

GENERAL PROVISIONS

20.5 BOARD OF HEALTH - RESPONSIBILITY

The District Board of Health of the Washoe County Health District, acting through the District Health Officer and District Health Department, is hereby designated as the air pollution control agency of Washoe County, Nevada and shall exercise all the authority, jurisdiction, powers, (including the power to take all necessary action to secure to Washoe County the benefits of any federal or state legislation concerned with air pollution), and responsibilities that inure to the benefit, or are, or shall be conferred upon and binding upon, a local District Board of Health, pursuant to any of the provisions contained in Chapter 445 or any other Chapter of the Nevada Revised Statutes.

020.0051 BOARD OF HEALTH - POWERS AND DUTIES

Pursuant to the powers and responsibilities that have inured to the benefit of the Board of Health, said Board shall, without excluding any other powers, responsibilities, and authority conferred on said Board in the Nevada Revised Statutes, have the following powers and/or responsibilities:

- A. To adopt and enforce rules and regulations to reduce the release into the atmosphere of any air contaminants originating within the territorial limits of the Washoe County Health District in order to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, aesthetic and historic value within said Health District.
- B. To establish ambient air quality standards in accordance with law.
- C. To make such determinations and issue such orders as may be necessary to implement the provisions of these regulations and to achieve air quality standards in accordance with law.
- D. To institute proceedings to prevent continued violation of any order issued by the Board of Health, Hearing Board, or Control Officer, and to enforce these regulations.
- E. To require access to records relating to emissions which cause or contribute to air pollution.
- F. To apply or and receive grants or other funds or gifts from public or private agencies.
- G. To cooperate and contract with other governmental agencies including the State of Nevada, other states, and the federal government.
- H. To conduct investigations, research and technical studies consistent with the general purposes of the Nevada Revised Statutes.
- I. To establish such emission control requirements, as may be necessary to prevent, abate, or control air pollution.

- J. To require the registration of air pollution sources together with a description of the processes employed, fuels used, nature of emissions and other information considered necessary to evaluate the pollution potential of a source.
- K. To prohibit, regulate or control, as specifically provided in **Section 030.000** through **030.260**, the installation, alteration or establishment of any source capable of causing air pollution.
- L. To issue or deny all requests or applications for a variance or waiver from any of the requirements of these regulations after due consideration of the recommendations of the Hearing Board and Control Officer.
- M. To require the submission of preliminary plans and specifications and other information as the Board deems necessary to process permits required by these regulations.
- N. To enter into and inspect, at any reasonable time, any premises containing an air contaminant source or a source under construction for purposes of ascertaining the state of compliance with these regulations.
- O. To hold any hearing as authorized in Chapter 445 of the Nevada Revised Statutes.
- P. To review recommendations of the Hearing Board and to take such additional evidence as the Board of Health deems necessary or to remand to the Hearing Board for such evidence as the Board of Health may direct on any matters arising under these regulations.
- Q. To require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of contaminants.
- R. To specify the manner in which incinerators may be constructed and operated.
- S. To delegate all above powers, except **Subsections A, B, F, O, and P**, to the Control Officer or his representatives as may be necessary to implement these regulations.
- T. To appoint by resolution, or other appropriate action of the Board of Health, a Hearing Board consisting of seven (7) members who are not employees of the State of Nevada or any political subdivision of the State of Nevada, or which one (1) member must be an attorney admitted to practice law in the State of Nevada, or which one (1) member must be a professional engineer registered in the State of Nevada and one (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215. All members of said Hearing Board shall be appointed to the terms as specified in NRS 445.481.
- U. To institute, in any court of competent jurisdiction, legal proceedings to compel compliance with these regulations and the Nevada Revised Statutes pertaining to the emission of air contaminants into the atmosphere within the territorial limits of the Washoe County Health District.

020.0052 BOARD OF HEALTH - MODIFICATION OF REGULATIONS

The Board of Health may, in granting any petition for a variance or waiver of the requirements of these regulations, pursuant to the authority and restrictions contained in Chapter 445 of the Nevada Revised Statutes, impose appropriate conditions upon any applicant for said waiver or variance and may revoke the variance for failure of said applicant to comply therewith.

