

Introduced by: Davis and Long
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KENAI PENINSULA BOROUGH

ORDINANCE 78-36

AN ORDINANCE REPEALING CHAPTER 10.08 OF THE BOROUGH CODE, AND ENACTING NEW CHAPTER 10.08 ESTABLISHING UNIFORM CLEAN AIR STANDARDS AND EMISSION REGULATIONS IN THE COOK INLET AIR RESOURCES MANAGEMENT DISTRICT.

WHEREAS, the Kenai Peninsula Borough and the Municipality of Anchorage have joined in forming the Cook Inlet Air Resources Management District; and

WHEREAS, the Cook Inlet Air Resources Management District has been charged with studying and managing the air resources of Cook Inlet; and

WHEREAS, after study, the Cook Inlet Air Resources Management District has recommended that the Municipality of Anchorage and the Kenai Peninsula Borough adopt a revised Cook Inlet Clean Air Ordinance in order to maintain and advance the ambient air quality and the public health; and

WHEREAS, after study, the Cook Inlet Air Resources Management District has recommended that the Kenai Peninsula Borough and the Municipality of Anchorage adopt Air Resources Regulation No. 1: Stationary Source Emissions, in order to maintain and advance the public health by regulating stationary source emissions; and

WHEREAS, the Assembly of the Kenai Peninsula Borough hereby finds that it is in the best interests of the Kenai Peninsula Borough to exercise jurisdiction and control over air pollution sources within the Kenai Peninsula Borough; and

WHEREAS, the Assembly of the Kenai Peninsula Borough finds that it is in the public interest to cooperate with the Municipality of Anchorage in enacting and enforcing a uniform clean air ordinance and standards:

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE
KENAI PENINSULA BOROUGH:

Section 1. That Chapter 10.08 of the Kenai Peninsula
Borough Code of ordinances is hereby repealed in full.

Section 2. That the Kenai Peninsula Borough Code of
ordinances is hereby amended by adding a new chapter, to
be numbered 10.08, which shall read as follows:

CHAPTER 10.08 General Provisions

10.08.010 Short title. This ordinance may be known
and cited as the Cook Inlet Clean Air Ordinance.

10.08.020 Purpose.

A. A regional air pollution control district called
the Cook Inlet Air Resources Management District is hereby
continued in existence within the boundaries of the
municipalities of Anchorage and the Kenai Peninsula Borough.

B. Subject to the powers granted by law to member
governments and within the boundaries of the existing member
governments and such other member governments that may here-
after jointly administer their air pollution control functions
and powers with this regional air pollution control district,
the Cook Inlet Air Resources Management District shall have
primary responsibility for control of air pollution from all
sources except where jurisdiction is reserved by law ex-
clusively for the United States or the State of Alaska, shall
adopt and enforce rules and regulations that endeavor to
achieve and maintain national and state ambient air quality
standards and emission standards, and shall enforce this
ordinance and any rules and regulations promulgated pursuant
thereto.

10.08.030 Definitions. Unless separately defined in a
rule or regulation promulgated pursuant to this ordinance or
unless the context clearly indicates otherwise, the following
terms used in this ordinance or any rule or regulation pro-
mulgated pursuant thereto shall be defined as follows:

- A. "Air contaminant" means dust, fumes, mist,
smoke, fly ash, other particulate matter,
vapor, gas, odorous substance, or a com-
bination of these but not including water
vapor or steam condensate.

- B. "Air contaminant source" means any source whatsoever at, from, or by reason of which there is emitted or discharged into the atmosphere any air contaminant.
- C. "Air pollutant" means a material in the atmosphere, either from natural or man-made sources, in a concentration that reaches or exceeds a level that tends to have some adverse effect on human health or welfare, have some deleterious effect on animal or plant life, or damage materials of economic value to society.
- D. "Air pollution" means the presence in the outdoor atmosphere of one or more air pollutants.
- E. "Air quality control plan" means the Alaska Air Quality Control Plan as approved by the Administrator of the Environmental Protection Agency pursuant to those provisions of the federal Clean Air Act relative to state implementation plans.
- F. "Alteration" means any addition to, any enlargement of, any replacement of, any major modification of, or any change in the design, capacity, process, or arrangement of or any increase in, the connected loading of equipment or control apparatus that will affect the kind or amount of air contaminant emitted.
- G. "Ambient air" or "atmosphere" means any unconfined portion of the atmosphere or the outside air.
- H. "Best practical technology" means the best system of technology available to correct the emission problem when considering cost of system, efficiency of the process, and commercial availability on the market.
- I. "Commission" means the Cook Inlet Air Pollution Control Commission.
- J. "Director" means the Director of the Cook Inlet Air Pollution Control Commission or his authorized representative.

- K. "District" means the Cook Inlet Air Resources Management District, which includes the area within the boundaries of its member governments.
- L. "Emission" means a release of air contaminants into the environment.
- M. "Equipment" means any stationary or portable device or any part thereof capable of causing the emission of any air contaminant.
- N. "Indirect source" means a facility, building, structure, or installation that attracts or may attract activity that results in emissions of a pollutant for which there is a national ambient air quality standard, including but not limited to highways and roads; parking facilities; retail, commercial, and industrial facilities; recreation, amusement, sports, and entertainment facilities; airports; office and governmental buildings; apartment and condominium buildings; and education facilities.
- O. "Installation" means the placement, assemblage, or construction of equipment or control apparatus at the premises where equipment, as defined herein, or control apparatus will be used.
- P. "Marine installation" means a movable or fixed petroleum exploration, production, or extraction platform, or other offshore facility in or on the waters located within the district from which the emission of air contaminants occurs.
- Q. "Member government" means the municipalities of Anchorage and the Kenai Peninsula Borough.
- R. "Motor vehicle" means any self-propelled vehicle designed and used for transporting persons or property but excludes aircraft, vessels operated on water, and vehicles operated exclusively on a rail or rails.
- S. "National air quality standard" means a national primary or secondary ambient air quality standard promulgated pursuant to the federal Clean Air Act.

