

SECTION 5. VARIANCE.

- (A) Any person who owns or is in control of any plant, building, structure, process, or equipment may apply to the Director for a variance from rules or regulations. The Director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the Director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharge involved including, but not limited to:
- (1) The character and degree of injury to or interference with the health and physical property of the people;
 - (2) The social and economic value of the source of the pollution;
 - (3) The question of priority of location in the area involved; and
 - (4) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source
- (B) No variance shall be granted until the Director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (C) Any variance or renewal thereof shall be granted within the requirements of subsection (A) of this section, for time periods and under conditions consistent with the reasons therefore, and within the following limitations:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the Director may prescribe;
 - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable;
 - (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in sub-division (1) or (2) of this subsection, it shall be for not more than one year.
- (D) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Director on account of the variance, no renewal thereof shall be granted unless the Director finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the Director shall give public notice of such application.
- (E) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Director. The granting or denial of a variance or a renewal shall be by final order of the Director.
- (F) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 8.05.070 to any person or his or her property.
- (G) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

ARTICLE 1
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VARIANCE

- (H) The fee associated with issuance of a variance shall be charged at the rate of ~~\$75.00~~ \$100.00 per hour ~~with a minimum fee of \$75.00.~~ The maximum fee shall not exceed ~~\$300.00~~ \$10,000.00.
- (I) Payment of Fees - - any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the variance.

SECTION 6. ANNUAL FEES.

- (A) Applicability -- The provisions of this Regulations and Standards section shall apply to any person who owns or operates a source as defined in Article 2, Section 1 of these Regulations and Standards and is required to obtain any one of the following: 1) A Class I or a Class II operating permit in accordance with Article 2, Section 5 of the Regulations and Standards; 2) A construction permit in accordance with Article 2, Section 17 of the Regulations and Standards; or 3) Any source subject to an applicable requirement (other than permitting) of the Regulations and Standards the nature of which necessitates that the source submit an annual emissions report and/or be the subject of an annual or biannual inspection.
- (B) Calculation of Fee -- Beginning July 1, 1999, owners or operators of sources, identified in paragraph (A) above, shall pay an annual fee. The fee shall be based on the actual emission tonnage as established in the emission inventory for the previous calendar year, beginning with calendar year 1998. For purposes of this section, a pollutant which may be regulated under more than one provision of these Regulations and Standards, need only be counted once. Any temporary source issued an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual fee based on emissions which occurred during the time period the source was located and operated in Lincoln or Lancaster County.
- (1) Fee Schedule:
- (+) ~~Class I sources with actual emissions equal to or greater than 100 tons per year pay only emission fees as required by Article 2, Section 29.~~
- (2) ~~Class I source with actual emissions less than 100 tons per year pay emission fees as required by Article 2, Section 29 plus \$2,000.00.~~
- (3) ~~Class H synthetic minor sources pay \$2,000.00.~~
- (4) ~~"True" Class H sources with actual emissions greater than 20 tons per year pay \$1,400.00.~~
- (5) ~~"True" Class H sources with actual emissions between 10 and 20 tons per year pay \$1,000.00.~~
- (6) ~~"True" Class H sources with actual emissions between 1 and 9.99 tons per year pay \$500.00.~~
- (7) ~~"True" Class H sources with actual emissions less than 1 ton per year pay \$100.00.~~
- (8) Notification fee for a National Emission Standards for Hazardous Air Pollutants (NESPAPS) asbestos project shall be \$265.00 per project.
- (a) Major sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, with the minimum annual emission fee to be no less than \$2,500.00.
- (b) Synthetic Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, with the minimum annual emission fee to be no less than \$1,250.00.
- (c) Minor sources shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, with the minimum annual emission fee to be no less than \$250.00.
- (d) Sources that have obtained a construction permit in accordance with the provisions set forth in Article 2, Section 17, paragraph (P) shall pay annual emission fees as follows:
- (1) If the generator was operated only for emergency use and testing purposes during the previous calendar year, the source will not be required to pay any emission fees.
- (2) If the generator was operated for non-emergency purposes during the previous calendar year, the source shall pay an annual emission fee as required by Article 2, Section 29 of the Regulations and Standards, with the minimum annual emission fee to be no less than \$250.00.
- (e) Notification fee for a National Emission Standards for Hazardous Air Pollutants (NESHAPS) asbestos project shall be \$275.00 per project.