020.0053 BOARD OF HEALTH - ACTIONS

The Board of Health may conduct any hearings and issue any orders respecting violations of these regulations, or any orders issued by the Control Officer, or take any other action authorized in Chapter 445 of the Nevada Revised Statutes.

020.0054 BOARD OF HEALTH - DECISIONS

All decisions and final orders of the Board of Health shall become effective not less than thirty (30) days after they are issued, unless:

- A. A rehearing is granted by said Board, which will have the effect of staying the decision, order or final action of said Board until a final decision, order, or action is taken;
- B. It is determined that an emergency exists which justifies an earlier effective date, in which event the decision, order or action shall become effective at the time indicated by the Board.

020.0055 BOARD OF HEALTH - INJUNCTIVE RELIEF

Upon the failure or refusal of a person to comply with any order, decision, or other final action of the Board of Health, pursuant to the authority conferred on said Board in Chapter 445 of the Nevada Revised Statutes, and action may be filed in the Second Judicial District Court of the State of Nevada to restrain and enjoin such person or persons from engaging in further acts violating said order, decisions, or action. However, nothing contained herein shall restrict the right of the Board of Health to seek appropriate injunctive relief prior to the entry of any formal order or decisions pursuant to this Section.

020.010 JUDICIAL REVIEW (Amended 10/20/93)

Any person aggrieved by any final decision, final permit action, order, or fine from the Board of Health, Hearing Board or Control Officer, pursuant to these regulations, is entitled to judicial review, as provided in NRS 233B.130. Any person intending to petition a district court for judicial review shall file a petition within 90 days after service of the final decision, notice of final permit action, order or imposition of a fine by either the District Board of Health, Hearing Board, or Control Officer from which such review is being requested.

020.015 ADOPTING, AMENDING REGULATIONS

Before the adoption or amending of any regulation, the District Board of Health shall hold a public hearing. Notice of said hearing shall be given in any newspaper, qualified pursuant to the provisions of Chapter 238 of the Nevada Revised Statutes, once a week for three (3) weeks, which notice shall specify with particularity the reasons and provide other informative details.

20.20

CONTROL OFFICER - POWER AND DUTIES

The Control Officer, or his designated agent or representative, shall enforce the provisions of these regulations in his name, or in the name of the Board of Health, in any one or combination of the following ways:

- A. By issuing a written notice of violation, delivered personally or by registered or certified mail, to any person if reasonable cause exists to believe said person is violating these regulations.
- B. By issuing a warning to any person suspected of violating these regulations and by giving said person an opportunity to correct the cause of said violation prior to issuing a notice of violation or citation and referring the matter to the Board of Health or proper prosecuting authority in the Washoe County Health District;
- C. By requesting the District Attorney of the County of Washoe, or other proper agency, person or prosecuting authority in the Washoe County Health District, to institute appropriate criminal, civil or administrative proceedings against the person or persons responsible for violation of any of these regulations.
- D. By requesting the Board of Health to levy an appropriate administrative fine against any person found to have violated any of these regulations.
- E. By reviewing each variance to ascertain if the variance holder is meeting all provisions of the variance or dates set forth in the compliance schedule; if they are not met, the Control Officer may notify the variance holder personally or by registered or certified mail to this effect and may suspend or revoke any variances or reject any schedule of compliance involved with said infractions.
- F. By requesting the Board of Health to institute all necessary and proper legal proceedings authorized by law to carry out the purposes of these regulations and purposes of Chapter 445 of the Nevada Revised Statutes, including injunctive relief.

020.0201

CONTROL OFFICER - INVESTIGATION OF SOURCES (Amended 10/20/93)

- A. The Control Officer, or his designated agent or representative, shall at any reasonable time require from any person in charge of or responsible for any source that is discharging or may discharge air contaminants into the atmosphere such information or analysis that will disclose the type or nature of control equipment that is or ought to be in use. In addition, the Control Officer may do the following:
 - 1. Require any information produced in accordance with this Section to be certified by a professional engineer registered in the State of Nevada.
 - 2. Designate any authorized agent or employee of the District Health Department of the Washoe County Health District to make an independent study and report as to the nature, extent, quantity, and degree of air contaminants which are or may be discharged from any source. Said agent or employees shall have authority to inspect work practices and techniques of operation, any article, machine, equipment, contrivance or structure necessary to make a complete study and report of such source.

