

PART I - ENFORCEMENT

§2109.01 INSPECTIONS

- a. **General.** The Department may enter any premise, except a building used exclusively as a private residence, for the purpose of inspecting any source of air contaminants and associated equipment, and all records, charts, instruments and the like associated therewith or for the purpose of determining compliance with any provision of this Article. As expeditiously as is reasonable, the person responsible for such source shall, upon request, make all records, charts, and the like pertaining to such source available to the Department for inspection and copying.
- b. **Manner of Entry.** Prior to entering any premise, the Department shall make all reasonable efforts to obtain the consent of the owner or operator or his authorized representative, and shall enter at such time and in such manner as is reasonable under the circumstances.
- c. **Search Warrant.**
 1. In accordance with §13.1. of the Air Pollution Control Act, whenever an agent or employee of the Department, charged with the enforcement of the provisions of this Article, has been refused access to property, except a building used exclusively as a private residence, or has been refused the right to examine any air contaminant source or air pollution control equipment or device, or is refused access to or examination of books, papers, and records pertinent to any matter under investigation, or has cause to believe he will be refused such entry or access, such agent or employee may apply for a search warrant to any Commonwealth official authorized by the laws of the Commonwealth to issue the same to enable him to have access, examine, and seize such property, air contaminant source, air pollution control equipment or device, or books, papers, and records, as the case may be. It shall be sufficient probable cause to issue a search warrant that the inspection is necessary to properly enforce the provisions of this Article.
 2. This Subsection shall not be construed as restricting or affecting any and all rights otherwise existing which the Department may have to obtain search warrants upon probable cause to believe that any source is being installed, operated, or maintained in violation of any provision of this Article.

§2109.02 REMEDIES

{Paragraphs a.3 & 6 amended September 6, 1995, effective October 20, 1995}

- a. **General.** In addition to any remedy specifically authorized by any other provision of this Article or the laws of the Commonwealth or the United States, the Department may pursue any one or more of the following remedies for the violation of any requirement of this Article:
 1. The issuance of an Enforcement Order as authorized by §§2109.03, 2109.04, and 2109.05 of this Article, including Emergency Orders to restrain or enjoin immediately and effectively any person from engaging in any activity in violation of a regulation or permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
 2. The revocation of any applicable License or Installation or Operating Permit.
 3. The initiation of a summary criminal proceeding before a district justice, magistrate, or justice of the peace as authorized by §§9. and 12.g. of the Air Pollution Control Act, 35 P.S. §§4009. and 4012(g).

4. The assessment of a civil penalty as authorized by §2109.06 of this Article;
 5. A request, from the Department or the Board of Health, to the Board of County Commissioners to initiate in a court of competent jurisdiction an action for an injunction or other equitable relief and may include a request for civil penalties in the amount set forth in §2109.06 of this Article, including to restrain or enjoin immediately and effectively any person from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
 6. A petition, from the Department or the Board of Health, to the Board of County Commissioners to request the District Attorney to initiate such other criminal action as may be appropriate, as authorized by §§9. and 12.g. of the Air Pollution Control Act, 35 P.S. §§4009. and 4012(g); and/or,
 7. [Not in SIP]
- b. **Other Rights and Remedies Preserved.** Nothing in this Article shall be construed as impairing any right or remedy now existing or hereafter created in equity, common law or statutory law with respect to air pollution, nor shall any court be deprived of such jurisdiction for the reason that such air pollution constitutes a violation of this Article.
- c. **Remedies Concurrent.** It is expressly declared that the remedies authorized by this Article shall be concurrent and that the existence of pendency of any remedy shall not in any manner prevent the Department from seeking or exercising any other remedy, whether authorized by this Article or otherwise existing at law or in equity.

