Sampling and Analysis.** Bulk samples shall be analyzed to determine asbestos content:
 - 1. By using, at a minimum, either polarized light microscopy (PLM) with point counting, supplemented, where necessary, by x-ray diffraction, as specified in Chapter 60 of the Allegheny County Source Testing Manual, entitled "Determination of Asbestos Content of Bulk Samples", or any other methods acceptable to the Department; and
 - 2. By independent laboratories participating in the EPA's bulk asbestos sample quality assurance program, as specified in Chapter 60 of the Allegheny County Source Testing Manual, entitled "Determination of Asbestos Content of Bulk Samples".
- d. **Calculation of Square Feet of ACM.** For purposes of determining the amount of ACM in a facility to be demolished or the amount of ACM to be removed, encased, or encapsulated at a facility, the square feet of ACM on cylindrical facility components such as pipes shall be calculated using the following formula:

$$A = 0.02 (D) (L)$$

where **A** = The area of ACM to be removed, encased, or encapsulated in square FEET;

D = The outside diameter of the cylindrical facility component, including any ACM to be removed, encased, or encapsulated, insulation, coating, or covering, in INCHES; and

L = The length of the cylindrical facility component from which, or on which, the ACM is to be removed, encased, or encapsulated, in INCHES,

and all calculations must be included in all required applications or notices.

- e. **Authority to Determine and Eliminate Public Health Hazard.**
 - 1. In cases where the Department believes ACM is present in a facility in such a condition as to pose a potential public health hazard, the Department shall have the authority to issue an order requiring the facility owner or operator to have bulk samples of the suspected ACM collected and analyzed

in accordance with Subsection c of this Section, and submit a copy of the laboratory results to the Department as expeditiously as possible.

2. If the Department determines, on the basis of any information available to it, that the presence and condition of ACM in a facility poses a public health hazard, the Department may issue an order pursuant to §§2109.03 or 2109.05 of this Article requiring the facility owner or operator to immediately take such action as is necessary to eliminate such public health hazard.

f. **Demolition Notice.** No person shall demolish, or allow the demolition, of any facility unless the owner of the facility proposed to be demolished has either:

1. Submitted to the Department, and the Department has received, by no later than 10 days prior to the beginning of the proposed demolition, if there is:

- Less than 260 linear feet of pipe with ACM and a total of less than 160 square feet of, or no, ACM present in the facility,

A written notice which includes, at a minimum, the following information about the facility proposed to be demolished:

- A. Names, mailing and street addresses, telephone numbers, and contact persons of the owner, and operator if not the owner, of the facility;
- B. Name, mailing and street addresses, telephone number, and contact person of the person (e.g. contractor) to perform the demolition;
- C. Exact location (e.g. street name and number) of the facility;
- D. The age and prior and present usage of the facility;
- E. Name, mailing and street addresses, telephone number, and contact person of the inspector, certified under §2105.61.a of this Article, who performed the ACM inspection at the facility proposed to be demolished;
- F. Copy of the documentation of the ACM Inspector's certification under §2105.61.a and Subparagraph 2.E of this Subsection; and
- G. Copy of the documentation of the results of the ACM inspection showing that no asbestos removal project permit is required prior to demolition due to the absence, or the presence of less than 260 linear feet of pipe with ACM and a total of less than 160 square feet, of ACM in the facility; or

2. Prior to the proposed demolition, if there is:

- 260 linear feet or more of pipe with ACM or a total of 160 square feet or more of ACM present in the facility,

- A. Submitted to the Department, and the Department has received, a properly completed Asbestos Abatement Project Permit (asbestos permit) application, with the appropriate fee, for any such permit required under Subsection h of this Section;
- B. Been issued such permit; and
- C. Removed all ACM in the facility and fully complied with all applicable provisions of this Article and such permit.

g. **Undersized Project Notice.** No person shall conduct, or allow to be conducted, the removal, encasement, or encapsulation of ACM on less than 260 linear feet of pipe and a total of less than 160 square feet of ACM at any facility, unless the owner of the facility has submitted to the Department a properly completed notice under this Section, and such notice has been received by the Department either at least 10 days prior to the start of such proposed abatement project or, for a project involving less than seven (7) square feet of ACM, no later than 10 days after the completion of the project, or for a facility with a current Operating & Maintenance (O&M) Plan approved by the Department under this Subpart, as part of the appropriate O&M Plan quarterly report, and includes, at a minimum, the following information about the facility and the proposed abatement project or the completed project:

1. Names, mailing and street addresses, telephone numbers, and contact persons of the owner, and operator if not the owner, of the facility;
2. Names, mailing and street addresses, telephone numbers, and contact persons of all persons preparing any asbestos management plans or designing any asbestos response actions for the facility related to the proposed project, and copies of the documentation of such persons' certifications under §2105.61.a of this Article;
3. Exact location (e.g. street name and number) of the facility;
4. The age and prior and present usage of the facility;
5. Name, mailing and street addresses, telephone number, and contact person of the inspector, certified under §2105.61.a of this Article, who performed the ACM inspection at the facility, and a copy of the documentation of the ACM Inspector's certification under §2105.61.a;
6. Copy of the documentation of the results of the ACM inspection showing that no asbestos removal project permit is required due to the presence of ACM on less than 260 linear feet of pipe and a total of less than 160 square feet of ACM in the proposed project area and, for a facility without a current O&M Plan, including the proposed project, how many square feet of ACM has been removed or encapsulated at the facility in the past one (1) year period;
7. Detailed description of the types, amounts, and specific locations within the facility of all ACM to be removed, encased, or encapsulated, including maps, blueprints, and sketches where necessary;
8. Starting and completion dates and times for the removal, encasement, or encapsulation;
9. Specific work practices, procedures, and equipment to be utilized on this project to comply with the requirements of 40 CFR §61.145(c), the federal requirements for planned asbestos abatement renovation/maintenance operations as incorporated by reference under Subsection b above;
10. Name, mailing and street addresses, telephone number, and contact person of the waste disposal firm transporting the asbestos-containing waste material from the project area to the waste disposal site; and
11. Name, mailing and street addresses, telephone number, and contact person of the waste disposal site where the asbestos-containing waste material will be disposed of.

