

BEFORE THE BOARD OF COUNTY COMMISSIONS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF ADOPTING)
THE LANCASTER COUNTY AIR)
POLLUTION CONTROL RESOLUTION)
OF 1993) RESOLUTION NO. 5069

WHEREAS, it is hereby declared to be the public policy of Lancaster County to achieve and maintain reasonable levels of air quality which will protect human health and safety, by working cooperatively with industries and other entities to prevent injury to plant, animal life, and property; and to promote the public safety, health and welfare of its inhabitants; and

WHEREAS, the need to prevent excessive emission potential air contaminants in the area of Lancaster County (except the City Lincoln and the area over which it exercises zoning jurisdiction), and the resultant effect upon the public safety, health and welfare, requires adoption of a comprehensive and integrated air pollution control program; and

WHEREAS, the County of Lancaster finds it necessary and desirable to make appropriate regulations to provide rules for the prevention, abatement, removal, and control of air pollution by exercising its powers to promote the public health and welfare of its inhabitants in accordance with Section 23-174.10, (Reissue 1991).

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lancaster County, Nebraska:

Section 1. Title. This Resolution shall be known and referred to as "The Lancaster County Air Pollution Control Resolution of 1993". Resolution Number 3690 entitled "The Lancaster County Clean Air Resolution of 1984" and any amendments thereto are hereby rescinded.

Section 2. Purpose. It is the intent and purpose of this Resolution to provide methods and procedures for the control of air pollution; to achieve and maintain the National Ambient Air Quality Standards; to empower the Director to investigate and abate violations of said standards and regulations; to prescribe the duties of the Director and the Air Pollution Control Advisory Board; and to prescribe penalties for violations of this Resolution as

adopted in accordance therewith. In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, the Director shall have the power to implement and enforce an air pollution control program within the Lancaster County under subsection (23) of Section 81-1504 or subsection (1) of Section 81-528 which program shall be consistent with the Clean Air Act (Act), as amended (42 U.S.C. 7401 et seq.). This Resolution together with the 1993 Lincoln-Lancaster County Air Pollution Control Program adopted by Resolution No. 5066 and implemented by an interlocal agreement with the City of Lincoln comprise the Lancaster County Air Pollution Control Program.

Section 3. Definitions. Unless otherwise defined, or a different meaning is clearly required by context, the following words and phrases shall have the following meanings:

Act shall mean the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust, fumes, mist, smoke, odor, vapor, gas, or other gaseous fluid, or particulate substance matter differing in composition from or exceeding in concentration the natural components of the atmosphere.

Air pollutant or air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof present in the atmosphere in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life.

Air Pollution Control Program shall mean this Resolution and the 1993 Lincoln-Lancaster County Air Pollution Control Program adopted by Resolution No. 5066 and implemented by an interlocal agreement by the City of Lincoln and County of Lancaster to implement and enforce the Act.

Ambient air shall mean the portion of the atmosphere, external to buildings, to which the general public has access.

Board of Health shall mean the Lincoln-Lancaster County Board of Health.

Complaint shall mean any charge, however informal, to or by the Department that any person or agency, private or public, is polluting the air or is violating the provisions of the Air Pollution Control Program.

Control and controlling shall mean prohibition of contaminants as related to air pollution.

Department shall mean the Lincoln-Lancaster County Health Department.

Director shall mean the Health Director of the Lincoln-Lancaster County Health Department, or any representatives, agents, or employees of the Director.

Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof.

Garbage shall mean all animal, fruit, or vegetable waste residue which is produced by preparation, dressing, use, cooking, dealing in, or storage of meats, fish, fowl, fruits, vegetables, cereals, or grains for human consumption, and coffee or tea grounds.

Odor shall mean that property of an air contaminant detectable by the Department, beyond the boundary line of the property on which the source is located.

Odorous emission shall mean any objectionable odor detectable upon investigation by the Department beyond the boundary line of the property on which the source of the emission is located. Odorous emission shall not include odors from:

- (1) Single family dwellings;
- (2) Restaurants other establishments for the purpose of preparing food employing less than five persons;
- (3) Materials with odors added for safety purposes;
- (4) Necessary materials where no suitable substitute is available and where the best modern practices to minimize odor are employed.

