

Chapter 121

AIR POLLUTION

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[HISTORY: Adopted by the City Council of the City of Rahway 7-9-1984 by Ord. No. A-12-84 as Ch. 65 of the 1984 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Fire prevention — See Ch. 209.

Incineration of recyclable material — See Ch. 357, Art. IV.

§ 121-1. Findings and declaration of policy.

It is hereby declared that pollution of the atmosphere by smoke, cinders, soot, fly ash, gases, fumes, vapors, odors, dust and other contaminants is a menace to the health, welfare and comfort of the residents of the City of Rahway and a cause of substantial damage to property. For the purpose of controlling and reducing atmosphere pollution, it is hereby declared to be the policy of the City of Rahway to minimize air pollution as herein defined and to prohibit excessive emission of the same; to establish standards governing the installation, maintenance and operation of equipment and appurtenances relating to combustion which are a source or potential source of air pollution; and, in furtherance of this purpose, to cooperate and coordinate these efforts with the State Department of Environmental Protection, Bureau of Air Pollution Control.

§ 121-2. Definitions.

Meaning of certain words. The following terms, wherever used herein or referred to in this chapter, shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

AGENCY — The Middlesex County Environmental Health Agency.[Amended 7-9-1984 by Ord. No. A-12-84]

AIR CONTAMINANT — Solid particles, liquid particles, vapors or gases which are discharged into the outdoor atmosphere.

AIR POLLUTION — The presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as are, or tend to be, injurious to human health or welfare, to animal or plant life or to property or would unreasonably interfere with the enjoyment of life or property throughout the city as shall be affected thereby, and excludes all aspects of employer-employee relationship as to health and safety hazards.

DEPARTMENT — The Department of Environmental Protection.

DILUTION GAS — Air or gas from any source whatsoever added to the source gas emitted from a source of operation.

DIRECT HEAT EXCHANGER — Equipment in which heat from the combustion of fuel is transferred to a substance being heated so that the latter is contacted by the products of combustion and may contribute to the total effluent.

DIRECTOR — Executive Director of the Central Jersey Regional Air Pollution Control Agency or such agency as is designated by the city. **[Amended 7-9-1984 by Ord. No. A-12-84]**

ECONOMIC POISONS — Those chemicals used as insecticides, rodenticides, fungicides, herbicides, nematocides or defoliantes.

EQUIPMENT — Any device capable of causing the emission of an air contaminant into the open air, and any stack, chimney, conduit, flue, duct, vent or similar device connected or attached to or serving the equipment. This shall include equipment in which the preponderance of the air contaminants emitted is caused by the manufacturing process.

FUEL — Solid, liquid or gaseous materials used to produce useful heat by burning.

FUEL-BURNING EQUIPMENT — Any furnace, boiler, water heater, device, mechanism, stoker, burner, stack, oven, stove, kiln, still or other apparatus, or a group or collection of such units in the process of fuel-burning for the generation of heat or power. Refuse-burning equipment shall be considered "incinerators" as herein defined and not as "fuel-burning equipment" under this definition. Ovens, stoves or ranges used exclusively for domestic cooking purposes are not included herein.

INCINERATOR — Any device, apparatus, equipment or structure used for destroying, reducing or salvaging by fire any material or substance, including but not limited to refuse, rubbish, debris or scrap, or facilities for cremating human or animal remains.

INDIRECT HEAT EXCHANGER — Equipment in which heat from the combustion of fuel is transferred by conduction through a heat-conducting material to a substance being heated, so that the latter is not contacted by, and adds nothing to the products of, combustion.

INTERNAL CROSS-SECTIONAL DIMENSION — Any maxilinear perpendicular distance from an inside wall of a stack or chimney to the inside of an opposite wall, such as the diameter of a circular cross section or the length or width of a rectangular cross section.

LIQUID PARTICLES — Particles which have volume but are not of rigid shape and which, upon collection, tend to coalesce and create uniform homogeneous films upon the surface of the collecting media.

MANUFACTURING PROCESS — Any action, operation or treatment embracing chemical, industrial, manufacturing or processing factors, methods or forms, including but not limited to furnaces, kettles, ovens, converters, cupolas, kilns, crucibles, stills, dryers, roasters, scrubbers, grinders, mixers, reactors, regenerators, separators, filters, reboilers, columns, classifiers, screens, quenchers, cookers, digesters, towers, washers, scrubbers, mills, condensers or absorbers.

MARINE INSTALLATION — Equipment for propulsion, power or heating on all types of marine craft and floating equipment.

