

**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. 64**

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

**§2102.10 Installation Permit Application and Administration Fees; and  
§2105.50 Open Burning**

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# 1.

## Article XXI Changes

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

### §2102.10 INSTALLATION PERMIT APPLICATION AND ADMINISTRATION FEES

*{Paragraphs b & d amended August 12, 1999, effective September 1, 1999}*

- a. **Installation Permit Application Fee.** On the date that an application for an Installation Permit is submitted under this Part the owner or operator of such source shall submit to the Department, in addition to all other applicable emission and administration fees, an Installation Permit Application Fee in an amount determined under, and in accordance with, the requirements of this Section.
- b. **Amount of Application Fees.** A schedule of the amounts of the application fees required by this Part for Installation Permit Application fees **shall be set by the Board of Health.** **Consideration shall be given to the degree of technical and regulatory difficulty in establishing fees for the following categories of installation permits:**
1. For any source requiring a Prevention of Significant Deterioration (PSD) permit under this Article, ~~shall be \$15,000 for calendar years 1995—1999, \$18,500 for calendar years 2000—2004, and \$22,700 after the year 2004.~~
  2. For any source requiring an Installation Permit under this Section which requires the Department to establish a MACT standard for such source, but not subject to Paragraph 1 above, ~~shall be \$5,500 for calendar years 1995—1999, \$6,700 for calendar years 2000—2004, and \$8,000 after the year 2004.~~
  3. For any source requiring an Installation Permit under this Section and subject to §2102.06 above involving new major sources and major modifications locating in or impacting a non-attainment area, but not subject to Paragraph 1 or 2 above, ~~shall be \$3,500 for calendar years 1995—1999, \$4,300 for calendar years 2000—2004, and \$5,300 after the year 2004.~~
  4. For any source requiring an Installation Permit under this Section and subject to an existing NSPS, NESHAP, or MACT standard, ~~but not subject to Paragraph 1, 2, or 3 above, shall be \$1,200 for calendar years 1995—1999, \$1,400 for calendar years 2000—2004, and \$1,700 after the year 2004.~~
  5. For any source requiring an Installation Permit under this Section but not subject to either Paragraph 1, 2, 3, or 4 above, and for all applications to use general installation permits, ~~shall be \$750 for calendar years 1995—1999 years, \$850 for calendar years 2000—2004, and \$1,000 after the year 2004.~~
- c. **Annual Installation Permit Administration Fee.** No later than 30 days after the date that an application for an Installation Permit is approved under this Part, and on or before the last day of

the month in which such permit application was approved in each year thereafter, during the term of such permit until a subsequent corresponding Operating Permit or amended Operating Permit is properly applied for, the owner or operator of such source shall pay to the Department, in addition to all other applicable emission and administration fees, an Annual Installation Permit Administration Fee in an amount ~~equal to \$750~~ **set by the Board of Health.**

d. **Minor Modifications of an Installation Permit.** Modifications to Installation Permits may be applied for but only upon submission of an application with a fee paid and where:

1. No reassessment of any control technology determination is required; and
2. No reassessment of any ambient air quality impact is required.

~~The fee shall be \$200 for calendar years 1995–1999, \$230 for calendar years 2000–2004, and \$300 after the year 2004.~~ **The fee amount shall be set by the Board of Health.**

e. **Payment of Fees.** Payment of the required fees under this Part shall be made by check or money order payable to the "Allegheny County Air Pollution Control Fund."

**...f. Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.**

#### **§2105.50 OPEN BURNING** *{Subsection f amended May 8, 2007, effective, August 17, 2007.}*

...

f. **Permits.**

1. The Department may issue a permit for open burning during a period specified by the Department, but only where the open burning is solely for:
  - A. The abatement of a fire or public health hazard or the annual disposal of Christmas trees when the burning is conducted under the supervision of a public officer;
  - B. The instruction of personnel in fire fighting;
  - C. The fostering of agriculture;
  - D. The conducting of a ceremony; or,
  - E. Any other purpose contributing a negligible amount of air contaminants; or
  - F. Clearing and grubbing wastes subject to, at a minimum, the following requirements:
    - i. Air curtain incineration units shall be used at all times when burning clearing and grubbing wastes.
    - ii. The use of air curtain incineration units shall not be permitted unless approved by the Department in writing with respect to equipment arrangement, design, and existing environmental conditions prior to commencement of burning.
    - iii. Approval for use of an air curtain incineration unit at one site may be granted for a specified period not to exceed three months, but may be

extended for additional limited periods upon further written approval by the Department.

- iv. The application for said permit must be accompanied by a non-refundable permit application fee, by check or money order payable to the "Allegheny County Air Pollution Control Fund," ~~in the amount of \$300~~ to cover the costs associated with processing, reviewing, and acting upon the application. **The amount of the fee shall be set by the Board of Health.**
- v. If operated at commercial, industrial, or institutional facilities, the air curtain incinerator may also be subject to the NSPS requirements of 40 CFR 60 Subpart CCCC or EEEE.

