

No. 03-19-OR

AN ORDINANCE

An Ordinance of the Council of the County of Allegheny ratifying amendments to Section 2102.06, “Major Sources Locating in or Impacting a Nonattainment Area”, and Section 2101.20, “Definitions”, of the Allegheny County Health Department Rules and Regulations, Article XXI, “Air Pollution Control”.

Whereas, Allegheny County, pursuant to the Pennsylvania Local Health Administration Law, 16 P.S. §§ 12001 – 12028, created the Allegheny County Health Department, and the Allegheny County Board of Health; and

Whereas, the Allegheny County Health Department regulates air quality under authority granted to it via the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 – 4106, and its implementing regulations; and

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

Whereas, on August 24, 2016, the U.S. Environmental Protection Agency issued requirements for the State Implementation Plans for Fine Particulates mandating amendments to state and local regulations to include volatile organic compounds and ammonia as precursors to fine particulates; and

Whereas, on January 9, 2019, during its regularly scheduled public meeting the Allegheny County Board of Health adopted by affirmative vote the attached amendments to Section 2102.06, “Major Sources Locating in or Impacting a Nonattainment Area”, and Section 2101.20, “Definitions”, of the Allegheny County Health Department Rules and Regulations, Article XXI, “Air Pollution Control”; and

Whereas, it is the desire of Council to ratify the Allegheny County Health Department regulation amendments as approved by the Board of Health on January 9, 2019.

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 in their entirety herein.

SECTION 2. Ratification of Regulations.


Acting pursuant to the Pennsylvania 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 Resolution 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 18th day of February, 2019

Council Agenda No. 12841-19


John DeFazio
President of Council

Attest: 
Jared Barker
Chief Clerk of Council

Chief Executive Office February 21, 2019

Approved: 
Rich Fitzgerald
Chief Executive

Attest: 
Sonya Dietz
Executive's Secretary

EXHIBIT "A"

PROPOSED REVISION

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

§2102.06, Major Sources Locating In or Impacting a Nonattainment Area

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. 90A.)

1. Revision

Deletions are shown with strikethroughs.
Additions are shown in **larger font, bolded, and underlined**.

§2102.06 MAJOR SOURCES LOCATING IN OR IMPACTING A NONATTAINMENT AREA *{Amended March 23, 2012, effective April 3, 2012. Subsection f amended November 13, 2014, effective January 1, 2015.}*

- a. **Applicability.** This Section shall apply to any new major facility, as defined by 25 Pa. Code 121.1 and to any major modification of an existing source which is located in a nonattainment area or transport region of the County or which will have a significant air quality impact on any nonattainment area or transport region. Procedures in 25 Pa. Code 127.203a shall be followed in determining whether any modification at a major source is determined to be a major modification.

1. Except as otherwise specifically provided under this Section, this Section shall be applied consistent with the provisions of the state regulation for New Source Review Applicability Determination promulgated under the Air Pollution Control Act at 25 Pa. Code §127.203 (except 127.203(b)), 127.203a, and 127.204, which are hereby incorporated by reference into this Subsection. All terms used in 25 Pa Code 127.203 (except 127.203(b)), 127.203a, and 127.204, and defined in 25 Pa. Code Section 121.1 are incorporated by reference, except as explicitly set forth herein. Additions, revisions, or deletions to such regulation by the Commonwealth are incorporated into this Subsection and are effective on the date established by the state regulations, unless otherwise established by regulation under this Article.

2. For purposes of this Subsection:
- A. "Department" shall mean Department as defined under this Article; ~~and~~
 - B. "Plan Approval" shall mean Installation Permit;

C. At Subparagraph (i) under the definition of "Major Facility," found at 25 Pa. Code §121.1, the following additional "lower emissions thresholds" shall apply:

- 1. Seventy TPY of PM_{2.5} in a serious nonattainment area for PM_{2.5}.**

2. Seventy TPY of NO_x in a serious nonattainment area for PM_{2.5}.
3. Seventy TPY of SO₂ in a serious nonattainment area for PM_{2.5}.
4. Seventy TPY of VOCs in a serious nonattainment area for PM_{2.5}.
5. Seventy TPY of ammonia in a serious nonattainment area for PM_{2.5}.

D. Subsubparagraph (iii)(B) of the definition of “Regulated NSR pollutant” shall read as follows: “(B) SO₂, VOCs and ammonia are precursors to PM_{2.5} in all PM_{2.5} nonattainment areas.”

