

No. 27-17-OR

AN ORDINANCE

An Ordinance of the Council of the County of Allegheny ratifying a new regulation of the Allegheny County Health Department promulgated pursuant to the authority granted to county departments of health under the Pennsylvania Local Health Administration Law, 16 P.S. §§ 12011 – 12028.

Whereas, Allegheny County, pursuant to the Pennsylvania Local Health Administration Law, 16 P.S. §§ 12011 – 12028, created the Allegheny County Health Department, and the Allegheny County Board of Health; and

Whereas, the Local Health Administration Law at Section 12011 provides for the Board of Health to adopt regulations and submit such regulations to Allegheny County for approval or rejection; and

Whereas, on May 3, 2017, the Allegheny County Board of Health adopted the attached proposed amendments to Allegheny County Health Department Rules and Regulations, Article XXI, “Air Pollution Control”; and

Whereas, it is the desire of Council to ratify the new Allegheny County Health Department regulations as approved by the Board of Health on May 3, 2017.

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference as set forth in their entirety herein.

SECTION 2. Ratification of Regulations.

Acting pursuant to the Local Health Administration Law and the Allegheny County Home Rule Charter, County Council hereby ratifies the amendments to the Allegheny County Health Department Rules and Regulations, Article XXI, “Air Pollution Control,” attached hereto as Exhibit “A.”

SECTION 3. Severability. *If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance, which shall be in full force and effect.*

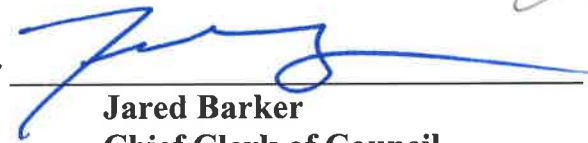
SECTION 4. Repealer. *Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.*

Enacted in Council, this 21st day of November, 2017

Council Agenda No. 10363-17



John DeFazio
President of Council

Attest: 

Jared Barker
Chief Clerk of Council

Chief Executive Office November 28, 2017

Approved: 

Rich Fitzgerald
Chief Executive

Attest: 

Sonya Dietz
Executive's Secretary

Legislative Summary

Proposed change to Allegheny County Health Department Rules and Regulations, Article XXI, Air Pollution Control ---

the addition of §2104.10, “Commercial Fuel Oil” limiting sulfur content and related changes

Pennsylvania recently revised its air pollution control regulations to lower the allowable sulfur content of commercial fuel oil used in fuel-burning or combustion units, including residential and commercial/industrial boilers, furnaces and other heaters.

The Allegheny County Health Department must promulgate similar regulations to be included in Article XXI. The addition of the proposed §2104.10, Commercial Fuel Oil, will enable the Air Program to enforce the new sulfur limits within Allegheny County and meet the State's requirement that ACHD promulgate regulations to implement all such state regulations.

The proposed revision was the subject of a comment period, including a public hearing held on April 3, 2017. No comments were received. The Board of Health granted final approval to this regulation on May 3, 2017

This rule, when finalized, will be submitted to EPA as a revision to the Allegheny County portion of the Pennsylvania State Implementation Plan.

EXHIBIT "A"

PROPOSED REVISION

**Allegheny County Health Department
Rules and Regulations
Article XXI, Air Pollution Control**

§2104.10, Commercial Fuel Oil

§2107.16, Sulfur in Fuel Oil

and

§2101.20, Definitions

(This proposed revision will also be submitted to the Pennsylvania DEP and U.S. EPA as a revision to Allegheny County's portion of the Pennsylvania State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards. Revision Tracking No. 83.)

Revision

The following section -- §2104.10 -- is being added to Article XXI.

§2104.10 COMMERCIAL FUEL OIL *{This section added by mm/dd/2017 amendment, effective mm/dd/2017.}*

Fuel-burning or combustion equipment must conform with the following:

- a. **Commercial Fuel Oil.** Except as specified in Paragraphs 1 and 2, a person may not offer for sale, deliver for use, exchange in trade or permit the use of commercial fuel oil in Allegheny County, if the commercial fuel oil contains sulfur in excess of the applicable maximum allowable sulfur content set forth in the following table:

***Maximum Allowable Sulfur Content
Expressed as Parts per Million (ppm) by Weight or Percentage by Weight***

Grades Commercial Fuel Oil (Consistent with ASTM D396)

No. 2 and lighter oil	500 ppm	(0.05%)
No. 4 oil	2,500 ppm	(0.25%)
No. 5, No. 6 and heavier oil	5,000 ppm	(0.5%)

1. Commercial fuel oil that was stored in Allegheny County by the ultimate consumer prior to July 1, 2016, which met the applicable maximum allowable sulfur content at the time it was stored, may be used by the ultimate consumer.
 2. The applicable maximum allowable sulfur content for a commercial fuel oil set forth in Subsection a may temporarily be suspended or increased if the Pennsylvania Department of Environmental Protection (DEP) has acted to do so in accordance with 25 Pa. Code §§123.22(d)(2)(iii & iv) and (h), regarding the Allegheny County air basin.
- b. **Equivalency provision.** Subsection a does not apply to a person who uses equipment or a process, or to the owner or operator of an installation where equipment or a process is used, to reduce the sulfur emissions from the burning of a fuel with a higher sulfur content than that specified in Subsection a. The emissions may not exceed those which would result from the use of commercial fuel oil that meets the applicable maximum allowable sulfur content specified in Subsection a.

c. Sampling and testing.