3. Enter any facility during any hour in which the facility is open for business, and review and copy any records required under the permit to operate or necessary to determine compliance with the terms of the permit.
- B. The Control Officer, or his authorized agent or representative, shall whenever he has reason to believe that an emission is occurring that is in violation of these regulations require any person in charge of or responsible for any source of said emission to make or have made tests to determine the degree of emission of air contaminants from said source. In this connection, the Control Officer may do the following:
1. Specify the testing methods to be used, if said methods are in accordance with good professional practice;
 2. Observe all testing;
 3. Require all tests to be conducted by reputable and qualified personnel; and
 4. Require that he be given a copy of the test results in writing, signed by the person responsible for said test.
- C. The Control Officer may conduct tests during business hours of emissions of air contaminants from any source to assure compliance. Upon request of the Control Officer the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and scaffolding and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the degree of emission of air contaminants.

20.25

HEARING BOARD CREATION AND ORGANIZATION

- A. The Air Pollution Control Hearing Board is hereby created and appointed pursuant to Section 445.481 of NRS.
- B. The Air Pollution Control Hearing Board consists of seven (7) members who are not employees of the state or any of its political subdivisions.
- C. One (1) member of the Board shall be an attorney admitted to practice law in Nevada.
- D. One (1) member shall be a professional engineer registered in Nevada.
- E. One (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215.
- F. Three (3) members shall be appointed for a term of one (1) year.
- G. Three (3) members shall be appointed for a term of two (2) years.
- H. One (1) member shall be appointed for a term of three (3) years.
- I. Each succeeding term shall be for a period of three (3) years.

- J. The Hearing Board shall select a chairman, vice-chairman and such other officers as it deems necessary. Officers of the Board shall serve at its pleasure.
- K. A majority of the members of the Board constitutes a quorum and a majority of those present must concur in any decision.
- L. Subject to the approval of the District Board of Health, the Board may adopt a manual of procedure to govern its operation.
- M. Any member appointed by the District Board of Health may be removed for cause upon majority vote of the total membership of the District Board. Cause for removal includes:
 - 1. Unjustified absence from more than two (2) consecutive meetings of the Air Pollution Control Hearing Board.
 - 2. Failure to adhere strictly to the provisions contained in these regulations.

If the District Board of Health determines after hearing that cause for removal exists, it shall remove the member and appoint a member with appropriate qualifications to fill the unexpired term of the member removed.

020.0251 HEARING BOARD - JURISDICTION

- A. Any person may bring an appeal to the Hearing Board, if said person has been aggrieved in any of the following ways:
 - 1. By the issuance, denial, suspension, or revocation of any permit required by these regulations.
 - 2. Whenever the Control Officer, or his authorized representative, has issued, modified, or rescinded any order, or suspended or revoked any variance.
 - 3. By the issuance of a Notice of Violation, either with or without a contained order.
 - 4. Whenever the Control Officer rejects or requires additional information or testing before approval of any application or Environmental Impact Assessment or study.
 - 5. By the imposition or amendment of any condition in conjunction with the issuance, renewal or modification of a Permit to Operate.
- B. The Hearing Board may also receive evidence and make appropriate recommendations to the Board of Health on any matter referred to said Hearing Board by the Control Officer, the Board of Health, or as provided for in the Nevada Revised Statutes.
- C. All petitions for variances authorized or permitted under these regulations shall first be considered by the Hearing Board which shall make appropriate recommendations on such petitions to the Board of Health.
- D. After receiving evidence and conducting a hearing as to all proper matters brought before the Hearing Board as provided in these regulations, said Board shall forward its findings

and recommendations to the Board of Health for final decision, except in cases of the renewal of a variance, in which event the findings and recommendations of the Hearing Board shall constitute "final action" under these regulations.

