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## **SECTION 1.5300 ENFORCEMENT; VARIANCES; JUDICIAL REVIEW**

### **1.5301 SPECIAL ENFORCEMENT PROCEDURES**

(a) The Director may notify in writing any person(s) responsible for any prohibited air contaminant emission or other violation of this Ordinance. Such notification shall state the nature and character of the prohibited emission or violation and shall specify the desired state of compliance including a schedule for increments of progress and a final compliance date. The person(s) notified shall promptly proceed to abate or control such emission or violation as required by said notice and by this Ordinance.

(b) Whenever the Director, in his sole discretion, deems it helpful in making a determination as to the appropriate enforcement action to take under this Ordinance, the Director may:

- (1) Invite any person notified of a violation under Paragraph (a) to a conference with the Director and/or any Department staff member duly authorized by the Director, at which conference the person so notified, along with his or her representative, may present information relevant to the matter. The Director, in his sole discretion, may request that the Mecklenburg County Air Quality Commission also be present at and participate in such conference.
- (2) Consult with the Mecklenburg County Air Quality Commission, either in the absence or presence of the person notified of a violation under Paragraph (a). Provided, however, the provisions of Paragraphs (a) and (b) shall not be a condition precedent to the Director's authority to bring a civil action under MCAPCO Regulation 1.5303 - "Civil Injunction" to institute criminal proceedings under MCAPCO Regulation 1.5302 - "Criminal Penalties".

### **1.5302 CRIMINAL PENALTIES**

Violation of any provisions of this Ordinance shall constitute a misdemeanor, punishable as provided in G.S. 143-215.112(d)(1). The Director shall have the authority, without prior approval of the Board, to take the necessary steps to initiate criminal process under this paragraph. Further, the Charlotte-Mecklenburg Police Department and other local law enforcement agencies within Mecklenburg County and the County Fire Marshal shall have the authority, without prior approval of the Board, to take the necessary steps to institute criminal process under this paragraph for violations of MCAPCO Regulation 1.5106 - "Open Burning".

### **1.5303 CIVIL INJUNCTION**

The Director, upon the written approval of the County Manager, shall be authorized to institute a civil action in the Superior Court, brought in the name of Mecklenburg County, for injunctive relief to restrain any violation or threatened violation of this Ordinance and for such other relief as the court may deem proper. Neither the institution of such action, nor any of the proceedings thereon shall relieve any party to such proceedings from the criminal penalties provided in MCAPCO Regulation 1.5302 - "Criminal Penalties".

### **1.5304 CIVIL PENALTIES**

#### **(a) PURPOSE AND SCOPE**

These Regulations provide the procedures and standards governing the assessment, remission, mitigation and appeal of civil penalties. All sanctions available in this section are separate from and supplemental to the enforcement actions otherwise available in this Ordinance and the assessment of civil penalties shall not preclude the use of such other available enforcement remedies.

#### **(b) WHO MAY ASSESS**

Civil penalties may be assessed by the Director.

#### **(c) WHEN ASSESSABLE**

Civil penalties may be assessed against any person who:

- (1) Violates any air control classification, standard or limitation established pursuant to this Ordinance;
- (2) Is required but fails to apply for or to secure a permit required by this Ordinance or who violates or fails to act in accordance with the terms, conditions, or requirements of the permit;
- (3) Fails to file, submit or make available, as the case may be, any documents, data, or reports required under this Ordinance;  
or
- (4) Violates any duly adopted regulation implementing the provisions of Article 21B, G.S. 143-215 or this Ordinance.

#### **(d) AMOUNT OF ASSESSMENT**

A civil penalty of not more than twenty-five thousand dollars (\$25,000) may be assessed for each air violation. Each day of continuing violation after a violator receives written notification from the Director shall be considered a separate air violation.