**G. Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.**

## 2. Technical Support Document

### Summary of Change

The proposed changes to the following sections of Article XXI delete fixed monetary amounts for certain permit and other administration fees, in lieu of language stating that the amount of the given fee shall be set by the Board of Health:

§2102.10, Installation Permit Application And Administration Fees (SIP Change);  
§2105.50, Open Burning (SIP Change);

Because this regulation change sections §2102.10 and §2105.50 of Article XXI already identified as included in the Allegheny County portion of the State Implementation Plan, this regulation revision constitutes a revision to the State Implementation Plan (SIP).

The regulation changes contained in this document were reviewed and approved by the Board of Health on May 6, 2009. At their July 1, 2009 meeting, the Board of Health made a minor change to clarify fee approval process, by adding §2102.10.f and §2105.50.f.1.G:

“Any fees approved by the Board of Health under the terms of this section shall not become effective until approved by Allegheny County Council.”

County Council gave its approval to the document on July 7. The County Chief Executive gave final approval on July 16, 2009.

### **3. Documentation of Public Hearing and Certifications**

Notice of Public Hearing

Transmittals of hearing notice to EPA & PA DEP

News Release

Proof of publication of notice of hearing

Certification of hearing

Summary of Comments and responses

Certification of approval and adoption

NOTICE OF PUBLIC HEARING  
FOR PROPOSED AMENDMENTS TO  
ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND REGULATIONS  
ARTICLE XXI, AIR POLLUTION CONTROL

The Allegheny County Board of Health will hold a public hearing on **Tuesday, April 14, 2009, at 10:00 AM**, Building #7 First Floor Conference Room, Clack Health Center, 301 39th Street, Pittsburgh, PA 15201 to take testimony on the following proposed modifications to County Ordinance 16782 and Allegheny County Health Department Article XXI:

Revision to the following Article XXI sections as they relate to permit and administrative fees:  
§2102.08, Emission Offset Registration;  
§2102.10, Installation Permit Application And Administration Fees;  
§2103.40, Administration Fees (for Operating Permits);  
§2105.50, Open Burning;  
§2105.51, Abrasive Blasting;  
§2105.60, Asbestos Abatement Contractor Licenses;  
§2105.62, Asbestos Abatement Applicability, Federal Requirements, Notices, And Permits; and  
§2105.63, Asbestos Abatement Procedures;  
Revisions to §2109.08, Allegheny County Air Pollution Control Fund & Air Quality Fund and  
§2109.09, Allegheny County Clean Air Fund, related to disbursement requirements.

**The proposed changes to §2102.10 and §2105.50 only, will be incorporated as a revision to Allegheny County's portion of the Pennsylvania State Implementation Plan.**

Copies of the proposed amendments may be examined beginning Friday, March 13, 2009, at the Allegheny County Law Library, Room 921 City-County Building, Grant Street, Pittsburgh, PA 15219, from 8:30 AM to 5:00 PM; at the Allegheny County Health Department Library, Building 7, Clack Health Center, from 8:30 AM until 3:30 PM Monday thru Friday; on the Allegheny County Health Department web site: [www.achd.net](http://www.achd.net); or by calling 412-578-8120 to request a mailed printed copy.

Oral testimony must be pre-scheduled by calling 412-578-8008 no less than 24 hours in advance of the public hearing. Speakers will be limited to five minutes and should bring a written copy of their comments.

The Board will accept written testimony beginning **Friday, March 13, 2009**, and concluding **Tuesday, April 14, 2009**, by mail to:

Board of Health  
3333 Forbes Avenue  
Pittsburgh, PA 15213  
By email to BOH@achd.net  
By Fax to 412-578-8325

# Allegheny County Health Department

## DIRECTOR

Bruce W. Dixon, M.D.



Ms. Joyce Epps, Director  
Department of Environmental Protection  
Bureau of Air Quality  
Rachel Carson Building  
400 Market Street, P.O. Box 8468  
Harrisburg, PA 17105-8468

## AIR QUALITY PROGRAM

301 39<sup>th</sup> Street – Bldg. #7  
Pittsburgh, PA 15201-1891

Phone: (412) 578-8115  
Fax: (412) 578-8144

March 10, 2009

## BOARD OF HEALTH

Paul M. King, Esq., Q.E.P.  
Chair

Lee Harrison, M.D.  
Vice Chair

Al M. Ahmed, P.E.  
Rev. Ricky V. Burgess  
Donald S. Burke, M.D.  
Hon. Joan Cleary, R.N.  
James M. Flynn, Jr.  
Lidia C. Turzai, M.D.  
William Youngblood

Dear Ms. Epps:

Enclosed is a Notice of Public Hearing scheduled to occur on April 14, 2009, regarding proposed revisions to the Allegheny County Health Department Rules and Regulations, Article XXI, Air Pollution Control and County Ordinance Number 16782, to revise sections related to Permit and Administrative Fees and disbursements from the various Air Funds. The portions of these changes that include Sections 2102.10 and 2105.50 will also be submitted as changes to Allegheny County's portion of the Pennsylvania State Implementation Plan.