020.0252 HEARING BOARD - APPEAL PROCEDURE (Amended 12/88)

All appeals to the Hearing Board shall be initiated by the filing of a petition on forms prepared by the Control Officer within ten (10) days after the person bringing the appeal has received any order or Notice of Violation issued by the Control Officer or his authorized representative or has had any permit as required by these regulations issued, denied renewed, suspended or revoked. All other requested matters to be heard by the Hearing Board, shall be initiated in writing and served or delivered on the Chairman of the Hearing Board. The Hearing Board shall meet within sixty (60) days after the receipt of any petition or service of any written request on the Chairman of the Hearing Board for the purpose of conducting a hearing and receiving evidence. In connection with any appeal or other matter before the Hearing Board, the following shall apply:

- A. The Chairman or Vice-Chairman of the Hearing Board may issue subpoenas to compel attendance of any person at any hearing in connection with any appeal or other matter being considered by the Hearing Board and may require the production of books, records and other documents and materials at the hearing.
- B. The Chairman or Vice-Chairman of the Hearing Board shall administer oaths to all persons appearing at and testifying before the Board, and any Board member may examine witnesses at any hearing before the Board.
- C. All decisions and recommendations along with the transcripts and evidence of any hearing conducted by the Hearing Board shall be transmitted to the Chairman of the District Board of Health and shall be included in the records of the Board of Health after the Board reaches a final decision on any matter referred by the Hearing Board.
- D. The Hearing Board may provide by rule the manner in which an appeal can be taken from the recommendation of the Hearing Board to the Board of Health, upon approval by the Board of Health.

020.0253 HEARING BOARD - VARIANCE PROCEDURES

- A. All sources, both new and existing, must operate or plan to operate in compliance with these regulations. If immediate compliance is not possible, a variance must be obtained prior to operations of the source from the District Board of Health, in accordance with the following procedures:
 - 1. The owner, operator, or any person responsible for any source of air contaminants, or any person who desires to establish such a source, shall petition the Hearing Board for a variance from these regulations upon forms for this purpose which shall be available in the office of the Control Officer.
 - 2. If an existing source requires lengthy or extensive remodeling to come into compliance, a Schedule of Compliance must be submitted to the Hearing Board stating interim and final compliance dates.

3. Each petition for a variance from these regulations shall include such information as the Control Officer, Hearing Board, or Board of Health deems necessary to facilitate the equitable and speedy determination of the matter presented to the Hearing Board. In addition to any other stipulations that may be required by these regulations all petitions for variances from these regulations shall state briefly the following:
 - a. The sections of these regulations from which the variance is sought.
 - b. A brief summary of the facts indicating why compliance with said section or sections is not possible.
 - c. If possible, the period of time for which the variance is sought.
 - d. The requirements which the petitioner is able to meet and the date on which said petitioner can comply with such requirements (Schedule of Compliance).

- B. The Hearing Board may recommend a variance only if, after a hearing on due and proper notice, it finds from a preponderance of evidence that:
 1. The emissions occurring or proposed to occur do not endanger or tends to endanger the health or safety of persons living in the Washoe County Health District; and
 2. Compliance with these regulations would produce serious hardship on the petitioner without equal or greater benefits to the public; and
 3. Owners of the property in the general vicinity of the proposed emission would not be adversely affected by the emissions.

- C. Nothing contained herein shall prevent the Hearing Board from recommending a variance with appropriate conditions imposed on the petitioner or applicant, together with a recommendation that any variance issued be revoked upon noncompliance with said conditions or time schedules.

- D. The Hearing Board may renew a variance previously granted by the District Board of Health only under circumstances and upon conditions which justified its original granting. Applications for any renewal of a variance from these regulations must be made at least sixty (60) days prior to expiration of variance to be renewed, and the Hearing Board shall give public notice of the application. If a protest is filed with the Hearing Board against the renewal, the Hearing Board shall hold a public hearing and shall not renew the variance unless it makes specific written findings of the acts which justify the renewal.