- T. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
- U. "Owner" means the person who owns, leases, or supervises equipment, control apparatus, or a stationary or mobile source of air contaminants.
- V. "Particulate matter" or "particulates" means finely divided solid or liquid particles in the air or in an emission, including but not limited to dust, smoke, fumes, mist, spray, and fog.
- W. "ppm" means parts per million by volume.
- X. "Person" means any individual, trust, estate, firm, corporation, association, partnership, or any officer, employee, department, agency, board, bureau, or commission of the United States, a state, or any political subdivision thereof.
- Y. "Regulation" means any regulation, ambient air quality standard, emission standard, limitation, or control or subsequently adopted additions or amendments thereto of the Cook Inlet Air Resources Management District.
- Z. "Standard cubic foot of gas" means that amount of gas that would occupy a cube having dimensions of one foot on each side, if the gas were free of vapor and at a pressure of 14.7 P.S.I.A. and a temperature of 70° F.
- AA. "Visible emissions" means those gases or particulates, excluding uncombined water, that separately or in combination are visible upon release to the outdoor atmosphere.

10.08.040 Cook Inlet Air Pollution Control Commission--
Powers--Terms of Members--Meetings.

A. The Cook Inlet Air Pollution Control Commission is the governing body of the Cook Inlet Air Resources Management District and shall exercise all powers of the

district provided by law. The commission shall be composed of two assembly members of each member government appointed from their respective assemblies in the manner provided by the law of the respective member governments and a non-voting director appointed by the commission. The commission shall select a chairman from among its voting members.

B. The terms of the commission members shall be for the duration of their service on the separate assemblies or until a vacancy occurs. When a vacancy occurs, a new member shall be appointed from the assembly of which the vacating commissioner was a member. Members of the commission shall receive a salary of \$35 per meeting day and are entitled to per diem in the amount of \$35 and travel expenses while attending commission business.

C. The commission shall hold at least six regular meetings each year and may hold additional meetings called by the chairman at a place and time to be fixed by the chairman. Special meetings shall be called by the chairman upon written request of three commission members. Three voting members shall constitute a quorum.

10.08.050 General powers and duties of the Commission.

A. In order to effect the powers and duties of the district, the commission shall have power to:

1. promulgate ambient air quality standards for the district after public hearing;
2. promulgate after public hearing emission standards, limitations, or other emission control requirements for the district that prevent, abate, or control emissions and that may vary from area to area as may be appropriate according to varying local conditions;
3. promulgate such rules and regulations as may be necessary to achieve the objectives of the district after public hearing and adopt procedures for promulgating rules and regulations;
4. hold such public hearings as it deems necessary for administration and enforcement of its regulations and the state law, compel the attendance of witnesses and production of evidence, and adopt such rules or procedures as it finds reasonable and necessary for holding public hearings;

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5. issue such orders as may be necessary to effectuate the provisions of this ordinance or any rule or regulation pursuant thereto and enforce them by appropriate administrative and judicial proceedings;
 6. require access to records relating to the emission of air contaminants;
 7. sue or be sued in the name of the district or one or more member governments in all actions and proceedings in courts of competent jurisdiction.
 8. establish and maintain such offices as the commission may authorize;
 9. contract for technical advisory services and other services that may be necessary for the performance of the powers and duties of the District;
 10. take by grant, purchase, gift, lease, or other means such real and personal property as may be necessary to carry on the purpose of this ordinance, including the right to dispose of such property whenever in the judgment of the commission such property is no longer needed by the district.
 11. classify by rules or regulations air contaminant sources that in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics relating to air pollution, which classifications may apply to the district as a whole or to a designated area thereof and may be made with reference to effects on health, economic factors, social factors, and physical effects on property.
 12. require the owner or operator of air contaminant sources to install, maintain, and operate emission or ambient air monitoring devices or both and to furnish data collected to the district.
 13. apply for, receive, administer, and expend federal aid, state aid, and other funds for the control of air pollution or the development and administration of programs related to that control in accordance with the approved budgets of each member government.

B. The director shall act as the authorized agent for the commission in effecting the powers and duties of the district and shall

1. enforce the provisions of this ordinance and all of the orders, regulations, and rules promulgated by the commission and adopted by the assembly of a member government pursuant to this ordinance;
2. enforce all variances and standards approved by the commission;
3. render general administrative services to the commission and perform such other duties as may be assigned by the commission or required to administer this ordinance;
4. serve as a nonvoting member and secretary of the commission.

10.08.060 Air pollution inspections--Authority.

The director or a duly authorized officer, employee, or representative of the district may at a reasonable time and upon presentation of a proper search warrant, where required by the Constitution of the United States or the state of Alaska, enter and inspect the property and premises where an air contaminant source is located or is being constructed for the purpose of ascertaining the state of compliance with this ordinance and the rules and regulations promulgated pursuant thereto. No person may interfere with such inspection.