The SIP revision is being tracked as our Revision Tracking Number 64.

Copies of this notice have also been sent to your Region V Pittsburgh Office for their information and review.

Your comments are welcome.

Sincerely,



James Thompson, Manager  
Air Quality Program

cc: Arlene Shulman

Enclosures

- Proposed Article XXI/SIP Revision 64
- Public Hearing Notice

25-093008

# Allegheny County Health Department

## DIRECTOR

Bruce W. Dixon, M.D.



Ms. Judith Katz, Director  
Air Protection Division  
Region III (3AP00)  
U.S. Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103-2029

## AIR QUALITY PROGRAM

301 39<sup>th</sup> Street – Bldg. #7  
Pittsburgh, PA 15201-1891

Phone: (412) 578-8115  
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March 10, 2009

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Rev. Ricky V. Burgess

Donald S. Burke, M.D.

Hon. Joan Cleary, R.N.

James M. Flynn, Jr.

Lidia C. Turzai, M.D.

William Youngblood

Dear Ms. Katz:

Enclosed is a Notice of Public Hearing scheduled to occur on April 14, 2009, regarding proposed revisions to the Allegheny County Health Department Rules and Regulations, Article XXI, Air Pollution Control and County Ordinance Number 16782, to revise sections related to Permit and Administrative Fees and disbursements from the various Air Funds. The portions of these changes that include Sections 2102.10 and 2105.50 will also be submitted as changes to Allegheny County's portion of the Pennsylvania State Implementation Plan.

The SIP revision is being tracked as our Revision Tracking Number 64.

Your comments are welcome.

Sincerely,



James Thompson, Manager  
Air Quality Program

## Enclosures

- Proposed SIP Revision 64
- Public Hearing Notice

# Allegheny County Health Department

## DIRECTOR

Bruce W. Dixon, M.D.



Mr. Mark Wayner  
Regional Air Quality Manager  
Department of Environmental Protection  
Southwest Regional Office – Region V  
400 Waterfront Drive  
Pittsburgh, PA 15222-4745

## AIR QUALITY PROGRAM

301 39<sup>th</sup> Street – Bldg. #7  
Pittsburgh, PA 15201-1891

Phone: (412) 578-8115  
Fax: (412) 578-8144

March 10, 2009

## BOARD OF HEALTH

Paul M. King, Esq., Q.E.P.  
Chair  
Lee Harrison, M.D.  
Vice Chair

Al M. Ahmed, P.E.  
Rev. Ricky V. Burgess  
Donald S. Burke, M.D.  
Hon. Joan Cleary, R.N.  
James M. Flynn, Jr.  
Lidia C. Turzai, M.D.  
William Youngblood

Dear Mr. Wayner:

Enclosed is a Notice of Public Hearing scheduled to occur on April 14, 2009, regarding proposed revisions to the Allegheny County Health Department Rules and Regulations, Article XXI, Air Pollution Control and County Ordinance Number 16782, to revise sections related to Permit and Administrative Fees and disbursements from the various Air Funds. The portions of these changes that include Sections 2102.10 and 2105.50 will also be submitted as changes to Allegheny County's portion of the Pennsylvania State Implementation Plan.

The SIP revision is being tracked as our Revision Tracking Number 64.

Copies of this submittal have been sent to Ms. Joyce Epps in Harrisburg for review.

Your comments are welcome.

Sincerely,

James Thompson, Manager  
Air Quality Program

cc: Steve Hepler

Enclosures

- Proposed Article XXI/SIP Revision 64
- Public Hearing Notice

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25-093008

NEWS RELEASE  
From: Cummings, Diane  
Sent: Tuesday, March 17, 2009 12:57 PM  
Subject: Public Comment on Clean Air Fund Changes

NEWS RELEASE

Bruce W. Dixon, M.D., Director

Guillermo Cole, Public Information Officer  
412-578-8004, e-mail: gcole@achd.net

For Release: Tuesday, March 17, 2009

HEALTH BOARD SEEKS PUBLIC COMMENT ON CLEAN AIR FUND CHANGES

Hearing Set for April 14 at Clack Health Center in Lawrenceville

The Allegheny County Board of Health has scheduled a public hearing on Tuesday, April 14, to accept comments on proposed changes to air pollution regulations relating to permit fees and allowable uses of the Health Department's Clean Air Fund.

The hearing will start at 10 a.m. and be held at Clack Health Center, Building 7, 301 Thirty-ninth Street, Lawrenceville. The public comment period for the proposed amendments began March 13 and will end with the hearing on April 14.

