

SUMMARY OF FUGITIVE DUST MODEL ORDINANCE PROVISIONS

Fugitive Dust Emissions

SECTION I. Title

Title of ordinance.

SECTION II. Authority

Explains by what authority the ordinance is enacted.

SECTION III. Policy

Explains why the ordinance is enacted. (To protect the citizens from air pollution and nuisances caused by fugitive dust emissions.)

SECTION IV. Definitions

Provides the definitions for certain terms which are used in the ordinance.

SECTION V. Regulations

Lists the sources and causes of fugitive (road) dust omissions which are to be regulated under the ordinance, and the conditions by which the emissions are regulated.

SECTION VI. Abatement

Lists actions which should be taken to prevent fugitive (road) dust from becoming airborne.

SECTION VII. Exceptions

Lists exceptions to the ordinance.

SECTION VIII. Enforcement Orders

Explains who has the power to enforce the ordinance. Discusses the different types of enforcement orders which are available to the municipality and how these orders are implemented.

SECTION IX. Responsibility of Owners and Operators

Explains the scope of the enforcing agent's authority with respect to owners and operators of an alleged fugitive dust source. States how a municipality may collect or recover the costs involved in enforcing an order.

SECTION X. Criminal Penalties

Explains what the criminal penalties are for any person who violates any provision of this ordinance or any order of the municipality issued pursuant to this ordinance.

SECTION XI. Civil Penalties

Explains the procedures by which a municipality may assess a civil penalty for the violation of a provision of this ordinance or any order issued pursuant to this ordinance.

SECTION XII. Unlawful Conduct

Explains what constitutes unlawful conduct.

SECTION XIII. Public Nuisances

Explains what constitutes a public nuisance, when it must be abated, how the municipality may recover the expenses of abatement, and who is liable for the costs of the abatement.

SECTION XIV. Repealer

Statement repealing any previous ordinance and any other ordinance which conflicts, in whole or in part, with this ordinance.

SECTION XV. Validity

Statement asserting the validity of this ordinance.

SECTION XVI. Effective Date

Statement of when the ordinance takes effect.

MODEL AIR POLLUTION CONTROL ORDINANCE

Fugitive Dust Emissions

An ordinance of (municipality), \_\_\_\_\_ County, Commonwealth of Pennsylvania for the prevention and control of air pollution; defining certain terms used herein; providing for regulations, abatement, exceptions, enforcement orders, responsibility of owners and operators, penalties, unlawful conduct, public nuisances, repealing previous ordinance (no.), and validity.

SECTION I. Title

This ordinance shall be known and may be cited as the (municipality) Air Pollution Control Ordinance of (year).

SECTION II. Authority

The (Council-Board) of the (municipality), under, and by virtue of and pursuant to the authority granted by (enabling authority/code) do hereby enact and ordain this ordinance.

SECTION III. Policy

Whereas the (Council-Board) of (municipality) has determined that air pollution from fugitive dust emissions may be detrimental to the health, comfort, living conditions, welfare, and safety of the citizens of (municipality), it is hereby declared to be the policy of (municipality) to safeguard the citizens of (municipality) from such air pollution.

SECTION IV. Definitions

The following words, terms, and phrases, when used in this ordinance, unless the context clearly indicates otherwise, shall have the following meanings ascribed to them:

- (1) Council-Board - Borough Council, Township Board of Supervisors.
- (2) Dust palliative - A substance used to abate the dispersion of particulate matter into the air. Dust palliatives for use on roads and other surfaces may be water or other substances approved by PennDOT and the Department of Environmental Resources.  
[Note to the municipality: Contact your local PennDOT office or Department of Environmental Resources' Regional Air Quality Program office for further guidance on approved dust palliatives.]
- (3) Fugitive air contaminant - An air contaminant of the outdoor atmosphere not emitted through a flue, including, but not limited to, industrial process losses, stockpile losses, re-entrained dust, and construction/demolition activities.