MOBILE SOURCE — Equipment designed or constructed to be portable or movable from one location to another, including but not limited to aircraft, locomotives operating on rails, tractors, earthmoving equipment, hoists and mobile power generators.

MOTOR VEHICLE — Any vehicle propelled otherwise than by muscular power, except such vehicles as are run only upon rails or tracks.

ODOR — A property of a substance which affects the sense of smell.

OPACITY — The property of a substance which renders it partially or wholly obstructive to the transmission of visible light expressed as the percentage to which the light is obstructed.

OPEN BURNING — Any fire wherein the products of combustion are emitted into the open air and are not directed thereto through a stack or chimney.

OPERATOR — Any person who has care, custody or control of a building or premises, or a portion thereof, whether with or without knowledge of the owner thereof.

OWNER — Any person who, alone or jointly or severally with others, shall have legal or equitable title to any premises, with or without accompanying actual possession thereof, or who shall have charge, care or control of any premises, or part thereof, including but not limited to a dwelling or dwelling unit as owner or agent of the owner or as fiduciary, including but not limited to executor, administrator, trustee, receiver, guardian or as a mortgagee in possession, regardless of how such possession was obtained. Any person who is a lessee or sublessee of all or any part of any premises, including but not limited to a dwelling or dwelling unit, shall be deemed to be a co-owner with the lessor and shall have joint responsibility with the owner over the premises or portion thereof so leased or subleased.

PARTICLES — Any material except uncombined water, which exists in finely divided form as liquid particles or solid particles at standard conditions.

PERSON — Includes corporations, companies, associations, societies, firms, partnerships and joint-stock companies, as well as individuals.

POTENTIAL EMISSION RATE — The mass rate of air contaminants emitted or to be emitted through a stack or chimney into the outdoor air, exclusive of any type of control apparatus.

REFUSE — All putrescible and nonputrescible wastes, except body wastes, and shall include, but not be limited to, garbage, rubbish, yard trimmings, leaves, ashes, street cleanings, dead animals, abandoned automobiles and solid particles and industrial wastes.

RINGELMANN SMOKE CHART — Ringelmann's Scale for Grading the Density of Smoke, published by the United States Bureau of Mines, or any chart, recorder, indicator or device for the measurement of smoke density which is approved by the State Department of Environmental Protection of the State of New Jersey, as the equivalent of said Ringelmann's Scale.

RUBBISH — Solids not considered to be highly flammable or explosive, and shall include but not be limited to rags, old clothes, leather, rubber, carpets, wood, excelsior, paper, ashes, tree branches, yard trimmings, furniture, tin cans, glass, crockery, masonry and other similar materials.

SALVAGE OPERATIONS — Any business, trade or industry engaged, in whole or in part, in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

SMOKE — Small gasborne and airborne particles arising from a process of combustion in sufficient number to be observable.

SOLID PARTICLES — Particles of rigid shape and definite volume.

SOURCE GAS — Air or gases passed through or generated by a source operation and discharged from the source operation.

STACK OR CHIMNEY — A flue, conduit or opening designed and constructed for the purpose of

emitting air contaminants into the outdoor air.

STANDARD CONDITIONS — Seventy degrees Fahrenheit and one atmosphere pressure (14.7 pounds per square inch or 760 millimeters of mercury).

TRADE WASTE — All solid or liquid material or rubbish resulting from construction, building operations or the prosecution of any business, trade or industry, and shall include, but not be limited to, plastic products, carton, paint, grease, oil and other petroleum products, chemicals, cinders and other forms of solid or liquid waste materials.

VISIBLE SMOKE — Smoke which obscures light to a degree readily discernible by visual observation.

§ 121-3. Open-air burning.

No person shall cause, suffer or permit open burning of refuse or plant life or conduct a salvage operation by open burning.

§ 121-4. Smoke emissions.

A. Smoke emissions from stationary indirect heat exchangers.

(1) Prohibited discharges.

- (a) No person shall cause, suffer, allow or permit visible smoke to be emitted into the outdoor air from the combustion of fuel in any stationary indirect or direct heat exchanger having a rated hourly capacity of less than 200,000,000 British thermal units (Btu) gross heat input or discharging through a stack or chimney having an internal cross-sectional dimension of less than 60 inches.
- (b) No person shall cause, suffer, allow or permit smoke, the shade or appearance of which is darker than No. 1 on the Ringelmann Smoke Chart or greater than an opacity of 20%, exclusive of water vapor, to be emitted into the outdoor air from the combustion of fuel in any stationary indirect or direct heat exchanger having a rated hourly capacity of 200,000,000 British thermal units or greater gross heat input or discharging through a stack or chimney having all internal cross-sectional dimensions of 60 inches or greater.