h. **Permits.**

1. **Generally.** No person shall conduct, or allow to be conducted, the removal, encasement, or encapsulation of:
 - A. Either:
 - i. ACM on 260 linear feet or more of pipe or a total of 160 square feet or more of ACM at any facility; or
 - ii. Any ACM at any facility without a current Operating & Maintenance (O&M) Plan approved by the Department under this Subpart if the Department has determined that a permit is required as a result of recent multiple prior related projects, each involving the removal, encasement, or encapsulation of ACM on less than 260 linear feet of pipe and a total of less than 160 square feet of ACM at the same facility as the current project,
 - B. Unless:
 - i. The owner of the facility has submitted to the Department a properly completed Asbestos Abatement Project Permit (asbestos permit) application, on forms approved by the Department, with the appropriate fee, under this Section;
 - ii. Such permit has been issued; and
 - iii. Such abatement is conducted in compliance with this Article and such permit.
2. **Posting.** The notice of issuance of the permit required by this Subsection shall be posted in a conspicuous location immediately adjacent to the work area at all times during the set-up and conducting of the asbestos abatement project until the Department has accepted the results of all required Final Clearance Inspections under this Part.
3. **Application.**
 - A. At least 10 working days prior to the proposed start of any asbestos abatement project requiring a permit under this Subsection, the owner of the facility shall submit to the Department, and the Department shall receive, a properly completed Asbestos Permit application, on application forms provided by the Department, with the appropriate fee under Paragraph 4 of this Subsection, which includes all information necessary for the Department to determine that such proposed project will fully comply with all requirements of this Article, including, but not limited to:
 - i. All information required to be included in undersized project notices under Subsection g of this Section;
 - ii. A detailed description of decontamination enclosure systems to be utilized, including floor plans;
 - iii. The specific sampling and analysis procedures to be utilized for the final clearance air sampling; and
 - iv. The names, mailing and street addresses, telephone numbers, and contact persons of the firms conducting the final clearance air sampling and analysis.

- B. A separate asbestos abatement permit, with its own application and fee, is required for each separate structure, installation, and building in which abatement activity is to be conducted, and for each different asbestos abatement contractor to conduct asbestos abatement activities.
4. **Application Fees.** For all permit and Operating & Maintenance (O&M) Plan applications required under this Subpart, by the deadline for the submittal of such applications, the owner of the facility requiring such application shall submit to the Department an Asbestos Permit application fee, payable to the Allegheny County Air Pollution Control Fund, in an amount to be set by the Board of Health. Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.
5. **Standards for Issuance.**
- A. The Department shall issue a permit or amended permit under this Subsection only if:
 - i. The application for such permit was timely filed with the Department, along with the appropriate fee, and in all other respects fully complies with all applicable requirements of this Article; and
 - ii. On the basis of all information available to the Department, the Department determines that the applicant is able and intends to fully comply with all requirements of this Article.
 - B. The Department shall not issue a permit under this Subsection for any project which does not require a permit under this Section, and no person shall apply, or allow the application, for a permit under this Subsection for a project which does not require a permit under this Section.
 - C. Permits shall only be issued to the owner of the site of the proposed project.
6. **Action on Applications.** The Department will take one of the following actions on each application under this Subsection:
- A. Issuance of an Asbestos Permit or amended permit as applied for;
 - B. Issuance of an Asbestos Permit or amended permit with different or additional specific conditions deemed necessary by the Department to ensure compliance with all requirements of this Article; or
 - C. Rejection of the application for failure to fully comply with the requirements of this Article. Such denial of a request for a permit or amended permit shall include a written notice to the applicant of the specific deficiencies in the application.

7. **Term of Permits - Permit Extensions.**

- A. Unless revoked by the Department under this Article, a permit issued under this Section shall expire on either the project completion date identified in the application, any expiration date identified on the issued permit, or 365 days after the date of issuance, whichever is sooner.
- B. Any request for the extension of the term of a permit, i.e. the extension of a permit expiration date, shall be in the form of an application for a permit amendment. Such an application can only be submitted on or before the current permit expiration date and must include:
 - i. A specific resumption date if work has ceased and will not recommence until after the current expiration date;
 - ii. A specific new expiration date; and
 - iii. The reason for the need for the extension.
- C. No fee is required for a timely application submitted in compliance with Subparagraph B above, and the amended permit, if approved by the Department, shall be effective on the date of application.
- D. In no case shall an expiration date of a permit be extended beyond 365 days after the date of initial issuance of such permit.
- E. All applications for extensions received after the current expiration date and all applications requesting the extension of an expiration date beyond 365 days after the date of the initial issuance of a permit shall constitute applications for a new permit and shall be rejected unless accompanied by the appropriate fee and in full compliance with all requirements for such an application under this Section. Such new permits, if approved, shall not be effective until issued.
- F. An application for a new permit to continue a project after the expiration of a permit 365 days after the initial issuance of such permit shall only be for the asbestos abatement activity remaining to be done.

8. **Permit Amendments - Other than Solely for Permit Extensions.**

- A. No person shall remove, encase, or encapsulate, or cause to be removed, encased, or encapsulated, any ACM during asbestos abatement activities conducted under a permit under this Section other than the ACM identified, by type, amount, and specific location within the facility, in the application and permit, unless for such additional ACM:
- i. Where all of the additional ACM is located within the existing containment barriers under the current permit:
 - (a). The owner of the facility has submitted to the Department a properly completed Asbestos Permit Amendment application including:
 - (1). A detailed description of the types, amounts, and specific locations within the facility of all additional ACM to be removed, encased, or encapsulated, including maps, blueprints and sketches where necessary; and
 - (2). The appropriate fee, under this Section, in the amount of either the difference between the amount of the fee for the total amount of the ACM to be abated under the current permit plus the additional ACM to be removed, encased, or encapsulated, less the amount of the fee previously paid for the current permit, or \$150, whichever is more;
 - (b). Such permit amendment has been issued; and
 - (c). Such abatement is conducted in compliance with this Article and such amended permit; or
 - ii. Where the additional ACM is located within the same facility under the current permit, but any portion of the additional ACM is located outside the existing containment barriers under the current permit:
 - (a). The owner of the facility has submitted to the Department a separate properly completed new Asbestos Permit application including:
 - (1). All requirements for a permit application under this Section except;
 - (2). The appropriate fee, under this Section, in the amount of either the difference between the amount of the fee for the total amount of the ACM to be abated under the current permit plus the additional ACM to be removed, encased, or encapsulated, less the amount of the fee previously paid for the current permit, or \$150, whichever is more;
 - (b). Such new permit has been issued; and
 - (c). Such abatement is conducted in compliance with this Article and such new permit.
- B. In no case shall an amended permit act to extend the expiration date of a permit beyond 365 days after the date of initial issuance of such permit.

- C. All applications for amendments received after the current expiration date and all applications for amendments including a new expiration date beyond 365 days after the date of the initial issuance of the current permit shall constitute applications for a new permit and shall be rejected unless accompanied by the appropriate fee and in full compliance with all requirements for such an application under this Section. Such new permits, if approved, shall not be effective until issued.