10.08.070 Air pollution episodes--Declaration--Standards.

A. An air pollution episode shall be declared when in the opinion of the director the concentration of air contaminants in the ambient air has reached or is predicted to reach any of the following levels:

- (1) Air alert:
 - (a) sulfur dioxide: 800 micrograms per cubic meter or 0.3 parts per million (24 hour average)
 - (b) particulate matter: 3.0 coefficient of haze units or 375 micrograms per cubic meter (24 hour average)
 - (c) carbon monoxide: 17 milligrams per cubic meter or 15 parts per million (8 hour average)

(2) Air warning:

- (a) sulfur dioxide: 1600 micrograms per cubic meter or 0.6 parts per million (24 hour average)
- (b) particulate matter: 5.0 coefficient of haze units, or 625 micrograms per cubic meter (24 hour average)
- (c) carbon monoxide: 34 milligrams per cubic meter or 30 parts per million (8 hour average)

(3) Air emergency:

- (a) sulfur dioxide: 2,100 micrograms per cubic meter or 0.8 parts per million (24 hour average)
- (b) particulate matter: 7.0 coefficient of haze units, or 875 micrograms per cubic meter (24 hour average)
- (c) carbon monoxide: 46 milligrams per cubic meter or 40 parts per million (8 hour average)

B. With the concurrence of the mayor of the member government in which an air pollution episode arises, the director shall prescribe and publicize curtailment actions when the concentration of air contaminants in the ambient air has reached or is predicted to reach any of the levels set forth in subsection (A) or any of the levels for which air pollution alert, warning, or emergency procedures are warranted under federal or state law, the state air quality control plan, or applicable rules or regulations of the district.

10.08.080 Confidentiality of records. Records and information other than emission data in the possession of the district which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the district after application by the party that their public disclosure would tend to adversely affect his competitive position.

10.08.090 Jurisdiction--Limitations. This ordinance does not:

- A. Grant to the district jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops;
- B. Affect the relations between employers and employees with respect to or arising out of a condition of air contamination or air pollution;
- C. Supersede or limit the applicability of a law or ordinance relating to sanitation, industrial health, or safety;
- D. Preclude the right of judicial review of decisions of the commission.

10.08.100 Federal and state law--Applicability and Precedence. Unless otherwise allowed by law and by this ordinance or a regulation promulgated pursuant thereto, no person shall commit any act prohibited by, omit any act required by, or exceed any standard or limitation established by the federal Clean Air Act, as amended, or by Alaska Statutes title 46, article 4, as amended, or by any valid rule, regulation, emission standard or limitation, ambient air quality standard, or performance standard promulgated pursuant to either the federal or state legislation.

CHAPTER 10.12
Recordkeeping Requirements

10.12.010 Registration of Air Pollution Sources--Required When. A. Except as otherwise provided in subsection (F) no person shall construct, install, or establish any of the following air contaminant sources within the territorial limits of the district without first registering that source with the district.

- 1. Any facility requiring a permit to operate pursuant to state or district law or regulation for the control of air contaminants.
- 2. Any facility that can emit into the ambient air, without regard to whether air quality control equipment is operating, carbon monoxide, sulfur oxides, or particulate matter in an amount that equals or exceeds five tons per year or hydrocarbons or nitrogen oxides in an amount that equals or exceeds ten tons per year.

3. Rock crushing or screening operations.
 4. Coal or oil fired equipment having a rating that equals or exceeds 3000 kilowatts or 10 million BTU per hour.
 5. Incinerators having a rated capacity that equals or exceeds 250 pounds per hour.
 6. Storage tanks, reservoirs, or containers having a capacity that equals or exceeds 40,000 gallons and is used for the storage of petroleum liquids.
 7. Marine installations within the district for more than thirty consecutive days in a year.
- B. The owner or lessee of an air contaminant source or his agent shall register all facilities subject to registration on forms furnished by the district. The owner of the source shall be responsible for registration and shall verify the correctness of the information submitted.
- C. The registration of each air contaminant source subject to registration and notification pursuant to subsection (A) shall include a detailed inventory of contaminant sources and emissions related to said process; provided, however, that separate registration shall not be required for identical units of equipment or control apparatus installed, altered, or operated in an identical manner on the same premises.
- D. No person shall operate or cause the operation of an air contaminant source for which registration is required pursuant to KPB 10.12.010 without first notifying the director of the date upon which such source shall begin to operate.
- E. The director shall within thirty days of receipt of notice of completion inspect the facility and shall issue a notice of violation if he finds that the construction, installation, or establishment of the facility is not in accord with the plans, specifications, or other information submitted to the district or that the facility is otherwise in violation of this ordinance or regulation promulgated pursuant thereto.
- F. Neither air contaminant source registration nor notification of completion shall be required for a point

source of an air contaminant that has previously registered with the district, previously issued a notice of completion to the district, and has not undergone significant alteration since such registration and issuance of notice of completion.