(2) The provisions of Subsection A(1)(a) and (b) shall not apply to smoke which is visible for a period of not longer than three minutes in any consecutive thirty-minute period.

B. Smoke emissions from marine installations.

- (1) No person shall cause, suffer, allow or permit smoke, the shade or appearance of which is darker than No. 1 on the Ringelmann Smoke Chart or greater than an opacity of 20%, exclusive of water vapor, to be emitted into outdoor air from the combustion of fuel in the indirect heat exchanger of any marine installation.
- (2) The provisions of Subsection B(1) shall not apply to smoke which is visible for a period of not longer than three minutes in any consecutive thirty-minute period.

C. Smoke emissions from the combustion of fuel in mobile sources. No person shall cause, suffer, allow or permit smoke, the shade or appearance of which is darker than No. 2 on the Ringelmann Smoke Chart or greater than an opacity of 40%, exclusive of water vapor, to be emitted into the outdoor air from the combustion of fuel in any mobile source for a period of more than 10 consecutive seconds.

- D. Smoke emissions from stationary internal-combustion engines and stationary turbine engines. No person shall cause, suffer, allow or permit smoke, the shade or appearance of which is darker than No. 1 on the Ringelmann Smoke Chart or greater than an opacity of 20%, exclusive of water vapor, to be emitted into the outdoor air from the combustion of fuel in any stationary internal-combustion engine or any stationary turbine engine for a period of more than 10 consecutive seconds.
- E. Exceptions. The provisions of this section shall not apply to any motor vehicle while operating upon the public highways.

§ 121-5. Incinerators.

- A. Permit required. No person shall operate, and no owner or operator of any building in the city shall permit the operation of, an incinerator without a duly issued permit issued by the Building Inspector and/or the Agency on recommendation of the Director of the Agency in accordance with this section.
- B. Application. Applications for permits to operate incinerators shall be made on forms provided by the Director of the Agency and shall provide such information as may be necessary to determine the nature of the installation, safety and fire-protection devices, design and devices sufficient to ensure against air pollution; necessary information as to person or persons responsible for operation and for maintenance and qualifications therefor; and such other pertinent information as may be necessary for protection of the public welfare, safety, health and interest.
- C. Recommendations as to issuance; conditions; issuance; fee; expiration date. The Director of the Agency shall recommend issuance of a permit for the operation of an incinerator after examining the application and inspecting the facility and being satisfied that it may be operated in accordance with this section. Such permit may be conditioned on improvements being made within a prescribed time or on certain operating restrictions if necessary to comply with this section. All permits shall be issued by the Building Inspector and/or the Agency and shall expire one year following their issuance or at such time prior thereto as any conditions or restrictions shall not be complied with. The annual fee for each incinerator shall be \$25 payable to the City of Rahway, and the procedures governing such permit shall be in accordance herewith.
- D. Sealing of incinerators operated without permit. The Director of the Agency may take all necessary steps to seal any incinerator which has been operated without a duly authorized permit issued pursuant to this section.
- E. Smoke emissions. No person shall cause, suffer, allow or permit smoke from any incinerator, the shade or appearance of which is darker than No. 1 of the Ringelmann Smoke Chart, to be emitted into open air, or emissions of such opacity within a stack or chimney or, exclusive of water vapor, of such opacity leaving a stack or chimney, to a degree greater than the emission designated as No. 1 of the Ringelmann Smoke Chart.
- F. New fires. The provisions of Subsection E shall not apply to smoke emitted during the building of a new fire, the shade or appearance of which is not darker than No. 2 of the Ringelmann Smoke Chart, for a period of no longer than three consecutive minutes; or to emissions of such opacity within a stack or chimney or, exclusive of water vapor, of such opacity leaving a stack or chimney, to a degree which is not greater than the emission designated as No. 2 of the Ringelmann Smoke Chart, for a period no longer than three consecutive minutes.
- G. Visible particles. No person shall cause, allow or permit the emission of particles of unburned waste or ash from any incinerator, which particles are individually large enough to be visible while suspended in the atmosphere.

- H. Odors. No person shall construct, install, use or cause to be used any incinerator which will result in odors being detectable by sense of smell in any area of human use or occupancy.
- I. Limitation on time of operation. No person shall operate, and no owner or operator of any building in the city shall permit the operation of, an incinerator prior to 7:00 a.m. or after 5:00 p.m. of any day, and all operation shall be completely terminated by 5:00 p.m., including complete extinction of the fire and removal of material in a safe manner from the firebox to a noncombustible container; provided, however, that, by special permit, the Agency may, because of exceptional circumstances, permit different hours of operation under such conditions as he shall deem necessary for the health, safety and welfare of the public or of persons in the vicinity.