1. For the purpose of determining compliance with the requirements of this section, the actual sulfur content of commercial fuel oil shall be determined by one of the following:
 - A. In accordance with the sample collection, test methods and procedures specified under §2107.16, "Sulfur in Fuel Oil."
 - B. Other methods developed or approved by the Department, **PA DEP** or the Administrator of the EPA, ~~or both.~~
2. A refinery owner or operator who produces commercial fuel oil intended for use or used in Allegheny County is required to sample, test and calculate the actual sulfur content of each batch of the commercial fuel oil as specified in Paragraph 1.
3. Prior to offering for sale, delivering for use, exchanging in trade or permitting the use of commercial fuel oil in Allegheny County, a person other than the ultimate consumer that accepts a shipment of commercial fuel oil from a refinery or other transferor, shall sample, test and calculate the actual sulfur content of the commercial fuel oil in accordance with Paragraph 1 if the shipment lacks the record required under Subsection d that enables the transferee to determine if the sulfur content of the shipment of commercial fuel oil meets the applicable maximum allowable sulfur content.

d. Recordkeeping and reporting.

1. Beginning with the refinery owner or operator who sells or transfers commercial fuel oil into or within Allegheny County for use in Allegheny County-and ending with the ultimate consumer, each time the physical custody of, or title to, a shipment of commercial fuel oil changes hands, the transferor shall provide to the transferee an electronic or paper record described in this paragraph. This record must legibly and conspicuously contain the following information:
 - A. The date of the sale or transfer.
 - B. The name and address of the transferor.
 - C. The name and address of the transferee.
 - D. The volume of commercial fuel oil being sold or transferred.
 - E. The identification of the sulfur content of the shipment of commercial fuel oil, determined using the sampling and testing methods specified in Paragraph c.1, expressed as one of the following statements:
 - i. For a shipment of No. 2 and lighter commercial fuel oil, "The sulfur content of this shipment is 500 ppm or below."
 - ii. For a shipment of No. 4 commercial fuel oil, "The sulfur content of this shipment is 2,500 ppm or below."
 - iii. For a shipment of No. 5, No. 6 and heavier commercial fuel oil, "The sulfur content of this shipment is 5,000 ppm or below."

- F. The location of the commercial fuel oil at the time of transfer.
 - G. Except for a transfer to a truck carrier, an owner or operator of a retail outlet or an ultimate consumer, the transferor may substitute the information required under Subparagraphs A - F with the use of a product code if the following are met:
 - i. The product code includes the information required under Subparagraphs A – F.
 - ii. The product code is standardized throughout the distribution system in which it is used.
 - iii. Each downstream party is given sufficient information to know the full meaning of the product code.
2. The refinery owner or operator shall do both of the following:
- A. Maintain, in electronic or paper format, the records developed under Paragraph c.2 to determine the actual sulfur content of each batch of the commercial fuel oil.
 - B. Provide electronic or written copies of the records developed under Paragraph c.2 of the actual sulfur content of each batch of the commercial fuel oil to the Department upon request.
3. The terminal owner or operator shall do both of the following:
- A. Maintain, in electronic or paper format, the applicable records developed under Paragraph c.3 or d.1, or both, to establish the maximum sulfur content of the shipment of commercial fuel oil.
 - B. Provide electronic or written copies of the records establishing the maximum sulfur content of the shipment of commercial fuel oil to the Department upon request.
4. A person subject to this section shall do both of the following:
- A. Maintain the applicable records required under Paragraphs 1 - 3 in electronic or paper format for 2 years unless a longer period is required under 2103.12.j.2 (relating to standard recordkeeping requirements).
 - B. Provide an electronic or written copy of the applicable record to the Department upon request.
5. The ultimate consumer shall maintain in electronic or paper format the record containing the information listed in Paragraph 1, except in either of the following situations:
- A. The transfer or use of the commercial fuel oil occurs at a private residence.
 - B. The ultimate consumer is an owner of an apartment or condominium building housing private residents and the transfer or use of the commercial fuel oil occurs for use at the building.

The following section--§2107.16--is being added to Article XXI, PART G.