#### **(e) STANDARDS**

In determining the amount of the assessment, the Director shall consider the following standards and shall cite those deemed applicable;

- (1) Gravity of the violation and the degree and extent of harm, including but not limited to the following for an air violation:
  - (A) emission control standard(s) or ambient air quality standard(s) violated;

- (B) type of violation;
  - (C) duration;
  - (D) cause;
  - (E) effect on ambient air quality, public health, animal or plant life;
  - (F) effectiveness of action taken by violator to cease the violation;
- (2) Cost of rectifying any damage;
  - (3) The violator's previous record in complying or not complying with the laws and implementing Regulations of the Board;
  - (4) The economic and financial condition of the Respondent will be presumed to allow the assessment of the penalty. The Respondent may raise this issue in an answer pursuant to MCAPCO Regulation 1.5304 - "Civil Penalties" Paragraph (h) and will have the burden of coming forward and proving this position.

(f) **PROPOSED ASSESSMENT: ASSESSMENT: MODIFICATION**

- (1) For minor violations of a continuing nature a letter of proposed assessment may be sent an alleged violator(s). The alleged violator(s) will be given up to 20 days from receipt of the letter to cease the violation or to submit reasons in writing why the penalty should not be assessed. If after 20 days the violation has not been ceased or no response has been received or if a response is not sufficient justification to preclude assessment, the penalty may be assessed from the date of receipt of notice under MCAPCO Regulation 1.5304 - "Civil Penalties" Subparagraph (g)(2).
- (2) For all violations for which a penalty is assessed a notice of such action shall be sent the respondent by registered mail or certified mail. The notice will describe the violation with reasonable particularity, advise that the penalty is due, and advise the respondent of the rights of appeal as specified in MCAPCO Regulation 1.5304 - "Civil Penalties" Paragraph (h).
- (3) The Director may modify a penalty to a lower amount upon finding that additional or different facts should be or should have been considered in determining the amount of assessment.

(g) **PAYMENT: HEARING: REMISSION/MITIGATION**

- (1) Within 30 days after receipt of notification of an assessment, the assessed person must tender payment, or submit in writing a request for an administrative hearing under MCAPCO Regulation 1.5306 - "Hearings" specifying the factual or legal issues in dispute or submit in writing a request for remission or reduction of the penalty or mitigation of the penalty stating the reasons why such request is justified.
- (2) Payment may be tendered in conjunction with a hearing or remissions request and in such case, the payment will be accepted as conditional upon final action.
- (3) This Regulation does not preclude informal conferences concerning the amount of penalty assessed or whether the penalty should have been assessed.

(h) **TENDERS OF PAYMENT: REMISSION/MITIGATION: HEARING REQUEST**

The Director will accept and acknowledge all tenders of payment. Requests for remission or mitigation will be presented to the Commission and the Respondent will be allowed the

opportunity to present its request only when the Respondent and Director stipulate that no facts are in dispute, or where the Respondent waives his right to an administrative hearing. If the Respondent and Director do not make such a stipulation and the Respondent does not waive his right to a hearing, one will be held. In such case and where a hearing is requested, it shall be held in accordance with MCAPCO Regulation 1.5306 - "Hearings".

(i) **REFERRAL**

If any civil penalty finally assessed is not paid, the Director, with the written approval of the County Manager, shall request the County Attorney to commence an action to recover the amount of the assessment.

(j) **REPORTS TO THE COMMISSION**

Action taken by the Director will be reported to the Commission at the next meeting. Such reports will include information on the following:

- (1) person(s) issued letter(s) of proposed assessment;
- (2) person(s) assessed a civil penalty;
- (3) person(s) who have paid a penalty as assessed, requested remission or requested an administrative hearing;
- (4) person(s) who have failed to pay; and
- (5) cases referred to the County Attorney for collection.

**1.5305 VARIANCES**

(a) Except as otherwise hereinafter provided, any person subject to the provisions of this Ordinance may apply to the Director for a variance from any standards, limitations, or other provisions of this Ordinance. The Director may grant such variance for a period not to exceed 90 days without public hearing or due notice. After a public hearing, the Director may grant a variance for fixed periods exceeding 90 days.

