

CHAPTER 1 - INTERLOCAL AGREEMENT, ORGANIZATION, ADMINISTRATION

.0101 INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF BUNCOMBE AND THE CITY OF ASHEVILLE TO CREATE A REGIONAL AIR QUALITY PROGRAM. This section, signed June 6, 2000, replaces all previous resolutions regarding the establishment of a regional air agency in Buncombe County and the City of Asheville.

WHEREAS, the County of Buncombe and the City of Asheville have determined that it is in their mutual best interest to establish a regional air quality program pursuant to the provisions of North Carolina General Statutes Section 143-215.112; and

WHEREAS, these parties do hereby enter into an interlocal agreement pursuant to the provisions of North Carolina General Statute Sections 160A-461, 160A-464, and 143-215.112 (c) (3) to create the Asheville-Buncombe Air Quality Agency for the purpose of developing and administering an air quality program in their respective jurisdictions.

NOW THEREFORE, pursuant to North Carolina General Statutes Section 143-215.112 and 160A-464 the parties hereto do hereby covenant and agree as follows:

- a) **PURPOSE OF AGREEMENT:** The purpose of this Agreement is to establish, administer, and enforce a local air quality program for the County of Buncombe and City of Asheville in accordance with the provisions of North Carolina General Statutes Section 143-215.112. To that end and not inconsistent with the applicable law, the County and City approve the Mission Statement attached hereto as Exhibit A.
- b) **DURATION OF AGREEMENT:** This Agreement shall become effective upon the later of July 1, 2000 or the date of certification by appropriate State agencies. It shall be automatically renewed for successive one year terms on July 1st of each calendar year unless terminated by either party given written notice of its intention to terminate to the other party no later than the first day of March of the year in which said termination is to become effective.
- c) **JOINT AGENCY ESTABLISHED:** Therefore is hereby established a joint agency to be known as the Asheville-Buncombe Air Quality Agency. The composition, organization, nature, and powers conferred on the Board of this Agency are set forth as follows:
 - (1) The Board shall consist of five members, three of whom shall be appointed by the Buncombe County Board of Commissioners and two of whom shall be appointed by the

Asheville City Council. Members shall be appointed for six-year staggered terms. Initially, one County appointee and one City appointee shall be appointed for two-year terms. One County appointee and one City appointee shall be appointed for four-year terms, and one County appointee shall be appointed for a six-year term. At the expiration of said terms, all members thereafter shall be appointed for six-year terms. Initial appointments shall be made within thirty days of ratification of this Agreement by both parties.

(2) The Board shall be responsible for its own internal organization such as the selection of a Chair, Vice Chair, and Secretary. The Board shall have authority to appoint a hearing officer who shall hear appeals on violations not settled during the "just cause" process with Agency staff. He or she shall make a recommendation to the full Board (or majority) to settle the violation. The entity issued the citation will have the opportunity to appear before the full Agency Board and present the entity's information and case on the violation in question.

(3) The Board shall have the following duties and responsibilities:

- A) To select the Director according to the Buncombe County personnel policies.
- B) To advise the Buncombe County Board of Commissioners and Asheville City Council in developing policies and plans to improve air quality programs.
- C) To consult with the Director about problems relating to management of the Agency and to approve the budgets for the Agency.
- D) To perform the functions and responsibilities enumerated in N.C.G.S. > 143-215.112(c)(1).
- E) To have such other duties and responsibilities as these parties may assign to it.

d) **PERSONNEL:**

(1) Staff: The parties hereto agree that since the Agency will not have a personnel office nor a personnel plan, that all Agency staff shall follow Buncombe County personnel policies and procedures and be employees of Buncombe County. To that end, the parties further agree:

- A) That the Agency Board will adopt by reference the rules, regulations and procedures applicable to Buncombe County employees for the purpose of personnel administration.
 - B) Buncombe County's personnel department will administer the position classification plan, leave policies, compensation and benefits and personnel records and reporting requirements of the Agency at the direction of the Agency Director.
 - C) The Director of the Agency shall have the authority to employ and discharge staff in keeping with the rules, regulations and procedures referenced in subparagraph (1) above.
- (2) Director: The Director shall be hired by the Board. The entire Board must be present and vote to hire or fire the Director. The Director of the Agency shall be subject to the Buncombe County personnel plan in all respects except for the fact that he or she shall be hired by the Board and shall serve at the pleasure of the Board, and the Board shall establish his or her terms of employment.
- e) **COUNTY SUPPORT SERVICES:** Buncombe County will provide all bookkeeping, financial, payroll, and other services as necessary for the Agency. The Agency will reimburse the County in accordance with the County's indirect cost allocation plan that is approved for use for grant funds. The Agency's annual budget shall reflect and maintain a fund balance at least equal to 8% of the Agency's total annual operating budget. The parties hereto anticipate that the Agency will generate sufficient revenues from inspection fees, permits, and federal grants to be self-supporting; but in the event that it is not self-supporting, the Board shall provide the parties hereto at least ninety days notice of any expected shortfall. Each party shall determine if funding is to be made to the Agency from their respective budgets in proportional to their representation on the Board. If either party declines to provide such funding this failure to contribute shall be considered withdrawal of that party to this Agreement subject to the notice requirements in Paragraphs (2) and (10).
 - f) **OWNERSHIP OF PROPERTY:** The parties hereto agree that the Agency shall not become the owner of any real property and in the event of termination of this Agreement the personal property owned by the Agency will become the property of these parties on a per capita basis.

- g) **AMENDMENTS:** This Agreement may be amended by consent of both parties.
- h) **TERMINATION:** This Agreement may be terminated as heretofore provided in Paragraph b).
- i) **ADDITIONAL REGULATIONS SHALL BE SUBMITTED TO BOTH GOVERNING BODIES:**
If the Board should determine that additional regulations not mandated by United States or North Carolina law are necessary for the effective control of air quality, the Board shall submit its recommendation concerning such proposed regulations to the Buncombe County Board of Commissioners and Asheville City Council for their review at least 30 days prior to the Board holding a public hearing to consider adopting said regulations.

.0102 GENERAL POWERS AND DUTIES OF DIRECTOR

- (a) The Director shall have the following powers and duties:
 - (1) Supervise the implementation of the standards and regulations contained in all chapters of the Agency Rules and Regulations.
 - (2) Make recommendations to the Board of any and all persons violating any provision of this chapter and institute necessary criminal and/or civil legal proceedings in the name of the Board; prosecute violators of this chapter; compel the prevention and abatement of air pollution or nuisances arising from violations of this chapter; and assure compliance with applicable standards.
 - (3) Examine and review in order to approve or disapprove plans and make recommendations to the Board for fuel-and refuse-burning equipment, process equipment and control equipment which is to be installed, constructed, reconstructed, added to or altered, to assure that they are in accordance with the requirements of the standards and regulations contained in this chapter.
 - (4) Make inspections and tests of existing and newly installed, constructed, reconstructed or altered fuel or refuse-burning equipment, process equipment and control equipment, to determine if there is compliance with applicable standards and regulations.
 - (5) Investigate complaints of violations of this chapter and make inspections and observations of air pollution sources, and record such investigations, complaints, inspections and observations.

- (6) Issue certificates of operation, notices or other materials required under the provisions of this chapter.
- (7) Prepare and submit to the Asheville-Buncombe Air Quality Agency Board for its consideration, after receiving recommendations of the Advisory Council, proposals, additions or revisions of the standards and regulations prescribed proposals, additions or revisions of the standards and regulations prescribed by this chapter of any other regulations pertaining to air pollution abatement.
- (8) Encourage voluntary cooperation by persons or affected groups in air quality control.
- (9) Collect and disseminate information on air quality control to the public civic groups, community organizations and others.
- (10) Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this chapter to foster and encourage the best possible management and conservation of the air resources within Buncombe County and the City of Asheville.
- (11) Cooperate and work with federal, state, county, municipal and other agencies concerned with air quality control in regard to aerometric studies, abatement programs, public complaints and other matters to the end that the air resources of the county shall best be conserved and improved.
- (12) Declare an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public, and issue orders in the name of the Board to responsible persons to reduce or discontinue immediately the emission of contaminants.
- (13) Recommend to the Board the adoption of required procedural modifications as set forth in the Code of Federal Regulations for evaluating standards contained in this chapter after notice and public hearing before the Asheville-Buncombe Air Quality Agency Board.
- (14) Perform other acts, which may be necessary for the successful enforcement of and compliance with the standards and regulations contained in this chapter or may be required by the Asheville-Buncombe Air Quality Agency Board.

(15) Between meetings of the Board, the Director may grant a limited and temporary construction or operating permit to sources of air pollution which have otherwise met the standards of the Agency's Code, only in those cases which would otherwise result in significant economic or physical hardship to the owners of the source, and only after consultation and approval of the Chair.

(b) The Asheville-Buncombe Air Quality Agency Board may, by resolution, delegate to the Director such other duties and responsibilities, consistent with the provisions of Article 21 of Chapter 143 of the North Carolina General Statutes, as are deemed appropriate, including but not limited to, the determination of facts based upon standards contained in this chapter.