E. Subparagraph (i) of the definition of “Significant” shall read as follows with respect to the Emission Rate for PM_{2.5}: “10 TPY of PM_{2.5}; 40TPY of SO₂; 40TPY of VOCs; 40TPY of ammonia; 40TPY of NO_x, unless the Department demonstrates to the EPA’s satisfaction or EPA determines that the NO_x emissions are not a significant contributor to PM_{2.5} nonattainment in the area.” And,

F. “Significance level(s)” shall mean “significant air quality impact” as defined under this Article.

3. **Circumvention.** Regardless of the exemptions provided in this section, an owner or other person may not circumvent this section by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit or submission of an installation permit application. In determining the LAER standard for such increments, the Department shall consider the stage of construction of each increment and the feasibility of installing additional air pollution controls on each.
- b. **Conditions for Approval.** The Department shall not issue an Installation Permit, or issue, amend, modify, or reissue a related Operating Permit, for any source to which this Section applies unless the applicant demonstrates that all of the following conditions are met:
 1. Except as otherwise specifically provided under this Subsection, conditions for approval of an installation permit shall be applied

consistent with the provisions of the state regulation for New Source Review promulgated under the Air Pollution Control Act at 25 Pa. Code §127.201 through 127.205 (except 127.201(f)), which are hereby incorporated by reference into this Subsection. All terms used in 25 PA Code §127.201 through 127.205 (except 127.201(f), and defined in 25 PA Code Section 121.1 are incorporated by reference, except as explicitly set forth herein. Additions, revisions, or deletions to such regulations by the Commonwealth are incorporated into this Subsection and are effective on the date established by the state regulations, unless otherwise established by regulation under this Article.

2. For purposes of this Subsection:
- A. "Department" shall mean Department as defined under this Article;
 - B. "Plan approval" shall mean Installation Permit;
 - C. "Title V Permit" shall mean an Operating Permit issued under Subpart C;
 - D. "Responsible official" shall mean Responsible Official as defined under this Article;
 - E. Public notification procedures shall follow the requirements of §2102.03, 2103.04, 2102.05, and 2102.06; and
 - F. "EHB" shall mean the "Department under Article XI".

G. At Subparagraph (i) under the definition of "Major Facility," found at 25 Pa. Code §121.1, the following additional "lower emissions thresholds" shall apply:

- 1. Seventy TPY of PM2.5 in a serious nonattainment area for PM2.5.**
- 2. Seventy TPY of NOx in a serious nonattainment area for PM2.5.**
- 3. Seventy TPY of SO2 in a serious nonattainment area for PM2.5.**
- 4. Seventy TPY of VOCs in a serious nonattainment area for PM2.5.**
- 5. Seventy TPY of ammonia in a serious nonattainment area for PM2.5.**

H. Subsubparagraph (iii)(B) of the definition of "Regulated NSR pollutant" shall read as follows: "(B) SO2, VOCs and ammonia are precursors to PM2.5 in all PM2.5 nonattainment areas." And,

I. Subparagraph (i) of the definition of “Significant” shall read as follows with respect to the Emission Rate for PM2.5:

“10 TPY of PM2.5; 40TPY of SO2; 40TPY of VOCs; 40TPY of ammonia; 40TPY of NOx, unless the Department demonstrates to the EPA’s satisfaction or EPA determines that the NOx emissions are not a significant contributor to PM2.5 nonattainment in the area.”

J. 25 Pa. Code §127.202(a), “Effective date,” shall read as follows:

“(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval is issued by the Department after May 19, 2007, except the special permit requirements for PM2.5 and precursors to PM2.5 which apply as follows:

(1) PM2.5, NOx and SO2 after September 3, 2011.

(2) VOCs and ammonia after -----
{Editor’s Note: The blank refers to the effective date of adoption of this proposed rulemaking.}

K. “Significance level(s)” shall mean “significant air quality impact” as defined under this Article.

3. Emission Offsets.

The applicant shall demonstrate that it has secured emission reduction credits from the state ERC registry system to offset allowable emissions and fugitive dust emissions from the proposed new source or the proposed modification by at least the ratios set forth below.

- A. Incorporation by Reference. Except as otherwise specifically provided under this Subsection, the state regulations for the use of Emission Reduction Credits and offset ratios promulgated under the Air Pollution Control Act at 25 Pa. Code §§127.206 through 127.210 inclusive, are hereby incorporated by reference into this Subsection. All terms used in 25 PA Code 127.206 through 127.210 inclusive, and defined in 25 PA Code Section 121.1, are incorporated by reference except as explicitly set forth herein. Additions, revisions, or deletions to such regulations by the Commonwealth are incorporated into this Subsection and are effective on the date established by the state regulations, unless otherwise established by regulation under this Article.