10.12.020 Permit to operate--Required when

- A. No person shall operate or cause the operation of a facility capable of emitting into the ambient air, regardless of whether air quality control equipment is operating, an air contaminant from any of the following sources without first applying at least thirty days prior to either purchasing equipment or commencing construction of the facility and without first receiving a permit to operate from the district:
1. industrial process units having a total design rate, capacity, or throughput that equals or exceeds five tons per hour.
 2. fuel burning equipment having a combined rating that equals or exceeds 35 million BTU per hour.
 3. incinerators having a total rated capacity that equals or exceeds 500 pounds per hour.
- B. No person may construct, modify, replace, or undertake a major alteration of a facility requiring a permit to operate until detailed plans and specifications are submitted to the district and approved. The director shall approve or reject such plans and specifications within thirty days of receipt of a complete set of such plans and specifications unless the commission holds a public hearing pursuant to subsection (C). These plans and specifications shall include the following information:
1. one set of plans and specifications, clearly indicating the layout of the facility, location of individual pieces of equipment, and points of discharge;
 2. one set of maps or aerial photographs of a scale of at least one inch to one mile indicating the location and zoning of the proposed facility and, within a one mile radius of the facility, the land use and zoning of the surrounding area, all homes, buildings, water courses, roads, and other adjacent facilities, and the general topography.
 3. an engineering report outlining the proposed methods of operation, the quantity and quality of

material to be processed, the proposed use and distribution of the processed material, and a process flow diagram indicating the points of emission including estimated quantities and types of air contaminants to be emitted;

4. a description and the specifications of all air quality control devices including design criteria and other information indicating that such equipment is capable of complying with applicable federal, state, and district emission requirements.
 5. an evaluation of the effect on the surrounding ambient air of the emissions from the facility if requested by the district.
- C. The commission may hold a public hearing concerning any application for a permit to operate if it determines that public testimony is necessary before approval or rejection of an application for a permit to operate and if it provides public notice of such hearing not less than thirty days prior to the hearing in a newspaper of general circulation. In such cases the commission shall approve or reject the application within five days after conclusion of the public hearing.
- D. Approval to construct a new air contaminant source or modify an existing facility requiring a permit to operate may not be granted unless the applicant shows to the satisfaction of the director that:
1. the new or modified source will not prevent or interfere with the attainment or maintenance of any federal, state, or district ambient air quality standard;
 2. the new or modified source will operate without causing a violation of this ordinance or any regulation, rule, permit, or final order issued pursuant thereto.
 3. the equipment incorporates the control technology required by federal, state, and district law or regulation for the kind and amount of air contaminant emitted by the equipment.
- E. A permit to operate may

1. not be transferred without the written consent of the director;
 2. not be issued for a period greater than five years after which the permit must be renewed for continued operation of the facility;
 3. include a compliance schedule approved by the director providing for the minimum time necessary to install the required control equipment if the facility would or is emitting air contaminants in excess of federal, state, or district emission standards or limitations; provided, however, that a compliance schedule for any facility emitting air contaminants subject to federal or state regulation may not allow compliance later than the date provided by federal or state regulation. A permit including a compliance schedule must be reviewed and renewed every year of its duration;
 4. require that specific emission reduction procedures be taken during an air pollution episode.
- F. The director may require an applicant for a permit to operate, to install, use, and maintain monitoring equipment; to sample emissions in accordance with methods prescribed by the director at locations, intervals, and by procedures as may be specified; to provide source test ports of the size, number, and location as may be required and safe access to each port; to provide emission data and information from analysis of any test samples; and to provide periodic reports on process emissions.
- G. If an application for a permit to operate is denied, the director shall notify the applicant in writing of the reasons.
- H. Nothing in this section may be construed to authorize the district to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required emission standards may be met by machinery, devices, or equipment available from other sources.
- I. A reasonable fee in the amount set by the commission will be charged for the issuance of a permit.

- J. The issuance of a permit to operate shall neither relieve the owner of a facility requiring a permit of the obligation to comply with all applicable federal, state, or district emission standards and limitations nor prevent the director or commission from issuing other orders pursuant to this ordinance and the rules and regulations of the district promulgated pursuant thereto.
- K. A permit to operate may be revoked or suspended by the director or the commission if the conditions of the permit or applicable laws, rules or regulations are violated.

10.12.030 Source reports.

- A. The air contaminant emission data required by KPB 10.12.010 or KPB 10.12.020 shall be compiled and submitted to the commission at reasonable intervals upon the request of the director.

10.12.040 Air Pollution Sources--Testing

- A. The director may conduct or have conducted source testing in order to determine compliance with this ordinance or any rule or regulation promulgated pursuant thereto.
- B. Testing to determine compliance with provisions of this ordinance or any rule or regulation promulgated pursuant thereto shall be by methods of measurement approved by the director and undertaken in such a manner as to characterize the actual discharge into the ambient air.
- C. The cost, if any, to the district of any such source testing authorized by subsection (A) shall be a debt due the district from the owner or operator of such source and recoverable in any court of competent jurisdiction when such testing shall have proved the emission of air contaminants in violation of this ordinance or any rule or regulation promulgated pursuant thereto.

CHAPTER 10.16
Air Quality Standard--Variance procedures

10.16.010 Variance criteria.

- A. A person who owns or is in control of a plant, building, structure, establishment, process, or equipment may apply to the commission for a variance from any emission standard or limitation promulgated pursuant to this ordinance. The commission may grant the variance, but only after public hearing following thirty days notice, if it finds that:
1. the emissions occurring or proposed to occur do not endanger human health or safety and
 2. compliance with the rules or regulations from which the variance is sought would produce serious hardship without equal or greater benefits to the public.
- B. No variance may be granted under this section until the commission has considered the relative interest of the applicant, other owners of property likely to be affected by the emissions, and the general public.
- C. A variance granted under subsection (A) of this section, shall be for periods and under conditions consistent with the reasons for it and within the following limitations:
1. If a variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be effective only until the necessary means for prevention, abatement, or control become known and available, subject to the taking of substitute or alternate measures that the commission may prescribe.
 2. If a variance is granted on the grounds that compliance with the particular requirement

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from which a variance is sought will necessitate the taking of measures which because of their complexity or cost will involve considerable hardship, it shall be effective for a period of time which in the opinion of the commission is necessary and reasonable. A variance granted on this ground shall contain a timetable for compliance with the particular requirement from which a variance is sought in an expeditious manner and shall be for not more than five years.