§2109.03 ENFORCEMENT ORDERS *{Paragraph b.5 amended September 6, 1995, effective October 20, 1995}*

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that any source is being operated in violation of any provision of this Article, including any provision of any permit or license issued pursuant to this Article, it may order the person responsible for the source to comply with this Article or it may order the immediate shutdown of the source or any part thereof. The issuance of an order to address any violations, including of permit conditions, need not be preceded by the revocation of a permit.
1. — 3. [Not in SIP]
- b. **Form.** Any Enforcement Order issued pursuant to this Section shall:
1. Be in written form and be signed by the Director or the Deputy Director, Bureau of Environmental Quality;
 2. Set forth the basis for such order;
 3. Require the performance of any acts specified by the order as expeditiously as practicable;
 4. Notify the person responsible that he has the right to a hearing as provided by Subsection d below;
 5. Notify the person responsible that the order is enforceable upon issuance and that appeal of an order shall not act as a stay unless the Director so orders.
 6. Notify the person responsible that failure to comply with the order within the times specified therein is a violation of this Article giving rise to the remedies provided by §2109.02 of this Article; and

7. Include the assessment of a civil penalty in accordance with §2109.06 of this Article, if deemed appropriate by the Department.
- c. **Service.** Any Enforcement Order issued pursuant to this Section shall be served upon the person responsible by:
 1. Personally handing him a copy;
 2. Serving him in the manner provided by Rule 1009(b)(2) of the Pennsylvania Rules of Civil Procedure or such other rules as may hereafter be established for the service of a complaint in a civil action; or
 3. Mailing a copy to him at his last known address by registered or certified mail, return receipt requested.
 - d. **Hearings.** Any person who is aggrieved by an Enforcement Order issued pursuant to this Section shall, upon request, be granted a hearing in accordance with the provisions of Article XI, Rules and Regulations of the Allegheny County Health Department, or in accordance with such other procedures as may hereafter be established by the Board of County Commissioners. In all cases involving the provisions of this Article, hearings granted pursuant to this Subsection:
 1. Shall not be held before employees of the Department who are assigned to the Bureau of Environmental Quality Division of Air Quality; and
 2. Shall be held before a hearing officer who represents the public interest and does not derive any significant portion of his income from persons subject to the Clean Air Act or this Article, as defined in §2101.20 of this Article; except that, if a panel of three (3) or more persons is appointed to hear the case, a majority of the panel shall represent the public interest and shall not derive any significant portion of his income from persons subject to the Clean Air Act or this Article. Prior to being appointed to act as a hearing officer; each proposed appointee shall file with the Chief Clerk of the County of Allegheny a Disclosure Statement as required by Subsection f of §2109.06 of this Article. Said Disclosure Statement shall be subject to the public inspection provisions of this Article.
 - e. **Violations.** Failure to comply with any Enforcement Order within the times specified therein shall be a violation of this Article and a public nuisance giving rise to the remedies and penalties provided by §§2109.02 and 2109.06 of this Article. In addition to such remedies and penalties, the Department may immediately revoke such order and may pursue any other remedy as if such order has never existed.
 - f. **Other Remedies Unaffected.** The issuance of an Enforcement Order shall in no manner preclude or affect the right of the Department to pursue other remedies as are provided by §2109.02 for violations of this Article, whether occurring before or after the effective date of the order. The issuance of an Enforcement Order shall not be construed as a revision to the SIP for the Commonwealth of Pennsylvania and shall in no manner preclude or affect the right of the United States, the Commonwealth, or any citizen to enforce that portion of the SIP applicable to Allegheny County pursuant to the provisions of the Clean Air Act and the Air Pollution Control Act.

§2109.04 ORDERS ESTABLISHING AN ADDITIONAL OR MORE RESTRICTIVE STANDARD

- a. **General.** Whenever the Department finds, on the basis of any information available to it, that emissions from any source are causing or significantly contributing to the exceedance of any ambient air quality standard established by §2101.10 of this Article at any location within the Commonwealth, that such

emissions violate the requirements of §2101.12 of this Article relating to interstate pollution, or that such emissions may otherwise reasonably be anticipated to endanger the public health, safety or welfare, it may order the person responsible for such source to comply with an additional or more stringent emission limitation than established by this Article or it may order the immediate shutdown of the source or any part thereof.