- (f) Area Source Bulk Gasoline Plants subject to 40 CFR Part 63 Subpart BBBBBB that are stand-alone plants or that are located at facilities that are not required to have a Class II operating permit - \$250.00
 - (g) Area Source Gasoline Dispensing Facilities subject to 40 CFR Part 63 Subpart CCCCCC with annual rolling average monthly gasoline throughputs equal to or greater than 100,000 gallons - \$300.00
 - (h) Area Source Paint Stripping and Miscellaneous Surface Coating Facilities subject to 40 CFR Part 63 Subpart HHHHHH
 - (1) Facilities using one ton or less of methylene chloride annually for paint stripping activities and that are not required to have a Class II operating permit - \$125.00
 - (2) Facilities using more than one ton of methylene chloride annually that are not required to have a Class II operating permit - \$250.00
 - (3) Miscellaneous surface coating operations (auto body shops and mobile equipment painting¹ and non auto body shops and non mobile equipment painting²) that are not required to have a Class II operating permit.
 - (aa) Operations with one painter - \$125.00
 - (bb) Operations with two painters - \$250.00
 - (cc) Operations with 3 or more painters - \$500.00
- ¹ The fee shall not apply to a facility that has been granted an exemption by the USEPA, the Nebraska Department of Environmental Quality, or the LLCHD because none of its coatings contain any of the 5 metal hazardous air pollutants (HAPS).
- ² The fee shall not apply to a facility that has certified to the LLCHD that none of its coatings contain any of the five metal HAPS addressed by this rule.

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- (4) Facilities that have petitioned for and have been issued an exemption (auto body shops and mobile equipment painting operations) from the Subpart HHHHHH rule or facilities that have certified to the LLCHD (non auto body shops and non mobile equipment painting operations) that they are exempt from the rule because none of their coatings contain any of the five metal HAPS addressed by this rule shall pay a one time exemption fee of \$250.00¹.

¹Payment of the one time fee assumes that a facility will continue to qualify for exempt status throughout the life of that facility. The exemption or certification fees shall not apply to facilities where all coatings are spray applied with a hand-held device whose paint cup capacity is 3 fluid ounces or less, where coatings are applied by using hand-held non refillable aerosol containers such as spray cans, where coatings are applied using powder coating equipment, where coatings are applied using non spray application methods such as brushing or rolling, or where non atomizing coating application technology (such as flow coating, dip coating and electrodeposition) is utilized.
 - (i) Area Source Plating and Polishing Operations subject to 40 CFR Part 63 Subpart WWWWWW that are not required to have a Class II operating permit - \$500.00
 - (j) Area Source Metal Fabrication and Finishing Facilities subject to 40 CFR Part 63 Subpart XXXXXX that are not required to have a Class II operating permit - \$500.00
- (2) For purposes of this section, the following definitions shall apply:
- (a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2 of

the Regulations and Standards.

- (b) Synthetic Minor source shall mean a any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 2 of the Regulations and Standards . which has accepted a federally enforceable limit to reduce its potential to emit to below the major source thresholds defined in Article 2, Section 2:
- (c) ~~“True” Class II Minor source~~ shall mean a any source which is required by that does not meet the definition of a major source as defined in Article 2, Section 2 of the Regulations and Standards, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (a)(1) of the Regulations and Standards. ~~Article 2, Section 5 to obtain a Class II operating permit whose potential to emit is below the major source thresholds defined in Article 2, Section 2 without physical or operational limitations on its capacity to emit any pollutants.~~
The fee for a temporary source which is a Synthetic Minor shall be pro-rated based on the number of months of the operating year during which the source was located and operated in Lincoln or Lancaster County. The operating year is the number of months during the calendar year that the source was operated. Operation during any part of a month will be counted as one month's operation for fee calculation.

- (C) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.
- (D) Payment of Fees -- Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
- (E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:
- (1) Revocation of the source's operating and/or construction permit; and
 - (2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D) above.
- (F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D) above.
- (G) The rate structure will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health may recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure may be adopted by Resolution of the two governing bodies, individually, as a result of a recommendation by the Board of Health, or at the initiation of either of the two governing bodies.
- (H) All money collected from the permit fees, and air quality service charges provided for herein, shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.

v. April 1999

SECTION 29. OPERATING AND CONSTRUCTION PERMIT EMISSION FEES.