(4) Municipality - A city, incorporated town, township, borough, county, municipal authority, or other public body created under State law having jurisdiction over the disposal of sewage, industrial wastes, or other wastes.

(5) Person - Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth or the Federal Government, political subdivision, municipality, district, authority, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(6) Roads and streets - This includes public and private roadways, paved and unpaved parking areas, race tracks of any kind, and land used for recreational purposes.

(7) Used oil - A petroleum-based or synthetic oil which is used in an internal combustion engine as an engine lubricant, or as a product for lubricating motor vehicle transmissions, gears, or axles which, through use, storage, or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

(8) Waste oil - Oil refined from crude oil or synthetically produced, used, and as a result of the use, contaminated by physical or chemical impurities. The term includes used oil or oil whose original purpose has been completed and which is directed to a disposal or processing facility or is otherwise disposed.

#### SECTION V. Regulations

(1) After (the effective date) a person responsible for any of the following activities or sources of fugitive air contaminants shall take all reasonable actions to prevent particulate matter from becoming airborne:

- (a) Construction or demolition of buildings or structures.
- (b) Construction, grading, paving, and maintenance of roads and streets.
- (c) Use of roads and streets. Emissions from material in or on trucks, railroad cars, and other vehicular equipment are not considered as omissions from use of roads and streets.
- (d) Clearing of land.
- (e) Stockpiling of materials.

(2) A person may not permit fugitive particulate matter to:

- (a) be emitted into the outdoor atmosphere from a source listed in Section V(1) if the emissions are visible at the point the emissions pass outside the person's property, or
- (b) adversely affect any other person, their property, or their reasonable enjoyment of their property.

## SECTION VI. Abatement

A person responsible for any source specified in Section V shall take all reasonable actions to prevent particulate matter from becoming airborne. These actions include, but are not limited to, the following:

(1) Use, where possible, of water or approved dust palliatives for control of dust in the demolition of buildings or structures, construction operations, the grading or use of roads or streets, or the clearing of land. The dust palliative used must be one which is approved by PennDOT and by the Department of Environmental Resources. The method of application must be one which is approved by PennDOT and by the Department of Environmental Resources. The use of waste oil as a dust palliative is prohibited.

(2) Application of asphalt, water, or approved dust palliatives on dirt roads, material stockpiles, and other surfaces which may give rise to airborne dusts. The dust palliative used must be one which is approved by PennDOT and by the Department of Environmental Resources. The method of application must be one which is approved by PennDOT and by the Department of Environmental Resources. The use of waste oil as a dust palliative is prohibited.

(3) Paving and maintenance of roadways.

(4) Immediate removal of earth or other material from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water, or other means.

## SECTION VII. Exceptions

The requirements of this ordinance do not apply to fugitive dust emissions arising from the production of agricultural commodities in their unmanufactured state on the premises of the farm operation.

## SECTION VIII. Enforcement Orders

(1) The (municipality) (supervisor, codes officer, zoning officer, or any other duly authorized agent) shall have the power and duty to enforce the provisions of this ordinance.

(2) The (municipality) may issue such orders as are necessary to aid in the enforcement of the provisions of this ordinance. These orders shall include, but shall not be limited to: orders requiring persons to cease unlawful activities or cease operation of a fugitive dust source which, in the course of its operation, is in violation of any provision of this ordinance; orders to take corrective action or to abate a public nuisance; orders requiring the testing, sampling, or monitoring of any fugitive dust source; or orders requiring production

of information. Such an order may be issued if the (municipality) finds that any condition existing in or on the facility or source involved is causing or contributing to fugitive dust or if the (municipality) finds that any person is in violation of any provision of this ordinance.

(3) The (municipality) may, in its order, require compliance with such conditions as are necessary to prevent or abate fugitive dust emissions or effect the purposes of this ordinance.