§ 121-6. Emission of substances causing pollution.

No person or owner of property, and no person having possession or control of property, shall cause, suffer, allow or permit to be emitted into the open air substances in such quantities as shall result in air pollution. The provisions of this section shall not apply to the use of economic poisons.

§ 121-7. Mechanical breakdowns; scheduled maintenance.

Operation of any fuel-burning equipment or incinerator so as to cause emissions in excess of limits set by this chapter which is a direct result of mechanical breakdown or is a direct result of the shutdown of such equipment or a scheduled maintenance is not a violation of this chapter, provided that:

- A. The occurrence has been reported to the Agency at least 24 hours before any scheduled maintenance, and the scheduled maintenance is performed, where possible, during times as specified by the Agency as favorable for atmospheric ventilation; or
- B. The occurrence has been reported to the Agency as soon as reasonably possible in the case of a mechanical breakdown, but in no case more than one hour after the occurrence; and
- C. Repairs are made with maximum reasonable efforts; and
- D. In the event of the emission of air contaminants of a nature or in quantities which would endanger public health or safety, such emission is stopped entirely or reduced to harmless levels as soon as possible; and
- E. Mechanical breakdowns do not occur with such frequency that careless, marginal or unsafe operation is indicated.

§ 121-8. Inspections and right of entry.

- A. All buildings and premises subject to this chapter are subject to inspection from time to time by the city or its duly authorized representatives. All rooms and areas in the building shall be available and accessible for such inspection, which shall be made during usual business hours if the premises is used for nonresidential purposes; provided, however, that inspections may be made at other times if the premises is not available during the foregoing hours for inspections; or there is reason to believe that violations are occurring on the premises which can only be apprehended and proved by inspection during other than the prescribed hours; or there is reason to believe that a violation exists of a character which is an immediate threat to health or safety requiring inspection and abatement without delay. Authorized representatives shall include the Executive Director of the Central Jersey Regional Air Pollution Control Agency and the Health Officer of Rahway and their agents, servants or employees.

- B. Emergency inspections may be authorized without warrant if he has reason to believe that a condition exists which poses an immediate threat to life, health or safety. Such procedure shall take place only where the time required to apply and secure the issuance of a warrant would render ineffective the immediate action necessary to abate the condition. Emergency inspections may be authorized by the Governor in times of air pollution emergencies in accordance with N.J.S.A. 26:2C-32. Where the city or its duly authorized representatives are refused entry or access or are otherwise impeded or prevented by the owner, occupant or operator from conducting an inspection of the premises, such person shall be in violation of this chapter and subject to the penalties hereunder.
- C. Search warrant or access warrant.
- (1) The city may, upon affidavit, apply to the Judge of the Municipal Court of the city for a search warrant setting forth factually the actual conditions and circumstances that provide a reasonable basis for believing that a nuisance or violation of the chapter may exist on the premises, including one or more of the following:
- (a) That the premises requires inspection according to the cycle established by the city for periodic inspections of premises of the type involved.
 - (b) That observation of external conditions (for example, smoke, ash, soot and odors) of the premises and its public areas has resulted in the belief that violations of this chapter exist.
 - (c) Circumstances, such as age and design of fuel-burning equipment and/or systems, types of incinerators, particular use of premises or other factors which render systematic inspections of such buildings necessary in the interest of public health and safety.
- (2) If the Judge of the Municipal Court of the city is satisfied as to the matters set forth in said affidavit, he shall authorize the issuance of a search warrant permitting access to and inspection of that part of the premises on which the nuisance or violation may exist.

§ 121-9. Seeking of injunctions.

If any person violates any of the provisions of this chapter, the Agency may institute a civil action in the Superior Court in the name of the state, on relation of the Agency, for injunctive relief to prohibit and prevent the continuance of such violation or violations.

§ 121-10. Violations and penalties.

- A. Any person who shall violate any of the provisions of this chapter or who shall fail to comply therewith or with any of the requirements thereof shall be punishable by a fine of no more than \$500 or imprisonment for a term not to exceed 90 days, or both. [Amended 7-9-1984 by Ord. No. A-12-84]
- B. The violation of any section or subsection of this chapter shall constitute a separate and distinct offense independent of the violation of any other section or subsection or of any order issued pursuant to this chapter. Each day of violation shall constitute an additional, separate and distinct offense.

§ 121-11. Construal of provisions.

This chapter is to be liberally construed to effectuate the purposes herein described. Nothing herein is to be construed as repealing or abridging the emergency powers of any agency of government except to the extent expressly set forth herein.