- D. Asbestos permit amendment applications may, in the sole discretion of the Department, be conditionally approved in the field or verbally over the phone, but such approval is automatically null and void unless:
 - i. By no later than 2:00 PM on the next Department business day, the owner of the facility has submitted to the Department a properly completed Asbestos Permit Amendment application including:
 - (a). A detailed description of the types, amounts, and specific locations within the facility of all additional ACM to be removed, encased, or encapsulated, including maps, blueprints and sketches where necessary;
 - (b). The appropriate fee, under this Section, in the amount of either the difference between the amount of the fee for the total amount of the ACM to be abated under the current permit plus the additional ACM to be removed, encased, or encapsulated, less the amount of the fee previously paid for the current permit, or \$150, whichever is more; and
 - (c). A detailed description of all changes in work practices, procedures, and equipment at the facility, including maps, blueprints and sketches where necessary;
 - ii. Such abatement is conducted in compliance with this Article and such amended permit application as issued by the Department; and
 - iii. Such permit amendment is subsequently issued by the Department.

- E. Asbestos permit amendments under Subparagraph D above not requiring any fee may, in the sole discretion of the Department, be tentatively approved in the field or verbally over the phone and finally approved by the issuance of a memo amendment by the Department to the site owner. Such asbestos abatement activities may proceed in accordance with such amendment following tentative approval, but only if:
 - i. Such abatement is conducted in compliance with this Article and such amended permit application as issued by the Department; and
 - ii. Such permit amendment is subsequently issued by the Department.

9. **Rejection, Suspension, and Revocation.**

- A. The Department may, at any time, reject a permit or permit amendment application under this Section or suspend or revoke a permit issued under this Section if it determines that:
 - i. Any statement made in the application or any other submittal by the applicant to the Department is not true, or that material information has not been disclosed in the application or any such submittal;
 - ii. The asbestos abatement project is not being conducted or will not be conducted, or the proposed project will not be conducted, in full compliance with all applicable provisions of this Article and all applicable permits and orders;
 - iii. Potential or actual emissions from the project or proposed project are potentially endangering, or are likely to potentially endanger, public health, safety or welfare;
 - iv. It has been denied lawful access to the site as authorized by Part I of this Article; or
 - v. A request for an alternative procedure does not include sufficient written details of the requested alternative procedure necessary for the Department to evaluate such procedure.
- B. Rejected applications and revoked permits can not be reconsidered or reissued. Consideration and issuance of new applications and permits can only occur after submittal of a new application and fee in accordance with this Section.
- C. Reinstatement of a suspended permit can only occur after the owner has, to the Department's satisfaction, corrected all problems and demonstrated an ability and willingness to comply with all requirements, and documented such corrections and demonstration to the Department.
- D. In no case shall the rejection, suspension, or revocation of any application or permit entitle the applicant or permit holder to any refund of any fee or part thereof.
- E. The Department, solely in its discretion, may, in lieu of rejecting, suspending, or revoking an application or permit, and if sufficient information has been provided to the Department, issue a permit or amended permit with whatever conditions are necessary to ensure compliance with this Article.

10. **Permit Conditions.**

- A. All information provided to the Department as part of the asbestos abatement permit or amendment application process constitutes conditions of the permit, if issued, unless:
 - i. The Department amends such conditions either in the permit or an amendment; or
 - ii. Such conditions are not in compliance with any requirements of this Article, unless:
 - (a.) An alternative procedure has been specifically applied for by the applicant; and
 - (b.) Such alternative procedure has been specifically approved by the Department.
- B. No person shall remove, encase, or encapsulate, or cause to be removed, encased, or encapsulated, any ACM during asbestos abatement activities conducted under a permit under this Section other than the ACM identified, by type, amount, and specific location within the facility, in the permit.

i. **Requests for Waivers from Requirement for 10 day Advanced Applications and Notices.**

- 1. The requirement to submit all permit applications and initial undersized project notices under this Section at least 10 working days prior to the proposed start of any asbestos abatement project requiring such permit or notice under this Subsection may be waived by the Department, in the sole discretion of the Department, only where the applicant communicates to the Department specific verifiable information regarding an alleged emergency situation and the Department determines, in its sole discretion, on the basis of any information available to it, that an emergency exists that necessitates immediate asbestos abatement action to protect the public health, safety, or welfare.
- 2. No person shall apply for a waiver under this Subsection, or allow the application for such a waiver, where no emergency exists that necessitates immediate asbestos abatement action to protect the public health, safety, or welfare.

j. **Operating & Maintenance Plans.**

- 1. Upon submittal of a properly completed application, with the appropriate fee, in accordance with Paragraphs h.3 and h.4 above, and demonstrating compliance with Subsection g above, the Department may, subject to Paragraphs h.5 through h.10 above, approve an Operating & Maintenance (O&M) Plan for multiple undersized asbestos abatement projects subject to Subsection g of this Section for a period not to exceed 365 days at a facility or multiple facilities located on contiguous, or nearly contiguous, properties and under common control.
- 2. Notwithstanding the requirements of Subparagraph h.3.D of this Section, an O&M plan can include asbestos abatement activity conducted by different asbestos abatement contractors.
- 3. For each 90 day period following the approval of an O&M Plan, the owner of the facilities under such plan shall submit a written quarterly report to the Department, by no later than 30 days following the end of each 90 day period, which consists of the applicable portions of the notices required under Subsection g above for all projects started or completed during such 90 day period.

- k. **Set-up and Preparation Notice.** No person shall conduct, or allow to be conducted, the removal, encasement, or encapsulation of ACM at any facility, unless following completion of the full set-up and preparation of the work area, including the commencement and continuing maintenance of negative air pressure in the work area, but prior to the commencement of any actual removal, encasement, or encapsulation, the Department is notified of such completion of set-up and preparation. Such notice shall include the asbestos permit number, the names of the permit applicant and the licensed contractor, the street address and municipality of the project site, the name and phone number of the person submitting the notice, and the estimated date and time of the actual commencement of ACM removal, encasement, or encapsulation.