(b) Provided, however, no variance shall be granted with respect to any source subject to MCAPCO Regulations 2.0524 - "New Source Performance Standards", 2.1110 - "National Emission Standards for Hazardous Air Pollutants", 2.0530 - "Prevention of Significant Deterioration", 2.0531 - "Sources in Non-Attainment Areas" and MCAPCO Section 1.5500 - "Title V Procedures" or any source which would violate National Ambient Air Quality Standards promulgated under the Federal Clean Air Act if such variance were granted.

Prior to granting a variance hereunder, the Director shall find that:

- (1) The emission of air contaminants occurring or proposed to occur do not endanger human health or safety;  
and
- (2) Compliance with the standards, limitations, or regulations from which the variance is sought cannot be achieved by application of best available technology found to be economically reasonable at the time of application for such variance, and would produce serious hardship without equal or greater benefits to the public, provided that such variance shall be consistent with the provisions of the Federal Clean Air Act as amended; and provided

further, that any person who would otherwise be entitled to a variance or modification under the Federal Clean Air Act as amended shall also be entitled to the same variance from or modification in standards, limitations, or other provisions of this Ordinance.

For the purposes of determining whether a source for which a variance has been requested would meet the standard stated above, the Director may allow a demonstration for a limited, fixed period of time adequate to gather evidence as to whether the standards could be met.

(c) All hearings required under this Paragraph shall be conducted in accordance with the provisions of MCAPCO Regulation 1.5306 - "Hearings"; provided, further, that notice of any hearings regarding variances under this Paragraph shall be given in a manner consistent with the requirements of G.S. 143-215.4(a) and (c) applicable to proceedings of the State Environmental Management Commission.

## **1.5306 HEARINGS**

### **(a) SCOPE, DEFINITIONS, DELEGATIONS**

#### **(1) PURPOSE OF THIS SECTION**

These rules and regulations delineate and reference the rules of procedure for conducting all hearings allowed or required by the provisions of this Ordinance.

#### **(2) POWER TO CONDUCT PUBLIC HEARINGS**

The Commission or a hearing body designated by the Commission shall conduct all hearings. The Commission may, in its discretion, sit as a whole as the hearing body or designate three or more of its members to sit as the hearing body for any hearing. Each member sitting on the hearing body must be disinterested in the subject matter of the hearing. The Director is authorized to establish the hearing dates, issue notices and perform other administrative functions in accordance with these Regulations.

#### **(3) CANCELLATION OF APPEAL HEARING**

Notwithstanding any provisions of this Regulation to the contrary, an appeal hearing before the Commission under MCAPCO Regulation 1.5213 - "Action on Application; Issuance of Permit" Paragraph (e) shall not be required if the Director and the applicant agree to bypass such hearing. In such case, the decision of the Director as in effect at the time of such agreement shall be considered final administrative action subject to judicial review under MCAPCO Regulation 1.5307 - "Judicial Review". This Paragraph shall not apply to public hearings under MCAPCO Regulation 1.5213 - "Action on Application; Issuance of Permit" Paragraphs (g) and (j).

### **(b) ADMINISTRATIVE HEARINGS**

#### **(1) OPPORTUNITY FOR HEARING**

An opportunity for hearing shall be provided to parties in a contested case. A contested case is a proceeding where the legal rights, duties and privileges of a party are required by law to be determined by the Commission after an adjudicatory hearing. This includes, but is not limited to the following instances: the denial, modification, revocation, or issuance with unacceptable conditions of air quality permits.