Open burning shall mean the burning of any matter in such a manner that the products of combustion resulting from such fires are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

Owner or operator shall mean any person who owns, leases, operates, controls, or supervises a stationary source.

Person shall mean any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof or any legal successor, representative, agent, or agency of the foregoing.

Refuse shall mean and include garbage, rubbish, ashes, street refuse, dead animals, vehicles and parts thereof, industrial wastes, construction wastes, sewage treatment residue, leaves and grass, and any other waste matter or material which accumulates in the conduct of a household, business establishment, shop, or factory of any kind or nature, and any other combustible waste material containing carbon in a free or combined state.

Salvage operation shall mean any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

Source shall mean any factory, grain elevator, machine, industrial plant, real or personal property, or person contributing to air pollution.

Stationary source shall mean any building, structure, facility, or installation which emits or may emit any air contaminant.

Section 4. Director Powers and Duties.

- (a) The duties of the Director shall include the investigation, prevention, and abatement of air pollution from any source and enforcing the provisions of the Air Pollution Control Program.
- (b) The Director shall have the power and duty to:
 - (1) Make such inspections and tests as the Director deems necessary to determine compliance with the provisions of the Air Pollution Control Program and to require the submission of air contaminant emission information in connection with such inspections, tests, and studies.
 - (i) Reports shall be made on forms furnished by the Department.
 - (ii) Director shall determine what information is required for reporting purposes, the persons to submit the information required, and the means maintaining current status of the information. All emission data furnished to or obtained by the Department concerning one or more air contaminant sources shall be made available during business hours for inspection by the public as provided by the Act.
 - (2) Exercise general supervision of the administration and enforcement of the Act and the Air Pollution Control Program;
 - (3) Develop comprehensive programs for the prevention, control, and abatement of new or existing sources of air pollution;
 - (4) Advise, consult, and cooperate with other agencies of the state, the federal government, and with affected groups, political subdivisions, and industries;
 - (5) Act as the local air pollution agency, for all purposes of the Act and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions,

which loans and grants shall not be expended for other than the purposes for which provided;

- (6) Collect and disseminate information and conduct educational and training programs relating to air pollution and the prevention, control, and abatement of such pollution;
- (7) Issue, modify, or revoke orders:
 - (i) Prohibiting or abating discharges of air pollutants;
 - (ii) Requiring the construction of control systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control, or abate air pollution;
- (8) Perform the following:
 - (i) Hold hearings required by the Air Pollution Control Program and give notice thereof,
 - (ii) Administer oaths, and
 - (iii) Make such testimony as the Director deems necessary.
 - (iv) Any of these powers may be exercised on behalf of the Director by a hearing officer designated by the Director;
- (9) Require under such conditions as the Director may prescribe, the submission of such plans, specifications, and other information as the Director deems necessary to carry out the Air Pollution Control Program. When deemed necessary by the Director, such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska. Nothing in this section shall be construed to authorize the Director to specify the type, design, method of installation, or type of construction of any equipment of manufacturing processes;
- (10) Issue, continue in effect, revoke, modify, or deny permits, under such conditions as the Director may prescribe and consistent with the Act and the Air Pollution Control Program:
 - (i) To prevent, control, or abate air pollution,
 - (ii) For the discharge of air pollutants, and
 - (iii) For the installation, modification, or operation of control systems or any parts thereof;
- (11) Require proper maintenance and operation of control systems;

- (12) Exercise all incidental powers necessary to carry out the purposes of the Act and the Air Pollution Control Program;
- (13) Require access to existing and available records relating to:
 - (i) Emissions or discharges which cause or contribute to air pollution; or
 - (ii) The monitoring of such emissions or discharges;
- (14) Obtain such scientific, technical, administrative, and operational services including laboratory facilities, by contract or otherwise, as the Director deems necessary;
- (15) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of the Act and the Air Pollution Control Program;
- (16) Consult with any person proposing to construct, install, or otherwise acquire an air contaminant source or a device or system for control of such source, upon request of such person, concerning the efficacy of such device or system or concerning the air, land, or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with the Act or the Air Pollution Control Program, or any other provision of law;
- (17) Require all persons engaged or desiring to engage in operations which result or which may result in air pollution to secure a permit prior to installation or operation or continued operation;
- (18) Enter and inspect or cause to be inspected, during reasonable hours, any building, facility, or place, as provided in the Uniform Inspections Code;
- (19) Receive or initiate complaints of air pollution, hold hearings in connection with air pollution, and institute legal proceedings for the control or prevention of air, water, or land pollution, and for the recovery of penalties, in accordance with the Act and the Air Pollution Control Program;
- (20) Conduct tests and take samples of air contaminants, fuel, process materials, or any other substance which affects or may affect discharges or emissions of air contaminants from any source, giving the owner or operator a receipt for the sample obtained;
- (21) Develop and enforce compliance schedules, under such conditions as the Director may prescribe and consistent with the Act and the Air Pollution Control Program to prevent, control, or abate air pollution;