Testimony given at the hearing must be scheduled in advance, by calling 412-578-8008, no later than 4 p.m. on Monday, April 13. Speakers are limited to five minutes and asked to submit a written copy of their testimony for the record.

Those who would like to comment but are unable to attend the hearing may submit comments until April 14 via email, boh@achd.net; fax, 412-578-8325; or postal service, Allegheny County Board of Health, 3333 Forbes Avenue, Pittsburgh, PA 15213.

The revisions are posted on the Health Department's web site, www.achd.net, and anyone can also have a copy mailed to them by calling 412-578-8120.

In addition, the changes may be examined Mondays through Fridays at Clack Health Center, Building 7, from 8:30 a.m. to 3:30 p.m., and at the County Law Library, Room 921 City-County Building, Grant Street, Downtown, from 8:30 a.m. to 5 p.m.

# # #

No. \_\_\_\_\_ Term, \_\_\_\_\_

**Proof of Publication of Notice in Pittsburgh Post-Gazette**

Under Act No 587, Approved May 16, 1929, PL 1784, as last amended by Act No 409 of September 29, 1951

Commonwealth of Pennsylvania, County of Allegheny, ss J. Boot, being duly sworn, deposes and says that the Pittsburgh Post-Gazette, a newspaper of general circulation published in the City of Pittsburgh, County and Commonwealth aforesaid, was established in 1993 by the merging of the Pittsburgh Post-Gazette and Sun-Telegraph and The Pittsburgh Press and the Pittsburgh Post-Gazette and Sun-Telegraph was established in 1960 and the Pittsburgh Post-Gazette was established in 1927 by the merging of the Pittsburgh Gazette established in 1786 and the Pittsburgh Post, established in 1842, since which date the said Pittsburgh Post-Gazette has been regularly issued in said County and that a copy of said printed notice or publication is attached hereto exactly as the same was printed and published in the regular editions and issues of the said Pittsburgh Post-Gazette a newspaper of general circulation on the following dates, viz:

**10 of March, 2009**

Affiant further deposes that he/she is an agent for the PG Publishing Company, a corporation and publisher of the Pittsburgh Post-Gazette, that, as such agent, affiant is duly authorized to verify the foregoing statement under oath, that affiant is not interested in the subject matter of the afore said notice or publication, and that all allegations in the foregoing statement as to time, place and character of publication are true.

**COPY OF NOTICE OR PUBLICATION**

NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENTS TO ALLEGHENY COUNTY HEALTH DEPARTMENT RULES AND REGULATIONS ARTICLE XXI, AIR POLLUTION CONTROL. The Allegheny County Board of Health will hold a public hearing on Tuesday, April 14, 2009, at 10:00 AM, Building #7 First Floor Conference Room, Clack Health Center, 301 39th Street, Pittsburgh, PA 15201 to take testimony on the following proposed modifications to County Ordinance 16782 and Allegheny County Health Department Article XXI. Revisions to the following Article XXI sections as they relate to permit and administrative fees: \$2102.08; Emission Offset Registration; \$2102.10; Installation Permit Application And Administration Fees; \$2103.40; Administration Fees (for Operating Permits); \$2105.50; Open Burning; \$2105.51; Abrasive Blasting; \$2105.60; Asbestos Abatement Contractor Licenses; \$2105.62; Asbestos Abatement Applicability, Federal Requirements, Notices, And Permits; and \$2105.63; Asbestos Abatement Procedures. Revisions to \$2109.08; Allegheny County Air Pollution Control Fund & Air Quality Fund and \$2109.09; Allegheny County Clean Air Fund, related to disbursement requirements. The proposed changes to \$2102.10 and \$2105.50 only, will be incorporated as a revision to Allegheny County's portion of the Pennsylvania State Implementation Plan. Copies of the proposed amendments may be examined beginning Friday, March 13, 2009, at the Allegheny County Law Library, Room 923 City-County Building, Grant Street, Pittsburgh, PA 15219, from 8:30 AM to 5:00 PM; at the Allegheny County Health Department Library, Building 7, Clack Health Center, from 8:30 AM until 3:30 PM Monday thru Friday, on the Allegheny County Health Department web site: www.achd.net, or by calling 412-578-8120 to request a mailed notice.

PG PUBLISHER hereby acknowledged and been fully satisfied with the original Proof of Publication and receipt for the Advertising costs in the subject matter of said notice.

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**Publisher's Receipt for Advertising Costs**

PG Publishing Company, a Corporation, Publisher of Pittsburgh Post-Gazette, a newspaper of general circulation, hereby certifies that the same have been fully satisfied with the original Proof of Publication and receipt for the Advertising costs in the subject matter of said notice.