- (2) REQUEST FOR HEARING, GRANTING RESCHEDULING
- (A) Any person entitled to a hearing under this Regulation may request a hearing within 30 days after having been notified of the action taken or proposed to be taken. Failure to do so constitutes waiver of the opportunity for a hearing.
  - (B) The request for a hearing must contain:
    - (i) Name and address of the requesting party.
    - (ii) A specific request for hearing.
    - (iii) A clear reference to the action being challenged.
    - (iv) A clear statement of the factual issues in dispute and/or the questions of law involved.
  - (C) The request must be filed with the:  
Director, Mecklenburg County Air Quality  
2145 Suttle Avenue  
Charlotte, NC 28208-5237
  - (D) The Director shall grant the request if the person making the request is a party to a contested case and shall issue a notice in accordance with MCAPCO Regulation 1.5306 - "Hearings" Subparagraph (b)(3).
  - (E) The hearing shall be scheduled by the Director for a date not later than 60 days following the receipt of the hearing request, unless a later date is agreed to by the requesting party.
  - (F) Any party may request a continuance or rescheduling of the hearing. The Commission will grant this request and reschedule the hearing within a reasonable time if all parties consent or if good cause is presented by the requesting party.
- (3) NOTICE: WAIVER
- (A) Upon the granting of a hearing request or where a hearing is required before taking action, notice shall be given to all parties at least 30 days prior to the hearing by personal service, or registered or certified mail, or if neither is possible then as provided in G.S. 1A-1, Rule 4(j).
  - (B) The notice shall inform the parties of the date, hour, location, and the nature of the hearing; the statutory and regulatory provisions involved; and the factual allegations to be determined.
  - (C) Failure to appear at the hearing constitutes waiver of the opportunity for a hearing, and the hearing body, if less than the full Commission, will recommend that the Commission render a default decision.
- (4) PLACE OF THE HEARING  
The Director shall establish the location for the hearing and the designated location will be set forth in the notice of the hearing.
- (5) PROCEDURES
- (A) All administrative hearings will be held in accordance with Article 3, Chapter 150B, of the General Statutes of North Carolina.
  - (B) In addition to the procedures set forth in Article 3, G.S. 150B, contested cases involving, but not limited to, the denial, issuance with unacceptable conditions, modifications, revocation of air quality permits; hearings prior to the issuance of

contested air quality special orders; and, prior to the granting of an air quality variance, shall be conducted in compliance with the following provisions:

- (i) Hearings shall be held upon not less than 30 days written notice given to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearings is to be held, unless shorter notice is agreed upon by all such parties.
- (ii) The burden of proof at any hearing shall be upon the person or Director, as the case may be, at whose instance the hearing is being held.
- (iii) Following any hearing, the Commission shall afford the parties a reasonable opportunity to submit, within such time as prescribed by the Commission, proposed findings of fact and conclusion of law and any brief in connection therewith. The record in the proceeding shall show the Commission's ruling with respect to each such requested finding of fact and conclusion of law.

- (C) In contested cases involving a hearing prior to the issuance of an order withholding air quality permits, the procedures set forth in MCAPCO Regulation 1.5306 - "Hearings" Parts (b)(5)(A) and (B) above will apply as well as those specifically set out by statute, except as to provisions of notice which are inconsistent with the following:

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of the hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State and federal government; and to any other person whom the Commission believes to have a direct interest therein.

(6) JUDICIAL REVIEW

Any decision of the Commission after a hearing under this Regulation shall be subject to judicial review under MCAPCO Regulation 1.5307 - "Judicial Review".

### **1.5307 JUDICIAL REVIEW**

Any person against whom a final order or administrative decision is entered by the Commission or hearing body or under this Ordinance, may request judicial review of the order or decision within 30 days after personal service or receipt of written notice by registered mail of the order or decision. No review will be allowed after 30 days except for good cause shown the Judge of the Mecklenburg County Superior Court. Judicial review will be conducted by the Superior Court of Mecklenburg County and as provided by in G.S. 150B. Such judicial review will be available also to the Director in the event of a decision by the Mecklenburg County Air Quality Commission adverse to the Director, including but not limited to decisions with respect to construction permits and certificates of operation under MCAPCO Section 1.5200 - "Air Quality Permits".