3. If a variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided in subsection (C) (1) and (2), it shall be for not more than one year.
- D. A variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate for the initial granting of a variance. If complaint is made to the commission on account of the variance, no renewal of it shall be granted unless, after public hearing on the complaint following the notice, the commission finds that renewal is justified. No renewal may be granted except upon application for renewal made at least sixty days before the expiration of the variance. Immediately upon receipt of an application for renewal, the commission shall give public notice of it.
- E. The grant of a variance or renewal is not a right of the applicant but is within the discretion of the commission.

10.16.020 Judicial review of variance determination

A person adversely affected by the grant, denial, or renewal of a variance by the commission may obtain judicial review of the commission order by filing an appeal within thirty days after the date of such order. Judicial review of the grant, denial, or renewal of a variance may be had only on the grounds that the grant, denial, or renewal was arbitrary or capricious.

10.16.030 Precedence of Air Pollution Episode Provisions. No variance or renewal granted under this section may be construed to prevent or limit the air pollution episode provisions of this ordinance.

CHAPTER 10.20
Rulemaking Procedures

10.20.010 Notice of proposed rule or regulation.

- A. At least thirty days prior to the adoption, amendment, or repeal of a rule or regulation notice of the proposed action shall be:
 - 1. published at least twice in a newspaper of general circulation within the district, and
 - 2. mailed to every person who has requested in writing notice of proposed rules or regulations of the district.
- B. The failure to mail notice to a person as provided in this section does not invalidate an action taken by the district under this section of this ordinance.

10.20.020 Contents of notice.

The notice of proposed adoption, amendment, or repeal of a rule or regulation shall include:

- A. a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the rule or regulation;
- B. either the express terms or an informative summary of the proposed rule or regulation;
- C. a statement inviting the public to submit commentary, opinion, or other criticism of the proposed rule or regulation for consideration by the commission, including the time, date, and place of public hearing;
- D. other matters prescribed by law applicable to the district or the specific rule, regulation, or class of rules or regulations.

10.20.030 Public proceedings.

- A. No less than thirty days after initial publication of notice, the commission shall conduct a public hearing to give any interested person further opportunity to present statements, arguments, or contentions on matters relevant to the proposed rule or regulation.
- B. For no less than thirty days after initial publication of the initial notice, interested persons may provide the commission written comment upon a proposed rule or regulation.
- C. At a hearing under this section the commission or its authorized representatives may administer oaths or affirmations and may continue or postpone the hearing to a time and place it may determine.

10.20.040 Right to petition.

Any person may petition the district for adoption, amendment or repeal of a regulation. The petition shall state clearly the substance or nature of the regulation, amendment, or repeal requested, the reasons for the request, whether a public hearing is requested, and reference to the authority of the district to take the action requested. Within thirty days of receipt of a petition, the commission shall initiate rulemaking procedures or notify the petitioner in writing as to its reasons for not doing so.

10.20.050 Decisionmaking.

The commission shall consider all relevant material presented to it before adopting, amending, or repealing a rule or regulation and shall within ninety days after initial publication adopt, amend, or repeal a rule or regulation with such modification as it deems appropriate.

10.20.060 Effective date of regulation or rule.

- A. Adoption or repeal of a regulation adopted by the commission shall be effective only within the boundaries of the member government whose assembly adopts or repeals a rule or regulation.

- B. The assembly of a member government may amend a rule or regulation submitted for adoption by first remanding the rule or regulation to the commission for its further deliberation with a clear, concise statement of the substance or nature of the amendment desired, after which further deliberation the rule or regulation shall be resubmitted for adoption by that assembly. Upon remand of a rule or regulation by the assembly, the commission may as it deems appropriate consider the amendments desired without regard to the provisions of KPB 10.20.010.040.
- C. No fine or other penalty for violation of a rule or regulation may be imposed for a violation occurring within the boundaries of a member government until the assembly of that member government has adopted by ordinance the rule or regulation violated.
- D. No rule or regulation may be promulgated by the commission under this ordinance unless the director first obtains a written opinion from the attorney for the district certifying that the district has lawful authority to issue the rule or regulation as specifically expressed by ordinance or law and that the rule or regulation is within the scope of the district's authority as set forth by law or ordinance.

10.20.070 Retroactive effect.. A rule or regulation adopted under this ordinance may be applied only prospectively from the date they become effective and may not be interpreted or applied to situations or activities of persons occurring prior to their effective date.

10.20.080 Judicial review.. Any interested person may obtain a judicial declaration of the validity of a rule or regulation adopted under this ordinance by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the rule or regulation invalid for substantial failure to comply with the rulemaking procedures of this section.

CHAPTER 10.24 Enforcement

10.24.010 Notice of violation. When the director has evidence that a violation of this ordinance or rule or

regulation issued under this ordinance has occurred, the director shall serve a written notice of violation upon the suspected violator. The notice shall specify the provision believed to be violated and the facts believed to constitute the violation and may include a compliance order that necessary corrective action be taken within a reasonable time.