- b. **Form, Service and Hearings.** Any order issued pursuant to this Section shall be in the form, and shall be served, as provided by §2109.03 of this Article. Upon request, any person who is aggrieved by an order issued pursuant to this Section shall be granted a hearing as provided by §2109.03 of this Article.
- c. **Emergency Power Unaffected.** The issuance of an order pursuant to this Section shall in no manner preclude or affect the power of the Department to issue an Emergency Order under §2109.05 of this Article.
- d. **Violations.** Failure to comply with any order issued pursuant to this Section within the time specified therein shall be a violation of this Article giving rise to the remedies provided by §2109.02 of this Article. In addition to such remedies, the Department may immediately revoke such order and may pursue any other remedy as if such order had never existed.

§2109.05 EMERGENCY ORDERS

- a. **General.** Whenever the Department determines, on the basis of any information available to it, that an emergency exists that necessitates immediate action to protect the public health, safety or welfare, it may, without prior notice, issue an Emergency Order requiring whatsoever action it deems advisable to meet the emergency. Notwithstanding any other provision of this Article, an Emergency Order shall be effective at once and shall be complied with immediately.
- b. **Form and Service.** Insofar as possible in light of the necessity for immediate action, an Emergency Order shall be in the form, and shall be served, as provided by §2109.03 of this Article.
- c. **Hearings.** Upon request, any person who is aggrieved by an Emergency Order shall be granted a hearing as provided by §2109.03 of this Article; provided, however, that an Emergency Order shall continue in full force and effect notwithstanding the pendency of any such appeal.
- d. **Violations.** Failure to immediately comply with an Emergency Order shall be a violation of this Article giving rise to the remedies provided by §2109.02 of this Article.

§2109.06 CIVIL PROCEEDINGS *{Paragraph a.1 amended September 6, 1995, effective October 20, 1995}*

- a. **General.**
 - 1. In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this Article, or any order or permit issued pursuant to this Article, and in accordance with §§9.1. and 12.g. of the Air Pollution Control Act, the Department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed \$15,000 per day for each violation which occurs on or after the effective date of this Article but not later than July 9, 1996, and \$25,000 per day for each violation which occurs after July 9, 1996.
 - 2.— 4. [Not in SIP]
 - 5. **Hearings.** Any person who is aggrieved by a Civil Penalty assessed pursuant to this Section shall, upon request, be granted a hearing in accordance with the provisions of Article XI, Rules and Regulations of the Allegheny County Health Department, or in accordance with such other

procedures as may hereafter be established by the Board of County Commissioners.

b. **Penalty Determination.**

1. In determining the amount of the penalty, the Department shall consider: the wilfulness of the violation; the actual and potential harm to the public health, safety, and welfare; the damage to the air, soil, water, and other natural resources of the County and their uses; the economic benefit gained by such person by failing to comply with this Article; the deterrence of future violations; the costs of the Department; the size of the source or facility; the compliance history of the source; the nature, frequency, severity, and duration of the violation; the degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether or not the violation was voluntarily reported; other factors unique to the owners, operators, or other responsible parties of the source or facility; and other relevant factors.
2. In determining the economic benefit gained by such person, the Department may use the formulas contained in the current Civil Penalty Policy published by the EPA, and/or the regulations promulgated by EPA pursuant to Section 120 of the Clean Air Act, as appropriate.

- c. **Board Costs.** Whenever the Department upholds, under Article XI, a penalty assessed, or an order or permit issued, under this Article, the Department shall also assess the owner, operator, and other responsible parties of the subject source the board costs for such hearing which shall be in the amount of \$50 plus the actual costs incurred by the County for the transcribing and copying of the record of the hearing.

§2109.07 [Not in SIP]

§2109.08 [Not in SIP]

§2109.09 [Not in SIP]

§2109.10 APPEALS

In accordance with State Law and County regulations and ordinances, any person aggrieved by an order or other final action of the Department issued pursuant to this Article or any unsuccessful petitioner to the Administrator under Part C Subpart 2 of this Article shall have the right to appeal the action to the Director in accordance with the applicable County regulations and ordinances.