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended July 16, 2009, effective July 26, 2009.}*

- a. **Applicability.** This Section applies to all asbestos abatement projects required to have a permit under §2105.62 of this Article.
- b. **Facility Protection.** No person shall conduct, or allow to be conducted, asbestos abatement activities at any facility unless:
1. Clearly identifiable signs with, and only with, the following specific warning, word for word, are posted at the facility, at eye level in a conspicuous location easily read by passers-by, at all potential approaches to the work area, a sufficient distance from the work area to permit a person to read the sign and take the necessary protective measures to avoid potential exposure, from the commencement of preparation for the project until acceptance by the Department of all final clearance inspections for the work area:

"- DANGER - ASBESTOS -
- CANCER AND LUNG DISEASE HAZARD -
- AUTHORIZED PERSONNEL ONLY -
- RESPIRATORS AND PROTECTIVE
CLOTHING ARE REQUIRED
IN THIS AREA -", and
 2. Negative air pressure is maintained in the work area, the air outside the work area remains uncontaminated by asbestos fibers, and negative air pressure equipment is utilized to provide, at a minimum, one (1) air change in the work area every 15 minutes, at all times, 24 hours per day, from the commencement of preparation for asbestos removal, encasement, or encapsulation until all requirements of this Part have been met.
- c. **Decontamination Outside the Work Area.**
1. Any area outside of the work area which becomes contaminated as a result of the asbestos abatement activity shall be immediately decontaminated in accordance with all requirements of this Part, including but not limited to the requirements for permit applications, fees, and permits. Such decontamination activities may, in the sole discretion of the Department, be determined by the Department to constitute emergency asbestos abatement activities under this Part.
 2. In addition to the requirements under Paragraph 1 of this Subsection, the contamination of any area outside of a work area as a result of asbestos abatement activity constitutes a breakdown at an air pollution source under this Article requiring compliance with §2108.01.c of this Article.

- d. **Work Area Preparation.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless:
1. All heating, ventilation, and air conditioning (HVAC) systems for the work area are completely shut down or isolated from the work area.
 2. All movable objects are removed from the work area.
 3. All remaining fixed objects in the work area are covered and enclosed with minimum six mil plastic sheeting sealed with tape.
 4. All openings, including but not limited to windows, corridors, doorways, skylights, ducts, and grilles are sealed off with minimum six mil plastic sheeting sealed with tape.
 5. All floor and wall surfaces are covered with minimum six mil plastic sheeting sealed with tape, all floors with a minimum of two layers of six mil plastic, so that plastic on floors overlaps the plastic on walls by a minimum of 12 inches.
- e. **Decontamination Enclosure Systems.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless decontamination enclosure systems are provided, maintained, and properly utilized at all locations where persons or equipment enter or exit the work area.
1. Worker decontamination enclosure systems shall consist of three (3) rooms separated by three (3) foot minimum air locks, with the second room from the work area being a shower room and the third room from the work area being a clean room.
 2. Equipment decontamination enclosure systems shall consist of two (2) rooms separated by a triple curtain, with the room adjacent to the work area being a wash room and the second room from the work area being a holding area directly connected or ramped to an enclosed truck or trailer for transportation.
 3. These systems may consist of existing rooms outside of, but adjacent to, the work area, that are enclosed in plastic sheeting and are accessible from the work area. When existing rooms are not available, these systems must be constructed out of metal, wood, or plastic support as appropriate.
 4. Entry to and exit from all airlocks and decontamination enclosure system chambers shall be through curtained doorways consisting of three sheets of overlapping polyethylene sheeting. One sheet shall be secured at the top and left side, the second sheet at the top and right side, and the third sheet at the top and left side. All sheets shall have weights attached to the bottom to ensure that the sheets hang straight and maintain a seal over the doorway when not in use. Any other design must be approved in advance by the Department as an alternative procedure.

- f. **Removal Procedures.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal of ACM unless, at a minimum, except when the glovebag technique has been approved by the Department as an alternative procedure:
1. All ACM to be removed, being removed, and having been removed, has been wetted and saturated to the substrate with an amended water solution, using low pressure equipment capable of providing a fine spray mist, and is kept wet and saturated until it can be containerized for disposal, except where an alternative procedure has been approved by the Department in advance due to special circumstances (e.g. live electrical equipment, materials previously coated with an encapsulant) which prohibit the adequate use of such wetting methods.
 2. All ACM to be removed, being removed, and having been removed, is handled in such a manner so as to prevent the release of any fibers from such ACM during such removal and disposal.
 3. All ACM is removed in manageable sections capable of containerization in six mil polyethylene bags and drums, and is so containerized at least once per eight (8) hour work shift.
 4. All ACM is removed as intact sections or components and carefully lowered to the floor or containerized at elevated levels (e.g. on scaffolds) and carefully lowered to the ground, and no ACM removed from facility structures or components is dropped or thrown to the floor at any time.
 5. Except where equivalent alternative procedures have been approved by the Department in advance, all ACM removed and asbestos-containing waste material is double-bagged in two (2) six-mil polyethylene bags which are securely sealed to prevent accidental opening and leakage, not overfilled, and placed in drums for transportation to an authorized landfill; all bags and drums are sealed prior to removal from the work area and labeled in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).
 6. All oversize components containing or covered with ACM, which are removed intact but do not fit into drums, are wrapped in at least two layers of six-mil polyethylene sheeting and securely sealed for transport to the landfill.
 7. After completion of the removal of ACM, all surfaces from which the ACM has been removed are wet cleaned to remove all visible residue.
- g. **Encapsulation Procedures.** No person shall commence or continue, or allow the commencement or continuation of, the actual encapsulation of ACM unless:
1. All damaged areas of existing ACM have been repaired with non-asbestos containing substitutes.
 2. All loose or hanging asbestos-containing materials have been removed in accordance with the requirements of this Section.
 3. All encapsulants are applied using airless spray equipment.
 4. All penetrating-type encapsulants are applied to penetrate existing asbestos material uniformly to the substrate and to the depth specified by the manufacturer of the encapsulant.
 5. All bridging-type encapsulants are applied to provide the manufacturer's specified number of inches of minimum dry film thickness over sprayed asbestos-containing surfaces.
 6. Encapsulated asbestos-containing materials shall be clearly designated (e.g. labels, signs, floor plans, or color codes) in order to warn of the presence of asbestos.
 7. Only non-clear and colored or tinted encapsulants are used.

- h. **Clean-up Procedures.** No person shall conduct, or allow to be conducted, any final clearance air sampling, or request, or allow to be requested, a final clearance inspection by the Department, until all ACM has been removed, encased, or encapsulated, in a work area, the following clean-up procedures and standards have been completed and achieved:

 - 1. All visible accumulations of asbestos-containing material and asbestos contaminated debris are removed and containerized for disposal as required by this Section; and
 - 2. All objects and surfaces in the work area are wet cleaned, dried, vacuumed using HEPA vacuum equipment, and continue to be wet/dry cleaned until there is no visible residue of any kind in the work area, and all rags, mops, and sponges used in the clean-up have been disposed of as asbestos-containing waste material.

- i. **Lock-down Procedures.** No person shall apply, or allow the application of, any material to lock-down any object or surface in a work area prior to the results of a final clearance inspection for such area being accepted by the Department unless:

 - 1. Subsection h above has been fully complied with; and
 - 2. Only clear, colorless material is used.