(4) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the (quasi judicial body) of the (municipality's) order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the (quasi judicial body) may issue such a supersedeas under rules established by the (quasi judicial body).

(5) The authority of the (municipality) to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this ordinance. The failure to comply with any such order is hereby declared to be a public nuisance.

#### SECTION IX. Responsibility of Owners and Operators

(1) Whenever the (enforcing officer) finds that fugitive dust is or may be resulting from an air contamination source in the (municipality), the (enforcing officer) may order the owner or operator to take corrective action in a manner satisfactory to the (municipality), or the (enforcing officer) may order the owner or operator to allow access to the land by the (enforcing officer) or a third party to take such action.

(2) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing, and investigation related to a corrective action, the (municipality) may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in Section XI of this ordinance.

#### SECTION X. Criminal Penalties

Any person who violates any provision of this ordinance or any order of the (municipality) issued pursuant to this ordinance commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employees of the (municipality) authorized to conduct inspections or

investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this ordinance, and the (municipal) Counsel is hereby authorized to prosecute these offenses. For purposes of this section, a summary offense may be prosecuted before any district justice in this (municipality). There is no accelerated rehabilitative disposition authorized for a summary offense.

#### SECTION XI. Civil Penalties

(1) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this ordinance or any order issued pursuant to this ordinance, the (municipality) may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, the (municipality) shall consider the willfulness of the violation; damage to air, soil, water, or other natural resources of the (municipality) or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the (municipality); the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

[Note to the municipality: The allowable amounts for the penalty increase in 1995 to \$15,000.00 per day for each violation and in 1996 and thereafter to \$25,000.00 per day for each violation. The municipality may want to write these amounts into its ordinance as appropriate.)

(2) When the (municipality) proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full; or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the (quasi judicial body) within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the (quasi judicial body) within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the (municipality). If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the (quasi judicial body) shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow

deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The (quasi judicial body) shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The (quasi judicial body) may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the (quasi judicial body) finds that the appellant is financially unable to pay. The (quasi judicial body) shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the (municipality) and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest on the penalty amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. 51 et seq.) from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the (municipality). The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the (municipality), the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this Section, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right, or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this section.

[Note to the municipality: The penalties and remedies available to the municipality are those set forth in the Air Pollution Control Act (APCA), as amended, 35 P.S. 4012, Sections 9, 9.1, and 12(g). Each municipality may tailor the penalty provisions to reflect the municipality's preferred penalty policy, within the legal limits of the APCA.]

## SECTION XII. Unlawful Conduct

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this ordinance or to fail to comply with any order or other requirement of the (municipality); or



to cause a public nuisance; or to cause air, soil, or water pollution resulting from a fugitive dust incident; or to hinder, obstruct, prevent, or interfere with the (municipality) or its personnel in their performance of any duty hereunder, including denying the (enforcing officer) access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this ordinance. The owner or operator of a fugitive dust source shall not allow pollution of the air, water, or other natural resources of the (municipality) to result from the source.

SECTION XIII. Public Nuisances

A violation of this ordinance or of any order issued by the (municipality) under this ordinance shall constitute a public nuisance. The (municipality) shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, when abating a public nuisance, the (municipality) may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in Section XI. Whenever the nuisance is maintained or continued contrary to this ordinance or any order issued pursuant to this ordinance, the nuisance may be abatable in the manner provided by this ordinance. Any person who causes the public nuisance shall be liable for the cost of abatement.

SECTION XIV. Repealer

Ordinance (no.) previously enacted is hereby repealed. All other ordinances or parts thereof which are in conflict with this ordinance are hereby repealed.

SECTION XV. Validity

The provisions of this ordinance are severable, and if any section, clause, sentence, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this ordinance. It is hereby declared to be the intent of the (Council-Board) that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part, or provision had not been included herein.

SECTION XVI. Effective Date

This ordinance shall become effective on the (no.) day of (month) , (year) .