PART G - METHODS

§2107.16 SULFUR IN FUEL OIL

{This section added by mm/dd/2017 amendment, effective mm/dd/2017}

The following apply to tests for the analysis of commercial fuel oil:

- a. The fuel oil sample for chemical analysis shall be collected in a manner that provides a representative sample. Upon the request of a Department official, the person responsible for the operation of the source shall collect the sample employing the procedures and equipment specified in:
 1. ASTM D 4057, *Practice for Manual Sampling of Petroleum and Petroleum Products*, including updates and revisions; or
 2. ASTM D 4177, *Practice for Automatic Sampling of Petroleum and Petroleum Products*, including updates and revisions.
- b. Test methods and procedures for the determination of viscosity and sulfur shall be those specified in ASTM D 396, *Standard Specification for Fuel Oils*, including updates and revisions. The viscosity shall be determined at 100°F.
- c. Results shall be reported in accordance with the units specified in §2104.10, *Commercial Fuel Oil*.

The following new definitions are being added to §2101.20.

§2101.20 DEFINITIONS {Amended mm/dd/2017, effective mm/dd/2017}

“Commercial fuel oil” means a fuel oil specifically produced, manufactured for sale and intended for use in fuel-burning or combustion equipment. A mixture of commercial fuel oil with noncommercial fuel when greater than 50% of the heat content is derived from the commercial fuel oil portion is considered a commercial fuel oil. The term includes home heating oil.

“Noncommercial fuel” means a gaseous or liquid fuel generated as a byproduct or waste product which is not specifically produced and manufactured for sale. A mixture of noncommercial and a commercial fuel oil where at least 50% of the heat content is derived from the noncommercial fuel portion is considered a noncommercial fuel.

“Transferee” means:

- a. A person who is the recipient of a sale or transfer.
- b. For purposes of §2104.10, the term includes the following:
 1. Terminal owner or operator
 2. Carrier
 3. Distributor
 4. Retail outlet owner or operator
 5. Ultimate consumer.

“Transferor” means:

- a. A person who initiates a sale or transfer.
- b. For purposes of §2104.10, the term includes the following:
 1. Refinery owner or operator.
 2. Terminal owner or operator.
 3. Carrier.
 4. Distributor.
 5. Retail outlet owner or operator.

“Ultimate consumer” means, with respect to a commercial fuel oil transfer or purchase, the last person, facility owner or operator or entity who in good faith receives the commercial fuel oil for the purpose of using it in fuel-burning or combustion equipment or for purposes other than resale.

The following existing definitions are being revised in §2101.20.

*{Deletions are shown with strikethroughs. Additions to are shown in **bolded and enlarged font, and underlined.**}*

§2101.20 DEFINITIONS *{Amended mm/dd/2017, effective mm/dd/2017}*

"Carrier" means a distributor who transports or stores or causes the transportation or storage of **commercial fuel oil or** gasoline without taking title to or otherwise having ownership of the **commercial fuel oil or** gasoline, and without altering either the quality or quantity of the **commercial fuel oil or** gasoline. The term includes a pipeline, truck or marine vessel distributor. *{added by May 7, 1998 amendment, effective May 15, 1998. Amended mm/dd/2017, effective mm/dd/2017.}*

"Distributor" ~~means:~~

- a. for purposes of the gasoline volatility program, means a person who transports, stores or causes the transportation or storage of gasoline at any point between a refinery, an oxygenate blending facility or terminal and a retail outlet or wholesale purchaser-consumer's facility. The term distributor includes a refinery, an oxygenate blending facility or a terminal. *{added by May 7, 1998 amendment, effective May 15, 1998}*
- b. **for purposes of commercial fuel oil under §2104.10, a person who transports, stores or causes the transportation or storage of commercial fuel oil at any point between a refinery, blending facility or terminal and a retail outlet, wholesale purchaser-consumer's facility or ultimate consumer. The term distributor includes a refinery, a blending facility or a terminal.** *{added by mm/dd/2017 amendment, effective mm/dd/2017.}*

"Retail Outlet" means an establishment at which **commercial fuel oil or** gasoline is sold or offered for sale to the ultimate consumer for use in **fuel-burning or combustion equipment or** motor vehicles, **respectively.** *{added by May 7, 1998 amendment, effective May 15, 1998. Amended mm/dd/2017, effective mm/dd/2017.}*

"Terminal" means:

- a. a facility at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities. *{added by May 7, 1998 amendment, effective May 15, 1998}*
- b. **For purposes of commercial fuel oil under §2104.10, a facility which is capable of receiving commercial fuel oil in bulk, that is by pipeline, barge, ship or other transport, and at which commercial fuel oil is sold or transferred into trucks for transportation to retail outlets or wholesale purchaser-consumer's facilities or ultimate consumers.** *{Added by mm/dd/2017 amendment, effective mm/dd/2017}*

M E M O R A N D U M
OFFICE OF THE COUNTY MANAGER

TO: Jared E. Barker
Allegheny County Council

FROM: William D. McKain CPA
County Manager

DATE: October 18, 2017

RE: Proposed Ordinance

Attached is an Ordinance of the Council of the County of Allegheny ratifying a new regulation of the Allegheny County Health Department promulgated pursuant to the authority granted to county departments of health under the Pennsylvania Local Health Administration Law, 16 P.S. §§ 12011 – 12028.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

I am requesting that this item be placed on the agenda at the next Regular Meeting of Council.

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