J. Boot  
PG Publishing Company  
Sworn to and subscribed before me this day of:  
March 10, 2009  
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City Of Pittsburgh, Allegheny County  
My Commission Expires Jan. 31, 2011  
Member, Pennsylvania Association of Notaries

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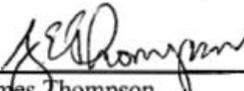
\_\_\_\_\_  
Attorney For

Revision 64

SIP Submittal for Administration/Permit Fees and Air Funds Disbursements

Certification of Hearing

James Thompson deposes and says that he is the Manager of the Air Quality Program of the Allegheny County Health Department and hereby certifies that a Public Hearing was held on April 14, 2009 on the proposed amendment to the County's portion of the Pennsylvania State Implementation Plan that would remove the specific monetary amounts for various Administration and Permit Fees and revise certain portions of the regulations dealing with Air Funds Disbursements as delineated in Sections 2102.10 and 2105.50 and other sections of Article XXI; that the opportunity for written comments was given in accordance with the requirements of 40 CFR 51.102; that notice of such hearing was given by publication in a newspaper of general circulation on March 10, 2009; and to the best of his knowledge, belief and understanding, such proceedings were in full compliance with all applicable State and Federal laws, regulations, and other requirements.

  
\_\_\_\_\_  
James Thompson,  
Manager, Air Quality Program  
Allegheny County Health Department

4/22/2009  
\_\_\_\_\_  
Date

**Comment and Response Document for the Proposed SIP Revision 64  
Changes to Administrative and Permit Fees and Regulations for Disbursements  
from the Various Air Funds.  
April 14, 2009 Public Hearing**

**PROCEDURAL MATTER**

*Comment related to Article XXI, §2102.08.a.3., Emission Offset Registration.*

1. **Comment:** The proposed change to Article XXI, §2102.08.a.3, should be deleted for the following reason: Federal regulations require that changes to the SIP be made only after such changes are advertised in a notice of public hearing. This section of Article XXI is part of the SIP, however, that fact was omitted from the public hearing notice, so the proposed change cannot be submitted as a SIP change.

**Commenter:** Allegheny County Health Department, Air Quality Program.

**Response:** The Health Department will delete the changes to §2102.08.a.3 and resubmit them at another time.

**PERMIT AND OTHER ADMINISTRATIVE FEES**

*Comments related to the amendments proposed to Article XXI §2102.10, §2103.40, §2105.50, §2105.51, §2105.60, §2105.62, and §2105.63, which would change the way that permit and other administrative fees are set.*

2. **Comment:** What criteria will be evaluated in *consideration of the degree of technical and regulatory difficulty [in setting permit fees]*? Reliant expects that the costs would be established based on an assessment of the fair cost for the personnel of a competent and efficient organization to review and process the permit application. In the proposal, it is not obvious whether any evaluation will actually be conducted and the fees could be established by a totally arbitrary assessment based upon considerations such as budget deficits.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** The regulation states “Consideration shall be given to the degree of technical and regulatory difficulty in establishing fees.” This is not arbitrary. The present fee structure is similarly based on a scale relative to difficulty in reviewing the permits.

3. **Comment:** The lack of a prescribed frequency for fee schedule updates allows the Board to increase fees without notice to regulated entities.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** When the Board of Health anticipates the release of a new fee schedule, the Board will provide adequate notice to the public as well as to regulated entities.

4. **Comment:** The proposed changes move fees from the certainty of rule and due course of regulatory process (that provides for public comment) to a yet undisclosed procedure that lacks any public or industry participation. Without oversight, the Board is free to revise fees without explanation.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** The Board of Health allows for public comment at its meetings.

5. **Comment:** Escalation of the fees can be built into the revised regulation as was established in the current version.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** Long term escalating fee structures assume a knowledge of future costs over a long period. The Board of Health will establish fees based on analysis of current market costs.

6. **Comment:** This proposal is inconsistent with the Pennsylvania Department of Environmental Protection regulations which define the fees and a schedule for increasing those fees.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** The Health Department is not required to maintain consistency with the Pennsylvania Department of Environmental Protection in setting permit fees. Fees set for the County will be based on costs at the County level, which may be different than those of the state.

***Comments related to the proposed amendments to Article XXI Section 2109.09.c.1.G***

7. **Comment:** There is a proposed addition of item G. which includes using funds for “Any other project that is consistent with the purpose of this Section and the mission of the Board.” This addition...broadens the possible uses for the Clean Air Fund. G. should not be added.

**Commenter:** Susan Seppi, GASP. Also, Frances E. Harkins and Jamin Bogi.

**Response:** The new language does not dilute in any way the strictures on the use of monies in the fund. The provisions of new Sub-subparagraph G are completely consistent with the already existing provisions of Subparagraph c.1, which state that “Disbursements of monies from the Allegheny County Clean Air Fund shall be utilized solely to support the purposes set forth under Subsection a above. Funds may therefore be disbursed for such purposes as, but not limited to:”

**5% CLEAN AIR FUND USE FOR NORMAL OPERATING COST OF AIR QUALITY PROGRAM**

***Comments related to the amendments proposed to Article XXI §2109.09(c)(2), which would allow up to five percent of the balance of the Clean Air Fund to be used to “supplement” the annual operating costs of the Health Department's Air Quality Program.***

**8. Comment:** To a limited extent...Penn Future supports the proposed amendments. Penn Future does, however, believe that the language in the proposed amendment to Section 2109.09(c)(2) is ambiguous, and recommends that language be clarified to permit up to "five percent of the balance of the Clean Air Fund on December 31<sup>st</sup> of the previous calendar year, may be used *to fund unanticipated shortfalls* from the normal operating costs of the County's air quality program, *or to pay for necessary improvements to the program's physical plant and equipment,*" rather than be "used to *supplement* the normal operating costs of the County's air quality program.