020.0254 HEARING BOARD - VARIANCE LIMITATIONS (Amended 10/20/93)

In addition to any other limitations and conditions contained in these regulations, the Hearing Board shall not recommend the issuance of any variance, except in accordance with the following limitations:

- A. If the variance is requested because no practical means is known or available for prevention, abatement, or control of the air pollution involved, the Hearing Board shall recommend the issuance of a variance only until such means become known and available.
- B. If the variance is requested because compliance with these regulations will require measures which, because of extent or cost, must be spread over a period of time, the Hearing Board may only recommend a variance after receiving an acceptable schedule of compliance, containing both interim and completion dates or may specify these dates themselves.
- C. The Hearing Board shall not recommend or issue a variance for any period of time to exceed one (1) year.
- D. The Hearing Board shall review at least once each year any variance granted in accordance with **Subsections A and B** above in order to determine whether practical measures to control air contaminants have become available or required steps for compliance with the variance have been taken. (Also see **Section 020.020**)
- E. Before renewal of any variance the Hearing Board shall obtain from the Control Officer the status of the present variance and may only renew a variance if all provisions and dates have been met.
- F. Nothing contained herein shall be construed to entitle any person requesting a variance to obtain a recommendation of the Hearing Board as to the granting or renewal of a variance as a matter of right.
- G. If a variance is requested which will allow a source to emit air pollutants into the atmosphere such that the National Ambient Air Quality Standards may not be attained or maintained, the Hearing Board shall not recommend that such a variance be permitted beyond the earliest applicable date, specified in the approved State Implementation Plan, for the attainment of the applicable National Ambient Air Quality Standard.
- H. No variance may be issued to violate any applicable requirement, terms or requirements of the Clean Air Act or regulations published in 40 CFR.

020.0255 VIOLATION OF REGULATIONS - BY WHOM COMMITTED (Adopted 10/24/90, Revised 4/22/98)

In determining whether a violation of these regulations has been committed, whether the violation was intentional or inadvertent is immaterial and does not constitute cause for dismissal of the case by the Hearing Board or Board of Health. However, either board may consider whether the violation was intentional or inadvertent in determining the amount of the penalty to be imposed.

20.30 NOTICE OF VIOLATION

- A. Whenever the Control Officer or his authorized agent or representative has a reasonable cause to believe that any section of these regulations for the prevention, abatement or control of air pollution has been violated, he shall cause written notice to be served upon the person or persons responsible for the alleged violations.

- B. The notice shall specify:
 - 1. The section or sections of these regulations alleged to be violated;
 - 2. The facts alleged to constitute the violation; and
 - 3. Appeal procedure including any time limitations
- C. The notice may include an order to take corrective action within a reasonable time, which shall be specified. Such an order becomes final unless, within ten (10) days after service of the notice, a person named in the order requests a hearing before the Hearing Board.
- D. With or without the issuance of an order pursuant to **Subsection C**.
 - 1. The Control Officer may notify the person or persons responsible for the alleged violation to appear before the Hearing Board at a specified time and place; or
 - 2. The Hearing Board may initiate proceedings for recovery of the appropriate penalty set forth in **Section 020.040** of these regulations.
- E. Nothing in this section prevents the Hearing Board or the Control Officer from making efforts to obtain voluntary compliance through warning, conference or other appropriate means.

020.040
05/28/18)

CIVIL FINES AND PENALTIES (Amended 4/88, 10/20/93, 11/16/94; Revised 8/26/04, 11/16/06,

- A. Except as provided in **Subsections B** and **C**, a violation of any section of these regulations constitutes a major violation. Any violation of a permit condition shall be a major violation as specified in **Section 030.2175** of these regulations.
- B. Any person who commits a major violation of any section of these regulations, other than Sections **020.050** and **020.055**, is guilty of a civil offense and may be required to pay an administrative fine of not more than \$10,000.00. Each day of violation constitutes a separate offense. The District Board of Health may establish a compliance schedule as a part of any civil finding either in lieu of, or in addition to, monetary penalties. Any fines assessed may be held in abeyance pending fulfillment of any compliance schedule.
- C. Any violation of Sections **040.030, 040.035, 040.040(A), 040.050, 040.051, 040.055, 040.080** or **050.001** of these regulations constitutes a minor violation unless the violation occurs on more than two (2) occasions during a period of twelve (12) consecutive months. In that event, the third (3rd) and any subsequent violations constitute major violations.