10.24.020 Compliance order. A compliance order issued pursuant to KPB 10.24.010 shall become a final order unless within ten days after receipt of service of the notice of violation and compliance order the person named requests in writing a hearing before the commission in the manner provided in KPB 10.24.040.

10.24.030 Voluntary compliance. The director may make efforts to obtain voluntary compliance through warning, informal conference, or other appropriate means.

10.24.040 Administrative hearings.

- A. Upon the written request by any person aggrieved by any decision of the director made pursuant to this ordinance or any rule or regulation in force pursuant thereto, including a decision to deny a permit to operate or the issuance of a compliance order, served on the director no later than ten days after that decision, the commission shall conduct a hearing to review the legality, appropriateness, or wisdom of that decision. The hearing shall occur no later than thirty days after receipt of service of the request upon the director, and after considering the evidence presented at the hearing, the commission shall affirm, modify, or reverse the decision of the director except as otherwise provided by this ordinance or a rule or regulation issued pursuant thereto.
- B. If after a hearing held under subsection (A) of this section the commission finds that a violation has occurred, it shall affirm or modify the compliance order previously issued or issue an appropriate compliance order for taking corrective action. If the commission finds that no violation has occurred, it shall rescind the previous order, if any. A compliance order issued as a part of a notice of violation or after a hearing may prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling emissions.
- C. In connection with a hearing held under this section, the commission shall have power to, and upon application

by a party to the hearing it shall have the duty to, compel the attendance of witnesses and the production of evidence on behalf of all parties.

10.24.050 Injunctive relief. Notwithstanding any other provision of this ordinance or other remedy provided by law, any person who violates any provision of this ordinance or any regulation, rule, permit, variance, or final order issued pursuant thereto is subject to injunctive relief to restrain that person from continuing the violation or threat of violation. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this ordinance or a rule, regulation, permit, variance, or final order in force under it, the superior court shall grant injunctive relief to restrain the violation.

10.24.060 Citizen enforcement.

- A. Any person residing within the boundaries of a member government may commence a civil action on his own behalf against any person who is alleged to be in violation of any provision of this ordinance or any rule, regulation, permit, variance, or final order pursuant thereto. The superior court of the judicial district in which such violation is alleged to occur shall have jurisdiction without regard to the amount in controversy to enforce such ordinance or rule, regulation, permit, variance, or final order issued pursuant thereto.
- B. No action may be commenced under this section either prior to thirty days after the plaintiff has given written notice of the alleged violation to the alleged violator and to the director or after the district has commenced and is diligently prosecuting a civil action against the alleged violator to require compliance with respect to such a violation, but in such action any person may intervene as a matter of right.
- C. In any action under this section the district, if not a party, may intervene as a matter of right.
- D. The court in issuing any final order in any action brought pursuant to subsection (A) will award costs of litigation to the prevailing party.

10.24.070 Appeals. All appeals of any final decision of the commission shall be made to the superior court of the judicial district wherein the final decision was made no

later than thirty days following that decision. Review of the court shall be limited to whether the decision of the commission or director is supported by substantial evidence.

10.24.080 Administrative fine.

- A. In addition to or as an alternate to any other remedy or penalty provided by law, any person who violates any of the provisions of this ordinance or any rule, regulation, permit, variance, or final order pursuant thereto may be subject to a penalty in the form of a civil fine in an amount not to exceed two hundred fifty dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.
- B. The penalty shall become due and payable when the person incurring the same receives a notice in writing from the director describing the violation with reasonable particularity and advising such person that the penalty is due unless a request is made for a hearing before the commission as provided for in KPB 10.24.040. When a request is made for a hearing, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order affirming the penalty in whole or in part.
- C. If the amount of such penalty is not paid to the district within thirty days after it becomes due and payable, then upon the request of the director the attorney for the district shall bring an action to recover such penalty.
- D. All penalties recovered under this section by the district shall be divided equally among the member governments of the district and paid into the general funds of each treasury.
- E. In all actions brought for the recovery of penalties hereunder, the procedure and rules of evidence shall be the same as in an ordinary civil action.

10.24.090 Judicial sanctions.

- A. In addition to any other remedy or penalty provided by law or this ordinance, a person who violates any provision of this ordinance or any regulation, rule, permit, variance, or final order issued pursuant thereto is subject to civil or criminal process or both,

including injunctive relief, recovery of civil or criminal fines, imprisonment, or any of these remedies where provided by the Anchorage Code or Kenai Peninsula Borough Code for violations of this ordinance.

- B. Conviction as specified in subsection (A) shall not be a ban to enforcement of this ordinance and the rules, regulations, and orders issued under it.

10.24.100-Private Relief--Effect of this Ordinance.
This ordinance does not affect the right of a person to bring an action for damage or other relief because of an injury caused by air pollution.

10.24.110 Separability of Code Provisions. The validity of any section, subsection, provision, clause or portion of this ordinance or any rule, regulation, permit, variance, or final order pursuant thereto or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance or any rule, regulation, permit, variance, or final order pursuant thereto or its application to other persons or circumstances.