.0103 AUTHORITY OF DIRECTOR TO ESTABLISH ADMINISTRATIVE PROCEDURES

- a) The director may establish administrative procedures relating to the submission of requests for permits under this chapter, including such information as is needed, and such other procedures deemed necessary in order to fulfill his responsibilities and not inconsistent with this chapter.
- b) Prior to issuing any permit for a source on the Code of Federal Regulations list of sources requiring a review for the prevention of significant deterioration, 40 CFR 51.24 (b) as of February 28, 1985, or for any other source that may be designated by the director, the information submitted by the owner shall be made available for public inspection. A notice for public comment shall be published in the newspaper of general circulation and shall allow a thirty-day period for submittal of comments. Confidential material will be handled in accordance with Section 1-29.

.0104 ADMINISTRATIVE PROCEDURES

a) Adoption of Air Quality Standards, Emissions Control Standards, Regulations Governing Air Quality and Special Orders and Special Orders by Consent.

(1) The Board shall direct staff to give notice by publication in a newspaper of general circulation within the region in which it has jurisdiction at least one time in 30 days before the date of any of the following actions:

- A) Adoption of any air quality standards, emission control standards or regulations governing air quality, which are not incorporated by reference pursuant to N.C.G.S. 143-215.112(c)(1)(d).
 - B) The issuance of any special order or special order by consent.
- 2) The Agency shall maintain a mailing list of persons who have requested notification of any action taken pursuant to section (a)(1)(A) or (B) above. Persons on this list will be mailed a copy of the notice published.
 - 3) The notice shall contain the text of the proposed air quality standards, emission control standards or regulations governing air quality, special order or special order by consent unless the length of the same makes this impracticable. In the event the entire text of a proposed air quality standard, emission control standard or regulation governing air quality, special order or special order by consent is not reproduced in full in the notice, a synopsis of the same shall be published with directions that the full text shall be available at the agency and on the agency web site. The notice shall solicit public comment.
 - 4) Staff will prepare a summary of written comments received, and proposed responses, for the Board. In the event the Board determines that significant public comment has been received, the board shall determine whether to: (i) take action pursuant to this notice at its next regularly scheduled board meeting following the publication of notice (provided the 30 day notice period has been met), at which it may elect to conduct a public hearing; or, (ii) set a special board meeting for the purpose of taking action on this notice, at which it may elect to conduct a public hearing; or, (iii) to continue action on this notice to the next regularly scheduled board meeting at which it may elect to conduct a public hearing. Regardless of when action is taken by the board, the board shall review the staff's written summary and proposed responses.
 - 5) In the event that a public hearing is specifically requested by any person or entity responding to notice, the Board shall consider conducting a public hearing at a regularly scheduled meeting or at a special meeting. In making this determination, the Board shall consider the significance of the proposed action.

b) Control of Sources of Air Pollution

- (1) Existing sources - after the effective date established for any air quality standard, emission control standard, or regulation, no person shall discharge any air contaminants into the outdoor atmosphere in violation thereof except in compliance with the terms of a temporary permit, special order, or other appropriate instrument issued by the Board.
 - (2) Control of new sources of air pollution - after the effective date established for any air quality standards, emission control standards, or regulation no person shall do any of the following acts or carry out any of the following activities until or unless such person shall have applied for and shall have received, from the Board, a permit therefore and shall have complied with such conditions, if any, as are prescribed by such permit:
 - A) Establish or operate any new air contaminant source;
 - B) Build, erect, use or operate any new equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
 - C) Alter or change the construction or method of operation of any existing or process from which air contaminants are or may be emitted;
 - D) Enter into a contract for the construction and installation of any air-cleaning device or allow or cause such device to be constructed, installed or operated.
- c) Board Powers as to Permits, Construction Permits and Operating Permits
- (1) applications for permits, construction permits, and operating permits so as to prevent, insofar as is reasonably possible, any pollution or any increased pollution of the air.
 - (2) Application for a permit shall be accompanied by plans and specifications and such other information as the Board may deem necessary to the proper evaluation of the application for a permit. Failure of the Board to take action on an application for a permit within 90 days shall be treated as approval of such application. Any person whose application for a permit is denied, or is granted subject to conditions which are unacceptable to such person, shall have the right to a hearing before the Board, provided that a written request for such a hearing is submitted to the Board within 30 days following the receipt by the applicant of such decision.