- (22) Advise planning agencies regarding air use aspects of plans and planning functions in order to prevent land use conflicts with air quality needs;
- (23) Conduct studies to determine what is necessary to meet assigned responsibilities;
- (24) Advise bodies with zoning responsibilities and make recommendations concerning both proposed and adopted zoning regulations affecting air pollution control;
- (25) Make recommendations for revisions of this Resolution and the Air Pollution Control Program;
- (26) Administer grants or other funds or gifts received for the purpose of carrying out any of the purposes of the Air Pollution Control Program, subject to the laws, regulations and resolutions of the State of Nebraska and the County of Lancaster; and
- (27) Consult with the Air Pollution Control Advisory Board and the Lancaster County Board of Commissioners on matters pertaining to the Air Pollution Control Program.

Section 5. Air Pollution Control Advisory Board; Appointment and Duties

As provided for in the 1993 Lincoln-Lancaster County Air Pollution Program:

- (a) The Mayor of the City of Lincoln shall appoint, with approval of the Lincoln City Council and the Lancaster County Board of Commissioners, an advisory board of nine members, four of whom shall be from industry. The Director and a member of the Lancaster County Board of Commissioners shall be ex officio members of the advisory board, and the Director shall serve as secretary to the advisory board. The City Attorney or a designated representative, and the Planning Director or a designated representative, shall advise the advisory board as necessary.
- (b) The members of the advisory board shall serve for a period of three years . Three original appointees to the advisory board shall serve a term of one year each; three original appointees to the advisory board shall serve a term of two years each; and three original appointees to the advisory board shall serve a term of three years each. Thereafter, all appointments to the advisory board shall be for a term of three years each. Annually, the advisory board shall organize itself by the election from its membership of a president and vice-president who shall not be an ex officio

member. The advisory board shall adopt its own rules and regulations for the conduct of its meetings. The advisory board shall meet at least annually and in addition, shall meet at the call of its president, the Mayor, the City Council, the Lancaster County Board of Commissioners, and the Board of Health, or upon written request signed by five of its members and filed with the secretary of the board.

- (c) The advisory board shall advise the Mayor, City Council, the Lancaster County Board of Commissioners, and the County Board of Health with respect to needed revision in this or any other resolution and on matters concerning the Air Pollution Control Program, and when necessary submit written evaluations of both the Air Pollution Control Program and the Department to the Mayor, City Council, the Lancaster County Board of Commissioners, and the Board of Health.

Section 6. Procedure for Abatement.

If the Director has determined by observation or tests that any act violates the provisions of this Resolution, a violation notice may be issued to the owner, operator, or the agent of either the owner or operator of any source of air pollution. The violation notice shall state the violation and specify the date by which the violation shall be corrected.

If the conditions causing the violation have not been rectified by the time described in the violation notice, the Director may refer the matter to the office of the County Attorney, and the County Attorney may institute the necessary legal proceedings in a court of competent jurisdiction for the purposes of assessing penalties or obtaining an injunction, or both, to secure compliance with the provisions of this Resolution.

Section 7. Appeal Procedure.

- (a) Any person who is aggrieved by a decision, notice, or order of the Director may appeal such decision, notice, or order
- (b) Enforcement of any decision, notice, or order of the Director shall be stayed during the pendency of any appeal properly and timely filed except in cases of emergency as defined by the Air Pollution Control Program or other applicable law.

Section 8. Variance.