B. For purposes of this Subsection:

1. Plan approval" shall mean Installation Permit; and
2. For 25 Pa. Code §§ 127.206 through 127.210 (except 127.206(d)(2), 127.207(3)(vii), 127.208 (5), 127.209(a) and 127.209 (e)), "Department" shall mean Department as defined under this Article.

3. At Subparagraph (i) under the definition of "Major Facility," found at 25 Pa. Code §121.1, the following additional "lower emissions thresholds" shall apply:

aa. Seventy TPY of PM2.5 in a serious nonattainment area for PM2.5.

bb. Seventy TPY of NOx in a serious nonattainment area for PM2.5.

cc. Seventy TPY of SO2 in a serious nonattainment area for PM2.5.

dd. Seventy TPY of VOCs in a serious nonattainment area for PM2.5.

ee. Seventy TPY of ammonia in a serious nonattainment area for PM2.5.

4. 25 Pa. Code §127.210, "Offset ratios," Subsection (a) shall read as follows for the PM2.5 offset levels:

<i>Pollutant/Area</i>	<i>Flue Emissions</i>	<i>Fugitive Emissions</i>

PM2.5 Nonattainment Area		
PM2.5	1:1	1:1
PM2.5 Precursors		
SO2	1:1	1:1
NOx	1:1	1:1
<u>VOCs</u>	<u>1:1</u>	<u>1.1</u>
<u>Ammonia</u>	<u>1:1</u>	<u>1:1</u>

- c. **Temporary Sources.** Temporary sources shall not be required to comply with net air quality benefit and offsets requirements.
- d. **Fuel Switches.** The Department may issue an Installation Permit for the modification of an existing source which is required to switch fuels pursuant to a federal order or fuel curtailment plan if:

1. The applicant demonstrates that it has used all best efforts to secure all available offsets; and,
 2. The applicant is made subject to a permit condition requiring it to use all best efforts to secure additional offsets until the requirements of Paragraph b.3 are met.
- e. **Portable facilities.** Incorporation by Reference. The state regulations for portable facilities under the Air Pollution Control Act at 25 Pa. Code §§127.212 are hereby incorporated by reference into this Subsection. All terms used in 25 PA Code §§127.212 and defined in 25 PA Code Section 121.1 are incorporated by reference. Additions, revisions, or deletions to such regulations by the Commonwealth are incorporated into this Subsection and are effective on the date established by the state regulations, unless otherwise established by regulation under this Article.
- f. **Requirements for Modeling.** Where air quality models are used to meet the provisions of this Section, modeling shall be based on the applicable models and other requirements specified in 40 CFR Part 51 Appendix W (Guideline on Air Quality Models). Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model may be substituted only on a case-by-case basis at the Department's discretion upon written approval by the Administrator of EPA. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in 40 CFR 51.102.
- g. **Plantwide Applicability Limit (PALs).**

The Plantwide Applicability Limits (PALs) regulations in 25 Pa. Code §127.218 are hereby incorporated by reference into this Subsection. All terms used in 25 PA Code §127.218 and defined in 25 PA Code Section 121.1 are incorporated by reference, except as explicitly set forth herein. Additions, revisions, or deletions to such regulations by the Commonwealth are incorporated into this Subsection and are effective on the date established by the state regulations, unless otherwise established by regulation under this Article.

For purposes of this Subsection:

1. Public notification procedures shall follow the requirements of §2102.03, 2103.04, 2102.05, and 2102.06;
2. "Plan approval" shall mean Installation Permit; and
3. "Department" shall mean the Allegheny County Health Department.

4. At Subparagraph (i) under the definition of "Major Facility," found at 25 Pa. Code §121.1, the following additional "lower emissions thresholds" shall apply:
 - A. Seventy TPY of PM2.5 in a serious nonattainment area for PM2.5.
 - B. Seventy TPY of NOx in a serious nonattainment area for PM2.5.
 - C. Seventy TPY of SO2 in a serious nonattainment area for PM2.5.
 - D. Seventy TPY of VOCs in a serious nonattainment area for PM2.5.
 - E. Seventy TPY of ammonia in a serious nonattainment area for PM2.5.
5. Subparagraph (i) of the definition of "Significant" shall read as follows with respect to the Emission Rate for PM2.5:
"10 TPY of PM2.5; 40TPY of SO2; 40TPY of VOCs; 40TPY of ammonia; 40TPY of NOx, unless the Department demonstrates to the EPA's satisfaction or EPA determines that the NOx emissions are not a significant contributor to PM2.5 nonattainment in the area."
6. "Significance level(s)" shall mean "significant air quality impact" as defined under this Article.