D. The following fines shall be levied for minor violations of these regulations:

	First Violation	Second Violation
Section 040.030 (Dust Control)		
A. Violation of Dust Permit Condition(s)	not more than 1000	not less than 1000 not more than 2000
B. Visual Emission Violation	not more than 1000	not less than 1000 not more than 2000
Section 040.035 (Open Fires)	not more than 500	not less than 500 not more than 1000
Subsection A of Section 040.040 (Fire Training)	not more than 500	not less than 500 not more than 1000
Section 040.050 (Incinerator Emission)	not more than 1000	not less than 1000 not more than 2000
Section 040.051 (Certified Woodstoves)	not more than 500	not less than 500 not more than 1000
Section 040.055 (Odors)	not more than 1000	not less than 1000 not more than 2000
Section 040.080 (Gasoline Transfer)	not more than 1000	not less than 1000 not more than 2000
Section 040.200 (Diesel Idling)	not more than 500	not less than 500 not more than 1000
Section 050.001 (Emergency Episode)	not more than 1000	not less than 1000 not more than 2000

E. Administrative fines shall be levied by appropriate action of the District Board of Health and recorded in its official minutes. The evidence or information on which the District Board of Health bases its action may include any one or more of the following:

1. The recommendation of the Control Officer based on any Notice of Violation served on any person in accordance with these regulations, if that person has not appeared or requested a hearing before the Hearing Board.

2. The recommendation of the Hearing Board, based on its findings in connection with any appeal or other matter referred to the Board in accordance with these regulations.
 3. Evidence presented before the District Board of Health by any person, public official, or representative of the District Board of Health or District Health Department, provided the person charged with violating any of these regulations has received reasonable notice (at least twenty (20) days in advance) of the hearing at which such evidence is to be presented and is provided an opportunity to present evidence in his defense at the hearing.
- F. Unless the Board of Health bases its decision on the recommendations and/or findings of the Control Officer or the Hearing Board as set forth in **Paragraphs 1 and 2 of Subsection E**, the Board shall base its decision as to whether a violation of these regulations has occurred on the evidence presented before the Board pursuant to **Paragraph 3** of that subsection. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Documentary evidence may be received in the form of authenticated copies or excerpts if the original is not readily available and, on request, parties shall be given an opportunity to compare the copy with the original. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though such matter was not covered in the direct examination, impeach any witness regardless of which party first was called to testify and rebut the evidence against him. The Board of Health may take notice of judicially cognizable facts and/or recognized technical or scientific facts within the Board's specialized knowledge. All decisions of the Board of Health respecting administrative fines shall be in writing or notice of the Board's decision shall be forwarded to the aggrieved party at his last known mailing address.
- G. All fines shall be levied by formal action of the District Board of Health. The Control Officer may suspend, deny or revoke any or all permits of a person who has failed to pay any fine that has been levied by the District Board of Health.
- H. In those cases where it is determined by the District Board of Health that a violation of the Regulations has occurred, the Board at its discretion may choose to waive the fine for a first violation, levy any fine providing it does not exceed the appropriate range limitation, require use of other mitigation methods or schedules of compliance and in emergency situations, require a Stop Work Order to be issued and/or any other combination of remedies to bring about compliance with the Regulations.
- I. All administrative fines collected by the District Board of Health pursuant to this section shall be deposited in the school district fund of Washoe County.
- J. All monetary fines assessed pursuant to violations of **Sections 030.105 or 030.107** for improper asbestos containing material removal, shall be for an amount greater than the estimated savings obtained by the illegal removal.

20.42

CRIMINAL FINES AND PENALTIES (Adopted 10/20/93)

A. Any person who knowingly:

1. makes any false statement, representation or certification;
2. falsifies, tampers with, renders inaccurate or fails to install any required monitoring device or method;
3. alters, conceals, fails to file or maintain any required document;
4. fails to pay any fee;
5. violates any applicable requirement; or
6. violates the terms or conditions of any permit.

as required under NRS 445B.100 to 445B.450, inclusive, or NRS 445B.470 to 445B.640, inclusive or any regulations adopted pursuant to those provisions shall pay a fine of not more than \$10,000.