CHAPTER 10.28
Stationary Source Emissions

10.28.010 Definitions. Unless the context clearly indicates otherwise, the following terms used in this regulation shall be defined as follows:

- A. "Fire Chief" means a municipal, borough, or city fire chief, chief of each fire protection district within the Cook Inlet Air Resources Management District or his authorized representative.
- B. "Incinerator" means any furnace used in the process of burning solid waste for the purpose of reducing the volume of the waste by removing combustible matter.
- C. "Industrial waste" means any material resulting from a production or manufacturing operation having no net economic value to the source producing it.
- D. "Open burning" means the burning of any matter in such manner that the products of combustion

resulting from the burning are emitted directly into the atmosphere without passing through an approved stack, duct, vent, or chimney but does not refer to the operation of safety flares for the purpose of protecting human life.

- E. "Open, untreated areas" means land upon which all of the natural vegetation has been removed and no successful measures have been taken to either revegetate or resurface the ground to prevent the emission of dust, vapors, or other particulate matter into the atmosphere.
- F. "Smolder" means to burn and smoke without flame.
- G. "Stationary source" means any building, structure, facility, installation, or equipment that emits or may emit any air contaminant and that contains apparatus to which this regulation applies.

10.28.020 Visible Emission Standards.

- A. No person shall cause, permit, or allow the emission of any air contaminant greater than 20 percent opacity from any stationary source including air curtain incinerators, for a period or periods aggregating more than three minutes in any one hour excluding, however, portions of emissions containing condensed, uncombined water vapor.
- B. The opacity of an air contaminant shall be determined at the point of emission, except when the point of emission cannot be readily observed, in which case it may be determined at an observable point of the plume nearest the point of emission.
- C. This section shall not apply to smoke generating equipment used by the district for the training, instruction, or certification of persons to observe and determine the opacity of air contaminants when such equipment is otherwise operated in compliance with applicable federal and state laws.

10.28.030 Emission Standards

- A. No person shall cause, permit, or allow emissions of particulate matter other than

combustion contaminants into the atmosphere from any stationary source in excess of 0.05 grains per standard cubic foot of exhaust gas.

- B. No person may cause, permit, or allow emissions into the atmosphere from any single source or emission whatsoever any one or more of the following air contaminants, in any state or combination thereof exceeding the following concentrations at the point of discharge:
1. Sulphur compounds calculated as sulphur dioxide (SO₂) above 500 parts SO₂ per million parts of exhaust gas.
 2. Combustion contaminants calculated to 12 percent of carbon dioxide (CO₂):
 - (a) 0.05 grains per standard cubic foot of exhaust gas except as noted in subsections (b) through (e) below:
 - (b) 0.10 grains per standard cubic foot of exhaust gas for those sources in operation prior to July 1, 1972, and for fuel burning equipment using coal for fuel or for incinerators larger than 1,000 pounds per hour capacity;
 - (c) 0.15 grains per standard cubic foot of exhaust gas for fuel burning equipment using wood waste as fuel;
 - (d) 0.20 grains per standard cubic foot of exhaust gas for incinerators larger than 200 pounds per hour rated capacity but equal to or less than 1,000 pounds per hour rated capacity;
 - (e) 0.30 grains per standard cubic foot of exhaust gas for incinerators less than or equal to 200 pounds per hour rated capacity.
- C. No person shall cause, permit, or allow the emission of particulate matter from any stationary source that exceeds in any one

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hour the amount shown in the following table for the process weight rate allocated to such source:

PROCESS WEIGHT LB./HR.	EMISSION STANDARDS LB./HR.
100-299	0.6
300-499	1.2
500-699	1.8
700-999	2.2
1000-1999	2.8
2000-2999	4.1
3000-3999	5.4
4000-4999	6.5
5000-5999	7.6
6000-6999	8.6
7000-7999	9.5
8000-8999	10.4
9000-9999	11.2
10000-14999	12.0
15000-19999	15.0
20000-29999	19.2
30000-39999	25.2
40000-49999	30.5
50000-59999	36.0
60000-79999	40.0
80000-99999	48.0
1000000-139999	55.0
140000-or more	65.0

- D. No person shall cause, permit, or allow the emission of particulate matter onto the property of others except when such emissions comply with the requirements of KPB §10.28.020 and KPB §10.28.030 A.-C.

10.28.040 Other Emission Limitations..

- A. No person shall cause, allow, or permit the emission of any air contaminant or water vapor including but not limited to odorous matter, that tends to be injurious to or adversely affects human health, safety, or welfare, animal or plant life, or property or interferes with the normal use and enjoyment of life, property, or business.

- B. Nothing in this regulation shall be construed to impair any cause of action or legal remedy therefor of any person or the public for injunctive relief, injury, or damages arising from the emission of any air contaminant in such place, manner, or concentration as to constitute air pollution or a common law nuisance.
- C. The commission may establish reasonable requirements that a building or stationary source be enclosed and ventilated in such a way that all the air, gases, and particulate matter are effectively dispersed or treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.

10.28.050 Concealment of Emissions Prohibited.

- A. No person shall willfully cause, allow, or permit the installation or use of any device or use any means which, without resulting in a reduction in the total amount of air contaminant emitted, conceals an emission of air contaminant which would otherwise violate these regulations.
- B. No person shall cause, allow, or permit the installation or use of any device or use of any means designated to mask the emission of an air contaminant which causes detriment to health, safety, or welfare of any person.
- C. No person shall cause, permit, or allow the use of air for dilution of emission contaminants without affecting any total decrease in such contaminants as a method to effect compliance with the requirements of this regulation.