The following existing definition is 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/2019, effective mm/dd/2019}*

"**Significant air quality impact**" means an increase in pollutant concentrations exceeding the following:

<u>Pollutant</u>	<u>Average Time</u>				
	<u>Annual</u>	<u>24 Hour</u>	<u>8 Hour</u>	<u>3 Hour</u>	<u>1 Hour</u>
PM-10	1.0 ug/m ³	5 ug/m ³	-----	-----	-----
Particulate	1 ug/m ³	5 ug/m ³	-----	-----	-----
<u>PM2.5</u>	<u>0.2 ug/m³</u>	<u>1.2 ug/m³</u>			
SO ₂	1 ug/m ³	5 ug/m ³	-----	25 ug/m ³	-----
NO _x	1 ug/m ³	-----	-----	-----	-----
CO	-----	-----	0.5 mg/m ³	-----	2.0 mg/m ₃
Lead	-----	0.1 ug/m ³	-----	-----	-----

All major new or modified sources of volatile organic compounds shall be considered to have a significant air quality impact. *{Lead added September 6, 1995, effective October 20, 1995}*

End of Regulation Changes

Legislative Summary

Article XXI Regulation Changes for Non-Attainment New Source Review Regulations (State Implementation Plan Revision 90A)

The Allegheny County Health Department ("ACHD") Air Quality Program is proposing to update its regulations regarding Non-Attainment New Source Review ("NNSR"). This regulation revision must be submitted to the U.S. Environmental Protection Agency ("EPA") as an amendment to the County's portion of the Pennsylvania State Implementation Plan ("SIP") in time to prevent the imposition of sanctions by U.S. EPA.

The proposed revisions are to Article XXI § 2102.06, "Major Sources Locating in or Impacting a Nonattainment Area", and related portions of Article § 2101.20, "Definitions".

The proposed revision was the subject of a public comment period, including a public hearing held on December 13, 2018. The Allegheny County Board of Health voted affirmatively to grant final approval on January 9, 2019.

Background and ACHD Implementation

The Clean Air Act requires the U.S. EPA to periodically review the National Ambient Air Quality Standards ("NAAQS") and to revise them as may be appropriate. On December 14, 2012, EPA issued a ruling that lowered the primary annual PM_{2.5} standard from 15ug/m³ to 12ug/m³.

On August 24, 2016, the EPA issued SIP requirements for the 2012 PM_{2.5} NAAQS. The EPA's implementation rule requires states with nonattainment areas for particulate matter less than and equal to 2.5 micrometers in diameter (PM_{2.5}) to amend their new source review ("NSR") regulations to include emissions of volatile organic compounds ("VOC") and ammonia as PM_{2.5} precursors.

Article XXI § 2102.06 incorporates by reference the NSR requirements of 25 Pa. Code Chapter 127, Subchapter E. However, because the Pennsylvania Department of Environmental Protection ("EPA") does not yet have their similar regulation changes in place, ACHD must make the proposed changes.

The necessary changes to the ACHD NNSR regulation are defined in the U.S. EPA's PM_{2.5} SIP implementation rule (81 Fed. Reg. 58010, August 24, 2016). The DEP has drafted similar proposed revisions to its NNSR regulations found in 25 Pa. Code Chapter 127, Subchapter E, to meet the EPA requirements. Because ACHD's NNSR regulations already takes the incorporation by reference approach, the proposed changes will reflect the DEP changes to the greatest extent possible.

Summary of Proposed Amendments

- Establish that emissions of VOC and ammonia are precursors to PM_{2.5} for new major sources or major sources being modified in certain counties of this Commonwealth that are designated as nonattainment for the PM_{2.5} NAAQS.
- Propose significant impact levels ("SIL") for PM_{2.5}.
- Propose offset ratios for emissions of VOCs and ammonia as PM_{2.5} precursors.
- Amend three definitions.

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: January 17, 2019

RE: Proposed Ordinance

Attached is an Ordinance of the Council of the County of Allegheny ratifying amendments to Section 2102.06, "Major Sources Locating in or Impacting a Nonattainment Area", and Section 2101.20, "Definitions", of the Allegheny County Health Department Rules and Regulations, Article XXI, "Air Pollution Control".

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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ALLEGHENY COUNTY COUNCIL