- (3) Any permit, construction permit, or operation permit granted by the Board may be modified, suspended, or revoked by the Board provided that written notice of such modification, suspension, or revocation shall be mailed to the holder of any such permit not less than 60 days prior to the effective date of any such modification, suspension or revocation. Any person whose permit has been modified, suspended, or revoked may appeal to the Board for relief from such action within 30 days following the giving of notice by the Board by mailing to the Board written notice of appeal. The action of the Board modifying, suspending, or revoking any permit shall become final if no notice of appeal is given in the manner provided above.
- (4) The Board shall have the power to grant any construction permit, and operating it in such a manner, upon such conditions and for such a period of time as the Board may specify so as to effectuate the purpose of this Board, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources. No permits shall be issued unless it is demonstrated that the emission standards set by these Regulations will be achieved. The National Ambient Air Quality Standard must also be maintained.
- (5) All requests for a construction permit, and operating permit shall be made by applying to the Board in writing on forms provided by the Board. Any and all information, plans, specifications and data required by such application form shall be submitted with such application. The Board may require the applicant to submit additional information, plans, specifications, and data as it may deem necessary to the proper evaluation of the application.
- (6) The granting of any construction permit, or operating permit shall not limit the application of Section .0300 entitled "Air Pollution Emergencies" of the Air Quality Code in the City of Asheville and Buncombe County of the Asheville-Buncombe Air Quality Agency and shall not relieve the holder of such permit from compliance with said Section .0300.

d) Inspection - Right of Entry

The Board may direct an investigation be conducted as it may reasonably deem necessary to carry out its duties and purposes, and for this purpose the Board, through its authorized agents, shall have the authority, in accordance with NCGS 143-215.3 (a) (2), to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of the air, air pollution, air contaminate sources, emissions or the installation and operation of any clean air

devices. No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

e) Zoning and Planning

The Board shall make available to any city or county zoning or planning agency, where such exists within the jurisdiction, those facts concerning air pollution which pertain to zoning or planning. These facts include information concerning such approved documents, as issued by the State covering air pollution devices, which will be installed within the local area.

f) Limitations and Severability

All Acts of the Local Board shall be consistent with the provisions of Chapter 143, Article 21, North Carolina General Statutes, and all rules and regulations promulgated thereunder. If any provision or clause of this Ordinance shall be declared invalid, such declaration shall not affect the validity of the ordinance as a whole or any other provision or clause contained herein.

.0105 APPEALS TO AND OTHER APPEARANCES BEFORE BOARD

Any person taking exception to any final ruling, notice of violation or order issued by the Director may appeal to the Board pursuant to the Board's Appeals policy. A copy of this policy is appended to The Agency's rules and regulations, available upon request from the Agency and available via the agency's website (www.abairquality.org). This appeals policy is subject to change at the discretion of the Board.

.0106 PENALTIES FOR VIOLATION

The agency has adopted a civil penalty policy pursuant to which penalties may be assessed for any violation of the Agency's rules and regulations. The Agency reserves the right to assess civil and criminal penalties under N.C.G.S. §143-215.114A and §143-215.114B.

.0107 CIVIL RELIEF FOR VIOLATION

The Agency reserves the right to bring a civil action for injunctive relief pursuant to N.C.G.S. §143-215.112(2) to restrain any violation or immediately threatened violation. The institution of such a proceeding will not relieve any violator from any penalty prescribed for any violation.

.0108 FEES FOR INSPECTION, PERMITS AND CERTIFICATES

Fees for inspections and the issuance of permits and certificates required by this chapter shall be made payable to the Asheville-Buncombe Air Quality Agency Board's Fiscal Agent. The amount of such fees shall be established by the Board and shall be based upon a reasonable approximation of the cost of the supervision and inspection required by the standards and regulations contained in this Chapter and the necessary for the enforcement thereof.

.0109 CHAPTER DOES NOT PROHIBIT PRIVATE ACTIONS FOR RELIEF

Nothing contained in this Chapter shall be construed as intended to prohibit any private right of action for damages, injunctive relief, or other appropriate relief by any person who has suffered, or is exposed to the immediate threat of damage or injury by reason of the violation or threatened violation of this chapter or by reason of the emission into the atmosphere of air contaminants in sufficient quantities as to constitute a nuisance.

.0110 JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS RENDERED UNDER THIS CHAPTER

Any final administrative decision of the Agency and/or Board shall be subject to judicial review as provided by Article 4 of N.C.G.S. Chapter 150B.

*AB Air Quality History Note Effective date: from and after September 15, 2000.
Amended Eff. November 9, 2021; January 1, 2007.*