- (A) Applicability--The provisions of this section of the Regulations and Standards section shall apply to any person who owns or operates a source that major source as defined in Section 2 of these Regulations and Standards who is required to obtain a Class I or Class II operating permit in accordance with Article 2, Section 5 of these Regulations and Standards, or is required to obtain a construction permit in accordance with Article 2, Section 17 of these Regulations and Standards.
- (B) Calculation of Fee--Beginning July 1, 1995, owners or operators of major sources, identified in paragraph (A) above, shall pay an annual emission fee for each ton of a regulated pollutant emitted to the air by the facility. Any temporary source issued a Class I an operating permit under Article 2, Section 10 of the Regulations and Standards shall pay an annual emission fee for emissions during the time period the source was located and operated in Lincoln or Lancaster County. The fee shall be based on the actual emission tonnage and as established in the emission inventory for the previous calendar year, beginning with calendar year 1994. For purposes of this section, a pollutant which may be regulated under more than one provision of these rRegulations and sStandards, need only be counted once.
- (1) The emission fee shall be determined by multiplying \$25 per ton of regulated pollutant for fee purposes reported in the annual emission inventory report required in Article 2, Section 6 of these Regulations and Standards. The emission fee shall be increased or decreased annually by the Department in each year, beginning after 1991, by the percentage difference between the Consumer Price Index (CPI) for the most recent year ending before the beginning of such year and the CPI for the year 1989, or as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit programs identified in these Regulations and Standards.
- (2) The emission fee is due and payable on Actual emissions up to and including 4,000 tons per year for each regulated pollutant.
- (C) Any person subject to the requirements of this section who fails to submit an annual emissions inventory report when required by Article 2, Section 6 of these Regulations and Standards shall pay an annual emission fee based on the source's potential to emit as defined in Article 2, Section 1 of these Regulations and Standards.
- (D) Payment of Fees--Any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check, or other authorized transfer, made payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with calendar year 1995, with submission of the annual emission inventory report form. All fees paid in accordance with this section shall be non-refundable.
- (E) Failure to submit the fees required by this section, in addition to other relief allowed by law, shall be cause for:
- (1) Revocation of the source's Class I operating and/or construction permit; and
- (2) Assessment of a late payment fee of 20 percent of the payment due, which late payment fee shall be increased by an additional 10 percent of the original payment due for each additional 30 day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D), above.
- (F) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within 30 days of notice of the assessment in accordance with paragraph (D), above.
- (G) The rate structure will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health shall recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure will be adopted by Resolution of the two governing bodies.
- (H) All money collected from the permit fees, and air quality service charges herein provided for shall be payable to the Lincoln-Lancaster County Health Department and shall be credited to the Air Pollution Control Fund.

SECTION 30. CONSTRUCTION PERMIT FEE.

- (A) For the following activities, a fee shall be charged at the rate of ~~\$95.00~~ \$100.00 per hour but shall not exceed a maximum of ~~\$9,500.00~~ \$10,000.
- (1) Review of an application for a permit for the construction, installation, modification, or reconstruction of processing machines, equipment or devices, fuel burning equipment, and waste incinerators;
 - (2) Development of a draft permit to construct, install, modify, or reconstruct;
 - (3) Review of an application or request to modify an existing permit to construct, install, modify, or reconstruct, whereas the modification(s) is defined as neither an "Administrative Permit Amendment", nor a "Minor Permit Modification" as provided in Article 2, Section 15 of these Regulations and Standards;
 - (4) Development of a modified draft permit to construct, install, modify, or reconstruct;
 - (5) Development of a statement of basis to issue an initial, or modified, permit to construct, install, modify, or reconstruct;
 - (6) Development of a document to provide notice for public participation as provided in Article 2, Section 14 of these Regulations and Standards.
 - (7) Issuance of a construction permit for a nonemergency electrical generator as referenced in Article 2, Section 17 (P), paragraph (1) (h) of these Regulation and Standards.
- (B) Payment of Fees - - any person required to submit fees pursuant to this section, shall submit the fees to the Director of the Department by check or other authorized transfer payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after receipt of issuance of the permit.