B. Each day of violation of the provisions of subsection A constitutes a separate offense.

020.045

INJUNCTIVE RELIEF

In addition to any remedy at law hereunder, the Control Officer may apply to a court of competent jurisdiction for any other equitable and injunctive relief to enforce compliance with, or to restrain violation of any provisions of these regulations or to any regulation or rule made and adopted pursuant thereto.

020.050

INTERFERENCE WITH PERFORMANCE OF DUTY

No person shall refuse entry or access to any authorized representative of the District Board of Health, upon presentation of appropriate credential, who requests entry to inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with these regulations. No person shall obstruct, hamper or interfere with any such inspection. If entry is refused, or prior to attempting to enter, such officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if he believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

20.55

CONFIDENTIAL INFORMATION (Amended 10/28/92, 10/20/93)

A. As used in this section "confidential information" means information or records which:

1. Relate to dollar amounts of production or sales;
2. Relate to process or production unique to the owner or operation; or

3. Contain other proprietary data which, if disclosed, would tend to affect adversely the competitive position of the owner or operator.
- B. Information which cannot be certified as confidential includes:
1. The emission data concerning any air contaminant which has an ambient air quality standard or emission standard or which has been designated as a hazardous air pollutant by the United States Environmental Protection Agency.
 2. The air pollution source operating permit, including the original application, any compliance plan, monitoring report, or schedule and variance.
 3. The existence and disposition of any past citations, fines or written warnings.
- C. Any information received by the Hearing Board or the Control Officer which is certified in writing to be confidential by the owner or operator disclosing it, and is verified and approved as confidential by the director of the local air pollution control agency may, unless the owner expressly agrees to its publication availability to the public, be used only:
1. In the administration or formulation of air pollution controls;
 2. In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator, or reveal any confidential information;
 3. In complying with federal statutes, rules and regulations.
- D. This section does not prohibit the use of confidential information in prosecution for the violation of any air pollution control statute, ordinance, or regulation. Any certification, if not otherwise designated as confidential pursuant to subsection C of this regulation shall be made public.
- E. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor, and shall be liable in tort for any damages which may result from such disclosure or use.

20.60

SAMPLING AND TESTING

In addition to any other testing requirements provided for in these regulations, the Control Officer or the Board of Health may require any person to conduct or make arrangements to conduct testing of any source to determine compliance with these regulations. In the event such testing is required, the Control Officer may do any of the following:

- A. Witness all tests as required by this Section.
- B. Determine whether or not generally recognized methods of measurement have been used to determine the quantity of emissions from the source being tested and if not additional testing may be required.

- C. Determine the point or points at or within the source where testing shall be done, to determine the actual discharge into the atmosphere.
- D. Make any modifications or adjustments in the testing requirements so as to be compatible with specific sampling conditions or needs as shown by good practice, judgement and experience.
- E. Require the cost of any testing to be paid by the owner or person responsible for any source of air contaminants.
- F. Require additional tests of any source of air contaminants tested in accordance with this Section, provided such separate or additional tests shall be conducted on behalf of the Board of Health and at said Board's expense.
- G. Require in writing the construction or creation of sampling holes, safe scaffolding and related facilities, to be provided at the expense of the owner or person responsible for any source of air contaminants being tested in accordance with this section.
- H. Require the owner or person responsible for any source of any air contaminants being tested pursuant to this section to provide a suitable power source to the point of testing, so that sampling instruments can be operated as required.
- I. All information gathered during any testing operation conducted pursuant to this Section will be provided to both the Control Officer or the Board of Health and the person or persons who own or control or are responsible for any source of air contaminants that are tested pursuant to this Section. All such information obtained pursuant to any testing required under this Section will be treated as confidential in accordance with the requirements of **Section 020.055** of these regulations.

020.065 TECHNICAL REPORTS AND FEES

The Control Officer may distribute copies of any documents, circulars, reports on technical work, and other reports prepared by the Control Officer, and any other information upon request by other governmental agencies or individuals or persons or groups requesting copies of same, and the Control Officer may charge a fee for all such material not to exceed the cost of preparation and distribution of such documents. All monies collected pursuant to this Section shall be deposited in the office of the County Treasurer. All such released information must not be considered confidential as outlined in **Section 020.055**.