Whenever it has been demonstrated to the Director that compliance with this Resolution cannot be effectively and promptly made, the Director may grant a variance as provided in the Air Pollution Control Program.

Section 9. Inspections; How Conducted.

All inspection, survey and examinations of premises conducted pursuant to the provisions of this Resolution relating to air pollution control shall be conducted in accordance with the provisions of the Uniform Inspections Code.

Section 10. Issuance of Building Permit.

No building permit to commence construction or modification of any source for which an application is required under the Air Pollution Control Program shall be issued by the Department of Building and Safety until the Director has issued a permit for construction or modification of the source.

Section 11. Odor Nuisances Prohibited.

- (a) It shall be unlawful to cause or permit odorous emissions from any source except animal confinement and feeding operations. Such violation may be established as follows:
 - (1) Upon complaint of the Director that the odorous emission endangers or tends to endanger the health or safety of the public, or that such emission is unreasonably offensive or objectionable causing unreasonable interference with the use or enjoyment of affected property; or
 - (2) Upon complaint of three or more unrelated people within a thirty-day period at their residences that any detectable odor endangers or potentially endangers health, safety or welfare or is unreasonably offensive or objectionable causing unreasonable interference with the use or enjoyment of the complainant's property.
- (b) It shall be unlawful to cause or permit odorous emissions from animal confinement and feeding operations. Such emissions shall not be a violation where:
 - (1) The owner or operator has employed all reasonable techniques to minimize odor;

- (2) The operation is in compliance with all applicable regulations adopted by the state and zoning regulations of the County;
- (3) The complaint is filed by a person other than a person in lawful possession of the land claimed to be affected by the odor; and
- (4) The complaint is filed by a person who acquired lawful possession of the affected land after the owner or operator began lawful operation.

Section 12. Open Burning.

- (a) Within Lancaster County, except the City of Lincoln and the area over- which the City of Lincoln exercises zoning jurisdiction, the open burning of refuse and salvage materials shall be regulated as follows:
 - (1) Residential, rural residential, agricultural, and common-carrier right-of-way open burning:
 - (i) It shall be unlawful to cause, suffer, allow or permit open burning of refuse on residential, rural residential, agricultural (farm) property or common-carrier right-of-way, when the nearest boundary of the burning site is within one hundred (100) yards of an occupied dwelling, an occupied business structure, school or other institution, park or recreational area, other than what is located on the property where proposed open burning is to take place without first obtaining a Burn Permit as hereinafter provided in Section 13 of this Resolution.
 - (ii) Any refuse burned shall be indigenous to the property of the owner or person in lawful possession of the land.
 - (2) Industrial, commercial (other than salvage operations), institutional (to include schools, hospitals, churches, and related facilities), governmental and community solid waste disposal open burning:
 - (i) It shall be unlawful for governmental, industrial or commercial enterprise, or institutions, or on community solid waste disposal sites, to cause open burning of refuse without having a permit to do so issued by the Director as hereinafter provided in Section 13 of this Resolution.

- (3) It shall be unlawful to intentionally burn any house, barn, shed and other structure without having a permit to do so issued by the Director as hereinafter provided in Section 13 of this Resolution.
- (b) Except as herein provided, regardless of whether a permit for open burning has been issued or not, and regardless of whether neighboring properties are affected or not, it shall be unlawful for any person, or industrial, commercial, government or institutional facility, or solid waste disposal site within Lancaster County to cause, permit, or allow any of the following:
- (1) Burn any garbage or salvage material. Permits shall not be issued for the burning of such materials.
 - (2) Conduct any open burning which allows smoke from the fire to travel onto any street, road or highway in such a way as to obscure the vision of any person operating a vehicle on that street, road or highway.
 - (3) Except as permitted by the Director for fire training purposes, burn or use to start the burning process, any of the following materials:
 - (i) Gasoline, diesel oil, heavy oil, solvents, or other flammable petroleum products.
 - (ii) Treated wood of any kind including railroad ties, treated posts, utility poles, wood paneling and particle board.
 - (iii) Plastic and items containing plastic of any kind.
 - (iv) Rubber and asphaltic products including rubber tires roofing shingles, tar paper, asphaltic siding and sheeting and items containing rubber or asphaltic compounds.
 - (v) Any material being burned for the purpose of salvaging all or part of said material.
 - (vi) Any other chemical material which produces highly toxic smoke or fumes which may endanger the public or firefighters called to extinguish the fire.
 - (4) Conduct open burning which permits smoke from the fire to travel onto a neighboring property, park or recreational area where it becomes a public nuisance to people who occupy the neighboring dwelling, business structure, or are using the park or recreational area.