**Commenter:** John K. Baille, Senior Attorney for PennFuture.

**Response:** The intent of this paragraph (2109.09.c.2) is to allow for flexibility in funding the Air Quality Program. For clarity, the word “supplement” in the proposed regulation will be changed to “fund” such that the language now reads “...may be used to fund the normal operating costs of the County's Air Quality Program.”

**9. Comment:** ...the amendment language:

- (1) Merely *permits* such a use of funds, but does not *require* such an annual disbursement.
- (2) Allows use of “up to five percent” of the balance, thus if a smaller percentage is sufficient to cover excess operating costs, only that percentage necessary to cover those excess operating costs may be used.
- (3) Allows use only to “supplement the normal operating costs of the County's air quality program,” thus it would be inappropriate to automatically include five percent of the fund balance in the County air program's normal budget each year as a matter of course. Clean Air Funds may only be used in those instances when typical sources of air program funds are inadequate to meet normal operating costs.

**Commenter:** Joseph Osborne, Legal Director, Group Against Smog and Pollution. Also, Kevin M. Stewart, Director of Environmental Health for the American Lung Association in Pennsylvania endorsed these comments.

**Response:** See the response to Comment 8.

**10. Comment:** I support the new §2109.09.c.2...However, for up to 5% of the fund to be meaningful, the amount of the fund must not dwindle to very low levels and it should not be accessed unless normal funding routes have fallen short.

**Commenter:** Susan Seppi, GASP.

**Response:** The Health Department will consider Clean Air Fund balances and income with regard to future Clean Air Fund requests.

**ALLOWING DEPARTMENT FACILITIES THE USE OF ALLEGHENY COUNTY AIR POLLUTION CONTROL FUND AND CLEAN AIR FUND DOLLARS TO COMPLY WITH PROVISIONS OF ARTICLE XXI.**

*Comments related to the proposed amendments to Article XXI Section 2109.08.c, and Section 2109.09.c.3.*

**11. Comment:** Under the current version of Article XXI, absolutely no air pollution sources shall receive money from these funds in order to comply with Article XXI. ...use of these funds to allow County Air Program facilities to comply with Article XXI would be consistent with the stated purposes of the Air Pollution Control Fund; however, the overbroad amendment language apparently seeks to allow disbursements to *any and all* health department facilities... Thus the proposed change to §2109.08.c must be rejected as inconsistent with the purpose of this fund. {The commenter made a similar comment related to §2109.09.c.3}

**Commenter:** Joseph Osborne, Legal Director, Group Against Smog and Pollution. Also, Kevin M. Stewart, American Lung Assoc. Similar comments were made by Susan Seppi of GASP, Robert W. Orchowski, P.E., and member of the Air Advisory Committee and Chair of the Regulation Subcommittee, Dan Bricmont, Chairman of the Advisory Committee, and Jamin Bogi.

**Response:** The Health Department will add the phrase “*supporting the Air Quality Program*” to the proposed regulation such that the language of §2109.08.c and §2109.09.c.3 will read, “except for Department facilities *supporting the Air Quality Program*”.

**12. Comment:** The proposed amendments to Sections 2109.08.c, 2109.09.c.3 and 2109.09.d may jeopardize the County Air Program’s ability to operate effectively and efficiently. If these funds are depleted, the County Air Program, which no longer receives any outside funding from the County, may find its ability to operate compromised...all parties recognize that these amendments pose a threat to our common interest in ensuring that the County Air Program has the resources it needs to operate effectively and efficiently. For these reasons GASP urges the Board of Health to reject the proposed changes to Sections 2109.08.c and 2109.09.c.3 & d.

**Commenter:** Joseph Osborne, Legal Director, Group Against Smog and Pollution. Also, Kevin M. Stewart, American Lung Assoc.

**Response:** The Health Department will consider the existing fund balances prior to Air Pollution Control Fund disbursements and Clean Air Fund requests.

