

No. 10-04-OR

Bill No. 1522-04

AN ORDINANCE

An Ordinance of the County of Allegheny amending and supplementing County Ordinance 16782, and Article XXI of the Allegheny County Health Department's Rules and Regulations. ("Bad Actor")

WHEREAS, as a means of achieving better air quality for the citizens of Allegheny County, the Allegheny County Board of Health ("the Board"), is desirous of: (i) facilitating the issuance of Installation Permits to those facilities in compliance with existing air quality standards set forth in County Ordinance No. 16782 and the Allegheny County Health Department's Rules and Regulations, Article XXI, Air Pollution Control, as amended ("Article XXI"); and (ii) denying Installation Permits to those new or existing facilities in violation of Article XXI, and

WHEREAS, after a duly advertised public comment period of thirty days, including the presentation of oral comments and the consideration of those comments received, the Board, by a unanimous vote at a publicly advertised meeting on March 3, 2004, adopted the attached amendment, known as the "Bad Actor" amendment, to its Article XXI that would facilitate the issuance of Installation Permits to those facilities in compliance with existing air quality standards and deny Installation Permits to those new or existing facilities in violation of Article XXI; and

WHEREAS, the Local Health Administration Law, Pa. Stat. Ann. tit. 16, § 12001 *et seq.*, provides for the submission of proposed health regulations or the amendment of existing health regulations to a county for approval and rejection; and

WHEREAS, in compliance with the Local Health Administration Law, the Director of the Allegheny County Health Department, on behalf of the Board, has submitted the "Bad Actor" amendment to Article XXI to the Allegheny County Council with the recommendation that the County should approve the amendment.

NOW, THEREFORE, the Council of the County of Allegheny hereby enacts as follows:

Section 1. Approval of Amendment to Article XXI of Health Department Rules and Regulations

Pursuant to the Local Health Administration Law, County Council does hereby approve the amendment to Section 2104 of the Allegheny County Health Department's Rules and Regulations, Article XXI, Air Pollution Control, known as the "Bad Actor" amendment, adopted by the Board on March 3, 2004 that is attached to this Ordinance.

Section 2. Submission of Amendment to Article XXI to Appropriate State and Federal Authorities

The Director, on behalf of the Board, is hereby authorized to submit the attached amendment to Article XXI changes to the Pennsylvania Department of Environmental Protection and the United States Environmental Protection Agency.

SECTION 3. *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. *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 20 day of APRIL, 2004

Council Agenda No. 1522-04



Rich Fitzgerald
President of Council

Attest: John Mascio
John Mascio
Chief Clerk of Council

Chief Executive Office April 28, 2004

Approved: Dan Onorato
Dan Onorato
Chief Executive

Attest: Donna Beltz
Donna Beltz
Executive's Secretary

Addition of Section

2102.04.k RESTRICTIONS ON SOURCES WITH VIOLATIONS

1. Applicability

This Subsection applies to all sources in Allegheny County submitting an Installation Permit application after the effective date of this regulation. This Subsection does not apply to sources installing air pollution control equipment, or projects that do not increase total potential air emissions of any regulated pollutant at those sources.

2. General provisions

- A. The Department shall not issue an Installation Permit if the source or any other source in Allegheny County owned or operated by the applicant has been in violation of any applicable requirement as defined in Article XXI at any time in the prior 18 months, except as provided under Paragraph 3 of this Subsection. For the purpose of this Subsection only, an applicant shall be deemed to own a source if the applicant or its parent corporation has a fifty percent or greater interest in the source, directly or through a partnership or subsidiary.
- B. The applicant shall include in the permit application a written history of compliance with all applicable requirements in the prior 12 months based on information and belief formed after reasonable inquiry. The history of compliance must be certified by a responsible official of the source.
- C. The Department shall not issue an Installation Permit unless the applicant has satisfied the provisions of 2.b of this Subsection, and is not in violation of any applicable requirements up until the time of permit issuance except as provided for in Paragraph 3 of this Subsection.

3. For the purpose of this Subsection only, the permit issuance will not be prohibited for:

- A. Violations that are the result of events beyond the reasonable control of the applicant as determined by the Department;
- B. Violations that the Department determines are due to infrequent exceedances that have not caused a significant increase in emissions, are not indicative of a systemic failure to meet applicable requirements, and the violations have been corrected to the satisfaction of the Department;
- C. Violations based solely on recordkeeping or reporting requirements, and the violations have been corrected to the satisfaction of the Department; or
- D. Violations for which the source or the Department has identified a compliance problem and the violations are being corrected pursuant to a compliance plan approved by the Department that meets the provisions of Section 2103.11 b.8 and the source has operated in compliance with that plan for six months or more, or has completed such a plan to the satisfaction of the Department.

4. Except for violations as described in Subparagraph 3.c above, if a source is subsequently found to be in violation of the terms and conditions of a compliance plan which satisfies the requirements of 3.d above, the Department shall revoke the Installation Permit, and the source shall cease all work allowed by the Installation Permit, other than work necessary for the protection of worker or public safety.

Proposed Ordinance—"Bad Actor" regulation

This proposed ordinance contains regulations recently approved by the Allegheny County Board of Health related to the "bad actor" ordinance. This regulation was approved after several meetings with affected parties, and also a public participation period. County approval of this legislation is required in order for the regulation to take effect.

MEMORANDUM
OFFICE OF THE COUNTY MANAGER

TO: John Mascio
Chief Clerk

FROM: James M. Flynn, Jr. *JM*
County Manager

DATE: April 15, 2004

RE: Proposed Ordinance

Attached is a Proposed Ordinance approving the "Bad Actor" regulation recently approved by the Board of Health.

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

Please place this on the next agenda for County Council approval.

Thank you.