- j. **Clearance Air Sampling.** No person shall request, or allow to be requested, a final clearance inspection by the Department, until clearance air sampling has been conducted for the work area in accordance with this Section, and no person shall conduct, or allow to be conducted, any final clearance air sampling unless:

 - 1. All ACM has been removed, encased, or encapsulated, in the work area, and the work area has been cleaned up, all in accordance with the requirements of this Section.
 - 2. At least five (5) samples of air per the first 5000 square feet of work area plus one sample per each additional 5000 square feet of work area, or one (1) sample of air per room, whichever is greater, is collected and analyzed in accordance with the requirements of this Subsection.
 - 3. Unless specifically directed by the Department, all clearance air sampling and analysis required under this Subpart shall only be conducted in accordance with either:
 - A. The National Institute for Occupational Safety and Health (NIOSH)/ Center for Disease Control (CDC) Standard Analytical Method for Asbestos in Air P&CAM 239 or Method 7400 (PCM), as approved in advance by the Department;
 - B. Transmission electron microscopy, as approved in advance by the Department; or
 - C. Such other method approved by both the EPA and the Department in advance.
 - 4. Asbestos abatement project clearance air sampling and analysis shall be conducted by an independent consulting company or laboratory which is trained and experienced in the appropriate procedures for collecting and analyzing such air samples and which is proficient in the NIOSH Proficiency Analytical Testing (PAT) Program.
 - 5. Aggressive sampling is conducted, a minimum volume of 1500 liters of air per sample is collected when utilizing Method 7400, and a minimum of 3000 liters of air per sample is collected when utilizing P&CAM 239.
 - 6. The airborne concentrations of asbestiform fibers detected in each sample is less than 0.01 fibers per cubic centimeter of air.

7. In lieu of compliance with paragraphs 2 through 6 of this Subsection, clearance air sampling and analysis is conducted in accordance with the procedures set forth in the federal regulation regarding asbestos-containing materials in schools, at 40 CFR §§763.80 et seq., and such sampling and analysis demonstrates a level of asbestos contamination of no more than a level which determines completion of a response action under such regulations.
8. The clearance air sampling laboratory analysis is retained on-site at the asbestos abatement project work area for review and a copy is provided to the Department no later than the time of its scheduled final clearance inspection.

k. **Final Clearance Inspection.**

1. No person shall remove containment barriers, fail to continue to maintain negative air pressure at a project work area, or reopen the work area to the public, or allow any such removal, failure, or reopening, until such time as the Department has accepted the results of a final clearance inspection or reinspection for such work area.
2. Final clearance inspections shall be requested by either the licensed asbestos abatement contractor or the air monitoring or sampling firm for the project and scheduled in advance with the Department in accordance with procedures set forth by the Department's Asbestos Abatement Section.
3. The results of a final clearance inspection can not be accepted by the Department until such time that such inspection indicates that:
 - A. All clean-up and clearance air sampling requirements of this Part have been complied with; and
 - B. There is no asbestos-containing waste material or visible residue remaining on any surface or object in the work area.
4. If the results of a final clearance inspection are not acceptable to the Department:
 - A. The Department will indicate the deficiencies which must be remedied; and
 - B. A request for a final clearance reinspection shall be submitted to the Department in accordance with the Department's procedures for scheduling initial final clearance inspections. All requests to schedule a final clearance reinspection shall include the submittal to the Department of:
 - i. A final clearance reinspection application, on a form approved by the Department; and
 - ii. A Final Clearance Reinspection fee payable to the Allegheny County Air Pollution Control Fund. The amount of the fee shall be set by the Board of Health. Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.

5. No person, including but not limited to owners, general contractors, asbestos abatement contractors, air monitoring or sampling firms, and their representatives, shall request or schedule a final clearance inspection or reinspection, or allow such an inspection or reinspection to be requested or scheduled, with the Department, until such time as:
 - A. All clean-up and clearance air sampling requirements of this Part have been complied with; and
 - B. There is no asbestos-containing waste material or visible residue remaining on any surface or object in the work area.
6. A failure to pass a final clearance inspection or reinspection constitutes a violation of Paragraph 5 of this Subsection.

1. **Disposal Procedures.**

1. All asbestos-containing materials, asbestos-containing waste materials, asbestos contaminated materials including, but not limited to, sealing tape and plastic, disposable clothing, respirator filters, mop heads, sponges, and rags, shall, at least once per eight (8) hour work shift and prior to removal from the work area, be placed in leaktight containers and properly sealed and labeled, for transportation to and disposal at approved landfills.
2. All such leaktight containers shall be labeled in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).
3. Alternative forms of containerization may only be approved under the alternative procedures provisions of this Part and upon a satisfactory demonstration that they are equivalent in terms of asbestos containment.
4. Double-bagged material may be carefully removed from drums at the landfill site for disposal and the drums cleaned for re-use, provided the bags are intact.
5. Asbestos-containing waste materials with sharp-edged components (e.g. nails, screws, metal lath, tin sheeting) which may tear the double six mil polyethylene bags and sheeting, shall be placed into drums for disposal together with the drum.
6. Asbestos-containing waste materials which cannot be placed in leaktight containers, shall be adequately wetted, wrapped in two (2) layers of six mil polyethylene, securely sealed, and transported from the work site to the disposal site in an enclosed truck.
7. Asbestos-containing waste materials shall be placed on the ground at the disposal site, not pushed or thrown out of trucks.
8. All asbestos-containing waste materials shall be transported directly to the approved landfill. Temporary storage at any location outside the project work area for more than eight (8) hours is prohibited.
9. All disposal receipts, trip tickets, transportation manifests and/or other documentation of transportation and disposal of the asbestos-containing waste materials shall be maintained and shall be made available to the Department, upon request, for inspection and copying.
10. All asbestos waste transportation vehicles shall be licensed in accordance with Department Rules and Regulations, Article VIII, Solid Waste and Recycling Management, and shall comply with all applicable PA Dept. of Transportation regulations.