**ELIMINATION OF ADVISORY COMMITTEE’S CONSULTATIVE ROLE TO THE BOARD OF HEALTH ON CLEAN AIR FUND DISBURSALS.**

*Comments related to the amendment proposed to Article XXI §2109.09.d, eliminating the requirement that requests for disbursements from the Clean Air Fund be prepared "upon consultation with the Air Pollution Control Advisory Committee and the Board of Health," and instead require that the Air Pollution Control Advisory Committee receive only notification of such requests.*

**13. Comment:** The Air Pollution Control Advisory Committee is comprised of air pollution experts (Ref: Section 2101.07.c.4). ...GASP can conceive of no legitimate reason why the Board of Health would not want to consult with air quality experts prior to spending money set aside for the specific purpose of improving air quality.

**Commenter:** Joseph Osborne, Legal Director, GASP. Also, Kevin M. Stewart, American Lung Assoc. Similar comments were made by Joy Sabl, Ph. D., Mark Virostek, Ivy Steinberg, and Court Gould, Executive Director of Sustainable Pittsburgh.

**Response:** To restore the consultative role of the Air Pollution Control Advisory Committee, the Health Department will:

Revise §2109.09.d.2 - delete the word “notify” and replace with the phrase “consult with” such that the revised language reads, “The Department shall ~~notify~~ consult with the Air Pollution Control Advisory Committee regarding ~~of~~ the disbursement request.”

Revise the second sentence of §2109.09.d.3 to state: “The request shall include a summary of the consultation with the Air Pollution Control Advisory Committee.”

***General Opposition***

**14. Comment:** Please consider my opposition to a recently proposed change to Article XXI §2109.09.d, eliminating the County Air Pollution Control Advisory Committee's voice in determining how county funds for air quality improvements are spent.

**Commenter:** Stephanie R. Land, private citizen. Similar comments made by Barbara Minges, John Shepard, Kathy Rubel, John Nagel, Michael T. Cummins, Jr., Barbara Litt, Nicholas Kyriazi, Annie Gensheimer, Chris West, Dr. Karla McNamara

**Response:** See the response to Comment 13.

***Reduction in Public Scrutiny of Appropriateness of Clean Air Fund Expenditure***

**15. Comment:** Reducing the checks and balances of County Council and eliminating the advice of the experts represented on the Air Pollution Control Advisory Committee on monetary disbursements from the Clean Air Fund is not in the spirit of Article XXI (Reference 2101.02.c.7) and possibly an improper Article XXI Rule Change.

**Commenter:** Susan Seppi, GASP. Similar comments were made by Joseph Osborne, Legal Director, GASP; John K. Baille, Senior Attorney for PennFuture; Frances E. Harkins, Jamin Bogi, and Peri Unligil, M.D.

**Response:** Clean Air Fund disbursements are not reviewed by the County Council, though they have been and are signed by the County Chief Executive's Office. See the response to Comment 13 regarding the revisions the Department will make to the proposed regulation language to restore the Advisory Committee's consultative role.

**16. Comment:** The proposed revisions in substance and effect totally gut this important avenue for public input and only specify that "The Department shall notify the Air Pollution Advisory Committee of the disbursement request".

**Commenter:** Robert W. Orchowski, P.E., and member of the Air Advisory Committee and Chair of the Regulation Subcommittee. Also, Dan Bricmont, Chairman of the Advisory Committee.

**Response:** See the response to Comment 13.

**17. Comment:** ...these proposed amendments, are undermining citizens' ability to improve the healthfulness of their community.

**Commenter:** Frances E. Harkins.

**Response:** See the response to Comment 13.

***Change in Authority over Disbursements***

**18. Comment:** The proposed §2109.09.d.3 provision will change the authority for disbursements from this fund from the County Commissioners (now read County Council) to the Board of Health...it would not surprise me if some if not all of the County Council members are not aware of the proposed shift in fund disbursement authority away from County Council.... if the authority shift were to occur, this would effectively eliminate an opportunity for public input when such disbursement requests are presented to the County Council.

**Commenter:** Robert W. Orchowski, P.E., and member of the Air Advisory Committee and Chair of the Regulation Subcommittee. Also, Dan Bricmont, Chairman of the Advisory Committee and Susan Seppi of GASP.

**Response:** Clean Air Fund disbursements are not reviewed by the County Council, though they have been and are signed by the County Chief Executive's Office. The County Council will have the opportunity to review and enact this regulation as a County Ordinance.

***Proposed Changes Minimize the Role of the Advisory Committee***

**19. Comment:** If the changes are implemented, the role of the Advisory Committee for this function is transformed from advising (not authorizing) to simply providing an outlet to disseminate Department requests for disbursements. Reliant is concerned that the change could appear to be a signal that the Board intends to minimize the statutory role of the Advisory Committee.

Reliant requests that the proposed regulation revisions be rejected.

**Commenter:** Keith Schmidt, Manager, Air Resources, Reliant Energy.

**Response:** See the response to Comment 13.

**20. Comment:** Decreasing the power of the Advisory Committee is a step towards making public involvement merely ornamental and increasingly meaningless.

**Commenter:** James L. Longhurst, Ph.D., Assistant Professor of History at the University of Wisconsin La Crosse. Similar comments were made by Frances E. Harkins and Gerald Kruth.