10.28.060 Inadvertent Emissions.

- A. No person shall cause, allow, or permit particulate matter to be handled, transported, or stored without taking reasonable measures to prevent the particulate matter from becoming airborne.

- B. Within the boundaries of Anchorage no person shall cause, allow, or permit a building or its appurtenances or a road to be constructed, altered, repaired, or demolished without taking reasonable measures to prevent particulate matter from becoming airborne.
- C. Within the boundaries of Anchorage no person shall cause, allow, or permit untreated open areas, including but not limited to roads, parking lots, or construction sites located within a private or public lot or roadway, to be improved, graded, excavated, repaired, demolished, altered, or constructed without taking reasonable measures to prevent particulate matter from becoming airborne.
- D. The commission shall publish guidelines it determines to be reasonable measures for controlling fugitive emissions, and compliance with such guidelines to the satisfaction of the director shall be deemed to fulfill the requirements of subsections A.-C.

10.28.070 Open Burning.

- A. Within the boundaries of the Kenai Peninsula Borough no person shall cause, permit, or allow open burning for the burning of dumps or sanitary landfills or the burning of industrial waste materials which does not comply with subsections (1) through (4) of this section.
 - (1) Open burning not prohibited in section A above is allowed; provided, however, that those materials which tend to result in the emission of black smoke or excessive odors shall not be burned in the open and that the fires permitted by this subsection shall occur only in the nonurban areas of the Kenai Peninsula Borough designated by the Kenai Peninsula Borough Planning Office.
 - (2) Controlled fires for the purpose of training fire fighting personnel or for the disposal of demolition waste require written

approval of the district, and after such fires have been conducted, a summary report shall be submitted to the district stating the number of individuals trained, type of training, date conducted, and duration of training.

- (3) The open burning of debris, trees, and brush accumulated during land clearing operations shall be conducted in such a way as to obtain maximum combustion efficiency throughout the burning period; provided, however, that no tires or heavy petroleum products are used to start or maintain the fire.
- (4) Notwithstanding any other provision of this section no open burning shall be allowed if an air quality advisory is broadcast on radio or television stating that burning is not permitted for that day.

B. Within the boundaries of Anchorage no person shall cause, suffer, permit, or allow any open burning except the following unless otherwise prohibited by law:

- (1) Open burning for pleasure, religious, ceremonial, cooking, or like social purposes and open burning from flares, torches, waste gas burners, incense burners, and insect pots is allowed.
- (2) Open burning authorized by the fire chief for the disposal of dangerous materials is allowed, provided no alternate means of disposal is reasonably available.
- (3) Open burning authorized by the fire chief for instruction in the method of fighting fires or testing of fire resistive materials and fire protection equipment is allowed provided that these outdoor fires have prior written approval from the district and that a summary report is submitted to the district after the exercises are completed stating the number of individuals trained, type of training, date conducted, and duration of training.

(4) Open burning for the disposal of trees and brush on property being developed for commercial or residential purposes or on property where the trees and brush were grown is allowed provided that:

(a) Open burning shall be allowed only outside the Anchorage bowl area and only during the periods from April 1 through April 30 and September 1 through October 31.

Anchorage bowl area means that area within the boundaries of Anchorage enclosed by a border beginning at the intersection of 61°18' north latitude and 149°42' west longitude, thence due south to 61°04' north latitude, thence due west to 150°05' west longitude, thence due north to 61°18' north latitude, and thence due east to the point of beginning, 149°42' west longitude.

(b) The person responsible for such open burning shall obtain a written permit for such fire from the district upon terms and conditions specifically approved by the district and shall comply with all the laws and regulations of the district the fire chief, and all other governmental agencies regarding such fires.

(c) The air pollution control officer of the district may issue open burning permits allowed by subsection (4) upon appropriate terms and conditions that take into consideration the ambient air quality, the achievement and maintenance of federal, state, or district ambient air quality standards, meteorological conditions, the suitability of air pollution control devices for large quantities of waste, means of reducing fire hazards, the suitability of disposal by other available means, the amount and nature of waste to be burned, the proximity of the burn site to developed areas, and the population density of the surrounding area.


(d) Tires or heavy petroleum products may not be used to start or maintain open burning.

- (5) Open burning for the disposal of household refuse is allowed in the areas of Anchorage where municipal or Alaska Public Utilities Commission sanctioned refuse collection service is not available.
- (6) The burning of combustibile construction debris, trees, brush, and other vegetative matter are allowed in a commercial air curtain combustion system properly operated and maintained according to the manufacturer's specifications, provided that the device has been registered with the district that the operator obtains written approval from the district prior to operation, and that the operation of the device complies with all rules and regulations of the district, the fire chief, and all other governmental agencies regarding such equipment.

C. It shall be a rebuttable presumption that the person who owns or controls the property on which open burning occurs has caused or allowed said open burning.

Section 3. That this ordinance shall become effective immediately upon enactment, provided however, that if the State of Alaska, Department of Environmental Conservation has not approved the air pollution program of the Cook Inlet Air Resources Management District to enforce the Federal Clean Air Act and to employ a single permit system in the regulation of air pollution in the district, within eighteen (18) months after the date of enactment of this ordinance, this ordinance shall be deemed repealed and of no further force and effect.

~~ENACTED~~
DEFEATED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 31 DAY OF October, 1978.


JoAnn Elson, Assembly President

ATTEST:


Borough Clerk

Kenai Peninsula Borough
Ordinance 78-36
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