m. **Alternative Procedures.**

1. The Department may, on a case-by-case basis, approve an alternative procedure to be followed on a specific asbestos abatement project in lieu of a requirement of this Section, only if the requested alternative procedure is submitted as part of a permit or permit amendment application to the Department in writing, and demonstrates to the Department's satisfaction that:
 - A. The proposed alternative procedure is equivalent, in terms of asbestos control, to the requirements in this Section; or
 - B. Strict compliance with the requirements of this Section are unreasonable or impossible in the particular circumstances involved, and the proposed alternative procedure will minimize, to the maximum extent possible, the potential for the public's exposure to asbestos fibers.
 2. Failure to fully comply with the requirements of Paragraph 1 above or to include sufficient written details of the requested alternative procedure necessary for the Department to evaluate such procedure will result in the rejection of the request for an alternative procedure.
 3. Approval to institute an alternative procedure in lieu of a requirement of this Section must be received, in writing, from the Department prior to the use of such alternative procedure.
 4. Asbestos abatement activity subject to this Section involving specific activities such as, but not limited to:
 - A. The use of glove-bags;
 - B. The removal, encasement, or encapsulation of floor tile;
 - C. The removal, encasement, or encapsulation of ACM from the exterior of a structure; or
 - D. The removal, encasement, or encapsulation of ACM which will not become friable or potentially at any time during the encapsulation, encasement, or removal and disposal activities,must fully comply with all requirements of this Part unless specific alternative procedures have been approved under this Part.
 5. Asbestos abatement activity subject to this Section involving specific activities such as, but not limited to, the use of:
 - A. Any heating equipment or machines; or
 - B. High pressure air, liquid, or solids,for preparation, wetting, removal, control, or clean-up are prohibited unless specifically approved as alternative procedures under this Part.
 6. In no case shall compliance with this Section or any alternative procedure approved by the Department under this Article exempt any solid waste hauler from the requirements to comply with all other federal, state, county, and local solid waste transportation regulations.
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PART H - REPORTING, TESTING, & MONITORING

§2108.01 REPORTS REQUIRED

[Subsection e amended May 8, 2015, effective June 19, 2015.]

...

c. Breakdowns.

1. In the event that any air pollution control equipment, process equipment, or other source of air contaminants breaks down in such manner as to have a substantial likelihood of causing the emission of air contaminants in violation of this Article, or of causing the emission into the open air of potentially toxic or hazardous materials, the person responsible for such equipment or source shall immediately, but in no event later than 60 minutes after the commencement of the breakdown, notify the Department of such breakdown and shall, as expeditiously as possible but in no event later than seven (7) days after the original notification, provide written notice to the Department.
2. To the maximum extent possible, all oral and written notices required by this Subsection shall include all pertinent facts, including:
 - A. Identification of the specific equipment which has broken down, its location and permit number (if permitted), together with an identification of all related devices, equipment, and other sources which will be affected.
 - B. The nature and probable cause of the breakdown.
 - C. The expected length of time that the equipment will be inoperable or that the emissions will continue.
 - D. Identification of the specific material(s) which are being, or are likely to be, emitted, together with a statement concerning its toxic qualities, including its qualities as an irritant, and its potential for causing illness, disability, or mortality.
 - E. The estimated quantity of each material being, or likely to be, emitted.
 - F. Measures, including extra labor and equipment, taken or to be taken to minimize the length of the breakdown, the amount of air contaminants emitted, or the ambient effects of the emissions, together with an implementation schedule.
 - G. Measures being taken to shut down or curtail the affected source(s) or the reasons why it is impossible or impractical to shut down the source(s), or any part thereof, during the breakdown.
3. Notices required by this Subsection shall be updated, in writing, as needed to advise the Department of changes in the information contained therein. In addition, any changes concerning potentially toxic or hazardous emissions shall be reported immediately. All additional information requested by the Department shall be submitted as expeditiously as practicable.

4. Unless otherwise directed by the Department, the Department shall be notified when the condition causing the breakdown is corrected or the equipment or other source is placed back in operation by no later than 9 AM on the next County business day. Within seven (7) days thereafter, written notice shall be submitted pursuant to Paragraphs 1 and 2 above.
5. This Subsection shall not apply to breakdowns of air pollution control equipment which occur during the initial startup of said equipment, provided that emissions resulting from the breakdown are of the same nature and quantity as the emissions occurring prior to startup of the air pollution control equipment.
6. In no case shall the reporting of a breakdown prevent prosecution for any violation of this Article.

PART I - ENFORCEMENT

§2109.01 INSPECTIONS

{Subsection d added by May 7, 1998 amendment, effective May 15, 1998}

- a. **General.** The Department may enter any premise, except a building used exclusively as a private residence, for the purpose of inspecting any source of air contaminants and associated equipment, and all records, charts, instruments and the like associated therewith or for the purpose of determining compliance with any provision of this Article. As expeditiously as is reasonable, the person responsible for such source shall, upon request, make all records, charts, and the like pertaining to such source available to the Department for inspection and copying.
- b. **Manner of Entry.** Prior to entering any premise, the Department shall make all reasonable efforts to obtain the consent of the owner or operator or his authorized representative, and shall enter at such time and in such manner as is reasonable under the circumstances.
- c. **Search Warrant.**
 1. In accordance with §13.1. of the Air Pollution Control Act, whenever an agent or employee of the Department, charged with the enforcement of the provisions of this Article, has been refused access to property, except a building used exclusively as a private residence, or has been refused the right to examine any air contaminant source or air pollution control equipment or device, or is refused access to or examination of books, papers, and records pertinent to any matter under investigation, or has cause to believe he will be refused such entry or access, such agent or employee may apply for a search warrant to any Commonwealth official authorized by the laws of the Commonwealth to issue the same to enable him to have access, examine, and seize such property, air contaminant source, air pollution control equipment or device, or books, papers, and records, as the case may be. It shall be sufficient probable cause to issue a search warrant that the inspection is necessary to properly enforce the provisions of this Article.
 2. This Subsection shall not be construed as restricting or affecting any and all rights otherwise existing which the Department may have to obtain search warrants upon probable cause to believe that any source is being installed, operated, or maintained in violation of any provision of this Article.
- d. The owner or operator of every coke plant within Allegheny County shall reimburse the Allegheny County Health Department for the cost of performing inspections pursuant to the coke oven NESHAP requirements of 40 CFR 63 Subpart L. The amount of reimbursement shall be determined annually by the Board of Health in accordance with 40 CFR 63.309, and include an appropriate administrative fee. Payment shall be made for each calendar quarter, within 30 days of invoice. Late payment of fees is subject to the provisions of Section 2109.07 of this Article.