**Response:** See the response to Comment 13.

**21. Comment:** The proposed §2109.09 Allegheny County Clean Air Fund d.4. provision states that "Approval of the Air Pollution Advisory Committee is not required" (for Clean Air fund disbursement request). Simply stated, the Advisory Committee fully understands its role to act solely as an advisory group without authority and did not need to be told so.

**Commenter:** Robert W. Orchowski, P.E., and member of the Air Advisory Committee and Chair of the Regulation Subcommittee. Also, Dan Bricmont, Chairman of the Advisory Committee.

**Response:** The Health Department considers this simply a clarification.

**22. Comment:** The Board of Health should be advised that there was no support from the Advisory Committee [Editorial Note: at the March 24, 2009 Advisory Committee Meeting] for the ...§2109.09.d provisions...I offered a motion to request that the Board of Health delay taking action on the proposed changes to Article XXI, Subsection 2109.09.d until the Board Chairman...or his representative, attends the next Advisory Committee meeting to address the perceived role of the Advisory Committee vis a vis the Board of Health. The motion was seconded and approved unanimously.

**Commenter:** Robert W. Orchowski, P.E., and member of the Air Advisory Committee and Chair of the Regulation Subcommittee. Also, Dan Bricmont, Chairman of the Advisory Committee. A similar comment was made by Walther Goldberg, Ph.D., Member, Air Pollution Control Advisory Committee.

**Response:** See the response to Comment 13. The Advisory Committee's request for a meeting with Board Chairman has been communicated to the Board of Health.

*The following comment was inadvertently missed by ACHD during the preparation of the package for the Board of Health and County Council. Though it is similar to other comments made above, ACHD is adding it here for the sake of transparency.*

**23. Comment:** The Advisory Committee...can and does respond directly to the public, on a monthly basis, without any "sign-up" in advance. This is most important if we really want citizen participation.

... the Sierra Club would like to see that the Advisory Committee remain as it has always been, advisory to the Board of Health.

... with many needs unmet in the Air Quality division, (personnel and equipment for starters), we cannot see how spending it for other things can be justified.

The Sierra Club is not in favor of the proposed changes to Article XXI.

**Commenter:** Marilyn Skolnick, Co-Conservation Chair of the Sierra Club of Allegheny County and former member of the Air Pollution Control Advisory Committee.

**Response:** See the response to Comment 13 regarding the revisions the Department will make to the proposed regulation language to restore the Advisory Committee's consultative role. See the response to Comment 11 regarding the revisions to the proposed language that will limit expenditures from the two funds to the Air Quality Program.

**CERTIFICATION of APPROVAL and ADOPTION**

To the best of my knowledge, information, and belief, I the undersigned hereby certify that the amendment to Sections 2102.10 and 2105.50 of Article XXI, Rules and Regulations of the Allegheny County Health Department, Air Pollution Control, and Ordinance No. 16782 of the County of Allegheny, adopted by the Allegheny County Board of Health on May 6, 2009 and July 1, 2009, enacted by the Allegheny County Council on July 7, 2009 (Ordinance 30-09-OR), approved by the Allegheny County Chief Executive on July 16, 2009, and effective July 26, 2009, as a revision to the County's Portion of the Pennsylvania State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards, were duly and properly enacted as prescribed by the Local Health Administration Law and the Second Class County Code, and as such, are fully and legally enforceable by the Allegheny County Health Department and the County of Allegheny as provided for by the within authority.

  
Henry Miller, III, Esquire  
Solicitor  
Allegheny County Health Department

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY ) S.S. \_\_\_\_\_

On the 5<sup>TH</sup> day of FEBRUARY, 2010,

Henry Miller, III personally appeared before me, the undersigned authority, satisfactorily proven to me to be the person whose name appears above, and did in my presence execute the above certification for the purposes contained therein.

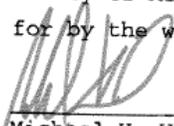
WHEREFORE, I have hereunto set my hand and official seal the 5<sup>TH</sup> day of FEBRUARY, 2010.

  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Janet M. Morris, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires May 29, 2011  
Member, Pennsylvania Association of Notaries

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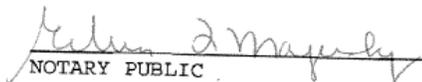
  
\_\_\_\_\_  
Michael H. Wojcik  
Solicitor  
County of Allegheny

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY ) s.s. \_\_\_\_\_

On the 12<sup>th</sup> day of February, 2010,  
Michael H. Wojcik personally appeared before me, the undersigned authority, satisfactorily proven to me to be the person whose name appears above, and did in my presence execute the above certification for the purposes contained therein.

WHEREFORE, I have hereunto set my hand and official seal the 12<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Eileen F. Majersky, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires May 9, 2013  
Member, Pennsylvania Association of Notaries