- (c) The Director or the chief of the appropriate fire department may prohibit any or all open burning when atmospheric conditions or local circumstances make such fires hazardous to health, welfare or safety of persons or property, and all permits for burning shall be subject to such prohibition or cancellation.
- (d) Any person who conducts open burning in Lancaster County must be present at the immediate site of the open burning at all times while the burning occurs. No person shall leave said site unattended until there are no smoldering embers or the fire has been completely extinguished, or both.
- (e) Within Lancaster County, it shall be prima facie evidence that the person who owns, controls, or occupies property on which open burning occurs has caused or permitted said open burning.

Section 13. Open Burning Permits.

- (a) A written application shall be filed with the Director giving reasons why no other practicable method except open burning can be employed to dispose of the refuse involved, the amount and kind of refuse to be burned, the exact location where the burning will take place, including the distances to adjacent structures; and the dates or days and times when the open burning is proposed to be done. Applications from industrial or commercial businesses must be accompanied by payment of a permit fee of fifty dollars per day on which burning is to take place. Said fee shall be credited to the Health Fund.
- (b) The Director shall immediately forward applications to the fire department having jurisdiction over the area in which the burning is to take place for the fire chief's approval. Upon receiving the application back from the fire department with its action noted, the Director shall act upon and notify the applicant within five (5) days.
- (c) The Director is authorized to issue a permit only if:
 - (1) There is no other practical method except open burning which can be employed to dispose of the refuse involved, and
 - (2) The appropriate fire department has approved the application as meeting their fire safety requirements.
 - (3) The fire is being set for purposes of training firefighters who are employed by or members of a rural fire district.

- (d) Applicants may be issued an extended permit covering a period of time not to exceed one year. Such permits may limit the number of times the applicant can burn in a specific time period. As a condition of issuance, specific pollution control procedures or methods may be required by the Director in order to protect the public health.
- (e) It shall be unlawful for the permittee to fail to carry out any control procedures or other conditions established as criteria for issuance of the permit. Said permit may be revoked by the Director at any time a violation of this Resolution is observed or conditions of the permit are not met.

Section 14. Air Pollution Nuisance. Prohibited.

- (a) The emission or escape into the open air from any source or sources whatsoever of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety, or ,welfare of the public, or is unreasonably offensive and objectionable to the public, or shall cause unreasonable injury or damage to property or interfere with the comfortable enjoyment of property or normal conduct of business, is hereby declared to be a public nuisance. It shall be unlawful for any person to cause, permit, or maintain any such public nuisance.
- (b) Nothing in any section of the Air Pollution Control Program shall in any manner be construed as authorizing or legalizing the creation or maintenance of a nuisance as described in this section of this Resolution.

Section 15. Penalty.

Any person who violates any of the provisions of this Resolution or who fails to perform any duty imposed by the same shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period of not to exceed three months or by a fine of not to exceed \$500.00 recoverable with costs, or both such fine and imprisonment. Each day that a violation continues shall constitute a separate and distinct offense and shall be punishable as such. In default of the payment of such fine and costs, the person or, if such person is a corporation, the officers of such corporation may be

imprisoned in the county jail for a period of not more than sixty days and in addition thereto may be enjoined from continuing such violation.

Section 16. Severability.

If any clause, paragraph, subsection or section of this Resolution is held invalid, it shall be conclusively presumed that the Lancaster County Board of Commissioners would have enacted the remainder of this Resolution not directly related to such clause, paragraph, subsection or section.

Section 17. Effective Date.

This Resolution shall take effect upon its execution by the Lancaster County Board of Commissioners.

EXECUTED this _____ day of _____, 2000.

BY THE BOARD OF COUNTY
COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

APPROVED AS TO FORM THIS _____ day of _____, 2000.

Gary E. Lacey
County Attorney

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