§2109.02 REMEDIES

*{Paragraphs a.3 & 6 amended September 6, 1995, effective October 20, 1995.
Paragraphs a.5, 6, & 7 amended August 29, 2013, effective September 23, 2013.}*

- a. **General.** In addition to any remedy specifically authorized by any other provision of this Article or the laws of the Commonwealth or the United States, the Department may pursue any one or more of the following remedies for the violation of any requirement of this Article:
1. The issuance of an Enforcement Order as authorized by §§2109.03, 2109.04, and 2109.05 of this Article, including Emergency Orders to restrain or enjoin immediately and effectively any person from engaging in any activity in violation of a regulation or permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
 2. The revocation of any applicable License or Installation or Operating Permit.
 3. The initiation of a summary criminal proceeding before a district justice, magistrate, or justice of the peace as authorized by §§9. and 12.g. of the Air Pollution Control Act, 35 P.S. §§4009. and 4012(g).
 4. The assessment of a civil penalty as authorized by §2109.06 of this Article;
 5. A request, from the Department or the Board of Health, to the County Executive to initiate in a court of competent jurisdiction an action for an injunction or other equitable relief and may include a request for civil penalties in the amount set forth in §2109.06 of this Article, including to restrain or enjoin immediately and effectively any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
 6. A petition, from the Department or the Board of Health, to the County Executive to request the District Attorney to initiate such other criminal action as may be appropriate, as authorized by §§9. and 12.g. of the Air Pollution Control Act, 35 P.S. §§4009. and 4012(g); and/or,
 7. A petition, from the Department or the Board of Health, to the County Executive to request the EPA and U.S. Department of Justice, and/or the DEP and PA Attorney General, to initiate such other civil and/or criminal action as may be appropriate.
- b. **Other Rights and Remedies Preserved.** Nothing in this Article shall be construed as impairing any right or remedy now existing or hereafter created in equity, common law or statutory law with respect to air pollution, nor shall any court be deprived of such jurisdiction for the reason that such air pollution constitutes a violation of this Article.
- c. **Remedies Concurrent.** It is expressly declared that the remedies authorized by this Article shall be concurrent and that the existence of pendency of any remedy shall not in any manner prevent the Department from seeking or exercising any other remedy, whether authorized by this Article or otherwise existing at law or in equity.

§2109.03 ENFORCEMENT ORDERS

{Paragraph b.5 amended September 6, 1995, effective October 20, 1995. Subsection d, and Paragraphs b.1 and d.1 amended August 29, 2013, effective September 23, 2013.}

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that any source is being operated in violation of any provision of this Article, including any provision of any permit or license issued pursuant to this Article, it may order the person responsible for the source to comply with this Article or it may order the immediate shutdown of the source or any part thereof. The issuance of an order to address any violations, including of permit conditions, need not be preceded by the revocation of a permit.
 1. The Department may also issue any such other orders as are necessary to aid in the enforcement of the provisions of this Article. These orders shall include, but shall not be limited to, orders modifying, suspending, terminating or revoking any permits, orders requiring persons to cease unlawful activities or cease operation of a facility or air contaminant source which, in the course of its operation, is in violation of any provision of this Article, or any permit, orders to take corrective action or to abate a public nuisance or to allow access to a source by the Department or a third party to take such action, orders requiring the testing, sampling, or monitoring of any air contaminant source, and orders requiring production of information. Such an order may be issued if the Department finds that any condition existing in or on the facility or source involved is causing, contributing to, or creating danger of air pollution, or if it finds that the permittee or any person is in violation of any provision of this Article.
 2. The Department may, in its order, require compliance with such conditions as are necessary to prevent or abate air pollution or effect the purposes of this Article.
 3. The Department shall have the authority to order any person causing a public nuisance under this Article to abate the public nuisance. In addition, when the Department undertakes to abate a public nuisance, it may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in §2109.06 of this Article. Whenever the nuisance is maintained or continued contrary to this Article, or any order or permit, the nuisance may be abatable in the manner provided by this Article. Any person who causes the public nuisance shall be liable for the cost of abatement.
- b. **Form.** Any Enforcement Order issued pursuant to this Section shall:
 1. Be in written form and be signed by the Director, the Deputy Director of the Bureau of Environmental Quality, or the Manager of the Air Quality Program, or their respective designee;
 2. Set forth the basis for such order;
 3. Require the performance of any acts specified by the order as expeditiously as practicable;
 4. Notify the person responsible that he has the right to a hearing as provided by Subsection d below;
 5. Notify the person responsible that the order is enforceable upon issuance and that appeal of an order shall not act as a stay unless the Director so orders.
 6. Notify the person responsible that failure to comply with the order within the times specified therein is a violation of this Article giving rise to the remedies provided by §2109.02 of this Article; and
 7. Include the assessment of a civil penalty in accordance with §2109.06 of this Article, if deemed appropriate by the Department.

- c. **Service.** Any Enforcement Order issued pursuant to this Section shall be served upon the person responsible by:
1. Personally handing him a copy;
 2. Serving him in the manner provided by Rule 1009(b)(2) of the Pennsylvania Rules of Civil Procedure or such other rules as may hereafter be established for the service of a complaint in a civil action; or
 3. Mailing a copy to him at his last known address by registered or certified mail, return receipt requested.
- d. **Hearings.** Any person who is aggrieved by an Enforcement Order issued pursuant to this Section shall, upon request, be granted a hearing in accordance with the provisions of Article XI, Rules and Regulations of the Allegheny County Health Department, or in accordance with such other procedures as may hereafter be established by the County Council. In all cases involving the provisions of this Article, hearings granted pursuant to this Subsection:
1. Shall not be held before employees of the Department who are assigned to the Air Quality Program of the Department; and
 2. Shall be held before a hearing officer who represents the public interest and does not derive any significant portion of his income from persons subject to the Clean Air Act or this Article, as defined in §2101.20 of this Article; except that, if a panel of three (3) or more persons is appointed to hear the case, a majority of the panel shall represent the public interest and shall not derive any significant portion of his income from persons subject to the Clean Air Act or this Article. Prior to being appointed to act as a hearing officer; each proposed appointee shall file with the Chief Clerk of the County of Allegheny a Disclosure Statement as required by Subsection f of §2109.06 of this Article. Said Disclosure Statement shall be subject to the public inspection provisions of this Article.
- e. **Violations.** Failure to comply with any Enforcement Order within the times specified therein shall be a violation of this Article and a public nuisance giving rise to the remedies and penalties provided by §§2109.02 and 2109.06 of this Article. In addition to such remedies and penalties, the Department may immediately revoke such order and may pursue any other remedy as if such order has never existed.
- f. **Other Remedies Unaffected.** The issuance of an Enforcement Order shall in no manner preclude or affect the right of the Department to pursue other remedies as are provided by §2109.02 for violations of this Article, whether occurring before or after the effective date of the order. The issuance of an Enforcement Order shall not be construed as a revision to the SIP for the Commonwealth of Pennsylvania and shall in no manner preclude or affect the right of the United States, the Commonwealth, or any citizen to enforce that portion of the SIP applicable to Allegheny County pursuant to the provisions of the Clean Air Act and the Air Pollution Control Act.