020.070 CIRCUMVENTION

It is unlawful for any person to build, erect, install, or use or cause to be built, erected, installed or use, any article, machine, equipment or other contrivance, or source, which conceals an emission or release of air contaminants into the atmosphere which would otherwise constitute a violation of these regulations Nothing contained herein shall apply to cases in which the only violation is a violation of **Section 040.055** of these regulations.

EMERGENCY UPSET, BREAKDOWN OR SCHEDULED MAINTENANCE (Amended 10/20/93)**A. Emergency Upset or Breakdown Conditions**

It is a violation of these regulations for any person to operate any facility or equipment so that the emissions from such facility or equipment is in excess of any limits set by a valid Permit to Operate or by these regulations. Upon determination or notification that excess emissions are occurring the Control Officer shall order the immediate cessation of operations unless it is his determination that such emissions are of a minor breakdown condition. In order to be considered an emergency upset or breakdown condition the following requirements must be met:

1. The occurrence must arise from sudden and reasonably unforeseeable events beyond the control of the permittee, including Acts of God, which situation requires immediate corrective action to restore normal operations. The excess emissions must occur as an unavoidable result of such an occurrence and must not result from inappropriate operation, operator error, improperly designed equipment, neglect or improper maintenance procedures.
2. The occurrence has been reported to the Control Officer as soon as reasonably possible, but in no case more than two (2) hours after the occurrence or within 2 hours of opening on the next business day if the incident occurs during off hours. The notice shall include a description of the emergency and steps taken to mitigate and correct the situation; and
3. Repairs are to be made with maximum reasonable effort, including use of off-shift labor, overtime, or work periods of non-operations; and
4. A written report must be submitted to the Control Officer within fifteen (15) days of such upset, breakdown or scheduled maintenance containing sufficient information to enable the Control Officer to determine the seriousness of the excess emissions. The submission must be properly signed and include as a minimum:
 - a. The identity of the stack and other emission points where the excess emissions occurred.
 - b. The estimated magnitude of the excess emissions expressed in opacity or in the units of the applicable emission limitation and operating data or methods used in estimating the magnitude of the excess emissions
 - c. The time and duration of the excess emissions.
 - d. The identity of the equipment causing the excess emissions or any other cause or causes.
 - e. If the excess emissions were the result of a malfunction, steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions.
 - f. The steps taken to limit the excess emissions.

- g. Documentation that the equipment or processes were at all times properly maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions.

B. Scheduled Maintenance Operations

Increased emissions that occur as a result of scheduled maintenance operations and do not violate any applicable requirement or federally enforceable permit condition, may be allowed by the Control Officer if it is determined that no significant risk to public health or any public nuisance will occur.

The occurrence, and expected duration, must be reported to the Control Officer at least two business days before the scheduled maintenance begins, and the maintenance must be performed during times specified by the Control Officer as favorable for atmospheric ventilation.

20.76 EXCESS EMISSIONS (Amended 10/20/93)

A. The Control Officer shall determine from the submission of data and information required in **Section 020.075** that no enforcement action is required if:

1. The excess emissions did not occur from intentional acts, inappropriate operation, operator error, improperly designed equipment, neglect or improper maintenance procedures;
2. All reasonable steps were taken, or are being taken in an expeditious manner, to correct the condition leading to the excess emission;
3. All the requirements specified in 020.075 Part A sections 1 through 4, inclusive, have been satisfied and all required information has been submitted; and
4. For any source holding a Part 70 permit, the violation is related to a technology based standard established in that permit.

B. The burden of proof for any emergency upset or breakdown shall be on the permittee. If the owner or operator misrepresents facts or fails to disclose facts with prior knowledge, the Control Officer shall deem that the period of excess emissions is a violation subject to enforcement action.

C. Nothing in this section limits the obligation of the owner or operator of a source to attain and maintain the Ambient Air Quality Standards or the authority of the Control Officer to institute actions under **Sections 113 or 303** of the Act or any section of these regulations.

020.080 SEVERABILITY

If any provision of these regulations or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.