§2109.04 ORDERS ESTABLISHING AN ADDITIONAL OR MORE RESTRICTIVE STANDARD

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that emissions from any source are causing or significantly contributing to the exceedance of any ambient air quality standard established by §2101.10 of this Article at any location within the Commonwealth, that such emissions violate the requirements of §2101.12 of this Article relating to interstate pollution, or that such emissions may otherwise reasonably be anticipated to endanger the public health, safety or welfare, it may order the person responsible for such source to comply with an additional or more stringent emission limitation than established by this Article or it may order the immediate shutdown of the source or any part thereof.
- b. **Form, Service and Hearings.** Any order issued pursuant to this Section shall be in the form, and shall be served, as provided by §2109.03 of this Article. Upon request, any person who is aggrieved by an order issued pursuant to this Section shall be granted a hearing as provided by §2109.03 of this Article.
- c. **Emergency Power Unaffected.** The issuance of an order pursuant to this Section shall in no manner preclude or affect the power of the Department to issue an Emergency Order under §2109.05 of this Article.
- d. **Violations.** Failure to comply with any order issued pursuant to this Section within the time specified therein shall be a violation of this Article giving rise to the remedies provided by §2109.02 of this Article. In addition to such remedies, the Department may immediately revoke such order and may pursue any other remedy as if such order had never existed.

§2109.05 EMERGENCY ORDERS

- a. **General.** Whenever the Department determines, on the basis of any information available to it, that an emergency exists that necessitates immediate action to protect the public health, safety or welfare, it may, without prior notice, issue an Emergency Order requiring whatsoever action it deems advisable to meet the emergency. Notwithstanding any other provision of this Article, an Emergency Order shall be effective at once and shall be complied with immediately.
- b. **Form and Service.** Insofar as possible in light of the necessity for immediate action, an Emergency Order shall be in the form, and shall be served, as provided by §2109.03 of this Article.
- c. **Hearings.** Upon request, any person who is aggrieved by an Emergency Order shall be granted a hearing as provided by §2109.03 of this Article; provided, however, that an Emergency Order shall continue in full force and effect notwithstanding the pendency of any such appeal.
- d. **Violations.** Failure to immediately comply with an Emergency Order shall be a violation of this Article giving rise to the remedies provided by §2109.02 of this Article.

§2109.06 CIVIL PROCEEDINGS

{Paragraph a.1 amended September 6, 1995, effective October 20, 1995}

a. **General.**

1. In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this Article, or any order or permit issued pursuant to this Article, and in accordance with §§9.1. and 12.g. of the Air Pollution Control Act, the Department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed \$15,000 per day for each violation which occurs on or after the effective date of this Article but not later than July 9, 1996, and \$25,000 per day for each violation which occurs after July 9, 1996.
2. In accordance with §§9.1. and 12.g. of the Air Pollution Control Act, when the Department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the Department within the 30 day period for placement in an escrow account with the County treasurer or any Commonwealth bank or post an appeal bond to the Department within 30 days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the Department.
3. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the Department shall, within 30 days, in accordance with §§9.1. and 12.g. of the Air Pollution Control Act, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleged financial inability to prepay the penalty or to post the appeal bond. If alleged, the Department shall conduct a hearing to consider the appellant's alleged inability to pay within 30 days of the date of the appeal. The Department may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the Department finds that the appellant is financially unable to pay. The Department shall issue an order within 30 days of the date of the hearing to consider the appellant's alleged inability to pay.
4. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the County and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with §6621(a)(2) of the U.S. Internal Revenue Code of 1986 (P.L. 99-514, 26 U.S.C. §1 et seq.), which shall run from the date of assessment of the penalty.

If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the County. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the Prothonotary of the Court of Common Pleas for the county where the property is located. In accordance with §§9.1. and 12.g. of the Air Pollution Control Act, the prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the Department, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien.

Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Subsection, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedures prior to the filing of a notice of lien under this Subsection.

5. **Hearings.** Any person who is aggrieved by a Civil Penalty assessed pursuant to this Section shall, upon request, be granted a hearing in accordance with the provisions of Article XI, Rules and Regulations of the Allegheny County Health Department, or in accordance with such other procedures as may hereafter be established by the Board of County Commissioners.

b. **Penalty Determination.**

1. In determining the amount of the penalty, the Department shall consider: the wilfulness of the violation; the actual and potential harm to the public health, safety, and welfare; the damage to the air, soil, water, and other natural resources of the County and their uses; the economic benefit gained by such person by failing to comply with this Article; the deterrence of future violations; the costs of the Department; the size of the source or facility; the compliance history of the source; the nature, frequency, severity, and duration of the violation; the degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether or not the violation was voluntarily reported; other factors unique to the owners, operators, or other responsible parties of the source or facility; and other relevant factors.
2. In determining the economic benefit gained by such person, the Department may use the formulas contained in the current Civil Penalty Policy published by the EPA, and/or the regulations promulgated by EPA pursuant to Section 120 of the Clean Air Act, as appropriate.

- c. **Board Costs.** Whenever the Department upholds, under Article XI, a penalty assessed, or an order or permit issued, under this Article, the Department shall also assess the owner, operator, and other responsible parties of the subject source the board costs for such hearing which shall be in the amount of \$50 plus the actual costs incurred by the County for the transcribing and copying of the record of the hearing.

§2109.07 PENALTIES, FINES, AND INTEREST

- a. **Fees.** A source that fails to pay any fee required under this Article when due shall pay a civil penalty of 50% of the fee amount, plus interest on the fee amount computed in accordance with Paragraph a.4 of §2109.06 of this Article from the date the fee was required to be paid. In addition, the source may have its permit revoked.
- b. **Disposition of Monies Collected.**
 1. All interest received by the County under this Article as a result of emissions fees under §2103.41.a.1 of this Article shall be paid into the Allegheny County Air Quality Fund for the major operating permit program.
 2. All interest received by the County under this Article as a result of fees, other than the emissions fees under §2103.41.a.1 of this Article, shall be paid into the Allegheny County Air Pollution Control Fund.
 3. All penalties, fines, interest, and other funds received by the County under this Article as a result of consent orders, noncompliance penalties, civil penalty actions, consent decrees, civil penalties, or summary proceedings, other than such funds provided for under paragraph 1 above, shall be paid into the Allegheny County Clean Air Fund.

§2109.10 APPEALS

In accordance with State Law and County regulations and ordinances, any person aggrieved by an order or other final action of the Department issued pursuant to this Article or any unsuccessful petitioner to the Administrator under Part C Subpart 2 of this Article shall have the right to appeal the action to the Director in accordance with the applicable County regulations and ordinances.

§2109.12 LIMITATION ON ACTION

In accordance with State law, actions for civil or criminal penalties under this Article may be commenced at any time within a period of seven (7) years from the date the offense is discovered.