

TITLE SEVEN - Air Pollution Code

- Chap. [1371](#). General Provisions.
- Chap. [1373](#). Administration, Enforcement and Penalty.
- Chap. [1375](#). Registration, Inventory, Permits, Fees and Certificate of Operation.
- Chap. [1377](#). Emission Regulations.
- Chap. [1379](#). Sampling and Testing.
- Chap. [1381](#). Variances.

1371.01 - SHORT TITLE

This Title Seven of Part Thirteen shall be known and cited as the Air Pollution Code.
(Ord. 1970-69. Passed 7-28-70.)

1371.02 - DEFINITION OF TERMS

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this chapter, unless a different meaning is clearly indicated.

- (a) “Air contaminant” means any solid, liquid, or gas, or any combination thereof except uncombined water, discharged into the atmosphere.
- (b) “Air pollution” means the presence in the atmosphere of one or more contaminants in such quantities for such period of time that they are, or may be, injurious to human, plant or animal life, or to property, or that they interfere with the comfortable enjoyment of life or property or the conduct of business.
- (c) “Air Pollution Control Officer” means the enforcement officer responsible for control of air pollution within the boundaries of the City.
- (d) “Appeals Board” means the Board to which an appeal may be made from a decision of the Board of Health.
- (e) “Board” means the Board of Health of the City.
- (f) “City” means the City of Portsmouth, Ohio.
- (g) “Commissioner of Air Pollution Control” means the person appointed by the Board to represent them between meetings and to execute the Board’s directives, and preside at all hearings with the exception of appeals.
- (h) “Control equipment” means any equipment designed to regulate the release of contaminants from process, fuel-burning or refuse-burning equipment by reducing the creation of air contaminants or the emission of air contaminants into the atmosphere, or both.
- (i) “Council” means Council of the City.
- (j) “Emission” means the act of passing in to the atmosphere an air contaminant or the material so passed to the atmosphere.
- (k) “Fuel-burning equipment” means any furnace, boiler apparatus, stack and all appurtenances thereto, whose combustion product emits or exhausts to atmosphere, and is used in the process of burning fuel for the primary purpose of producing heat or power.
- (l) “Hearing officer” means the official assigned by the Board to hear complaints with reference to violation of this chapter.
- (m) “Opacity” means the state of a substance which renders it partially or wholly impervious to the rays of light. Opacity as used in this chapter refers to the obscuration of an observer’s view.

(n) "Open burning" means any fire from which the products of combustion are emitted directly into the outdoor atmosphere without passing through a stack.

(o) "Particulate matter" means material other than uncombined water, which is suspended in or discharged into the atmosphere in a finely divided form as a liquid or solid, at standard conditions.

(p) "Person" means any individual, partnership, co-partnership, firm, company, public or private corporation, association, trust, estate, or any agency, board, department of the City, or any other legal entity.

(q) "Process equipment" means any equipment, device, or contrivance for changing any material whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stacks, etc., the use or existence of which may cause any discharge of air pollutants into the outdoor atmosphere but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment in this chapter.

(r) "Process weight" means the total weight of all material introduced into an industrial operation or process, including solid fuels, but excluding liquid fuels and gaseous fuels when these are used as fuels and air introduced for purposes of combustion, cooling or transport.

(s) "Process weight per hour" means for continuous or steady state operation or process: the total process weight for the entire period of operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof. For batch operation: the total process weight for a period which covers a complete operation of an integral number of cycles divided by the hours of actual process operation during such period.

(t) "Refuse-burning equipment" means any equipment, device, or contrivance used for the destruction of garbage, and/or other combustible wastes by burning, and all appurtenances thereto.

(u) "Salvage operations" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

(v) "Seal" or "sealing equipment or premises" means a device, tag or marking installed by the Board so as to prevent use of the process, fuel-burning, refuse-burning, or control equipment or premises causing the violation or from which violations of this chapter originate.

(w) "Smoke" means small gas borne particles, consisting essentially of carbonaceous material, in sufficient number to be observable.

(x) "Stack" means a stack, chimney, flue, conduit, or opening arranged for the emission into the outdoor atmosphere of air pollutants.

(y) "Standard conditions" means a gas temperature of sixty degrees Fahrenheit and a gas pressure of 14.7 pounds per square inch absolute dry air.

(z) "Volatile content" means the gaseous constituents of solid fuels as determined by the standard procedure of the American Society for Testing Materials designated D-980 as amended or revised to date. (Ord. 1970-69. Passed 7-28-70.)

1371.03 - PURPOSE

This chapter is designed to prevent and control air pollution by prescribing the duties of the Board of Health with respect to air pollution control, empowering investigation and abatement, providing for the establishment and enforcement of rules and regulations, providing for the registration and establishment of a comprehensive emission inventory for major sources located within the City limits of Portsmouth, establishing limitations upon the emission of air pollutants, declaring emissions which do not meet such limitations to be unlawful and a public nuisance, prohibiting certain acts causing air pollution, providing for fines and penalties for violation of the

provisions of this chapter, and providing just and adequate means by which the provisions of this chapter may be executed. (Ord. 1970-69. Passed 7-28-70.)

1371.04 - SEVERABILITY

It is declared that this chapter is enacted in the interest of the public health and welfare of the residents of the City. If any part of this chapter shall be declared to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter, the Council hereby declaring that it would have passed such remaining portions of this chapter notwithstanding such validity. (Ord. 1970-69. Passed 7-28-70.)

CHAPTER 1373 - Administration, Enforcement and Penalty

- 1373.01** Enforcement agency.
- 1373.02** Powers and duties of the Board.
- 1373.03** Duties of the Commissioner.
- 1373.04** Preparation and adoption of rules and regulations.
- 1373.05** Coordination of departments.
- 1373.06** Adopted standards or recommended practices.
- 1373.07** Secret process.
- 1373.08** Inspections.
- 1373.09** Circumvention and right of entry.
- 1373.10** Sealing.
- 1373.11** Abatement orders.
- 1373.12** Emergencies.
- 1373.13** Injunctive proceedings.
- 1373.14** Appeals.
- 1373.15** Appeals Board.
- 1373.99** Penalty.

CROSS REFERENCES

Variances - see BLDG. Ch. [1381](#)

1373.01 - ENFORCEMENT AGENCY

The Board is charged with the duty of investigating, preventing, and abating causes of air pollution and enforcing the provisions of this chapter. The Board may appoint or designate a person who shall perform and be responsible for such of the duties of the Board as set forth in this chapter as the Board may specify. This person shall have the title Commissioner of Air Pollution Control. In carrying out and enforcing the provisions of this chapter, the Board shall employ an Air Pollution Control Officer and other necessary personnel, as shall be provided for in the budget of the Board and approved by City Council, and shall be privileged to call upon any other City official and to receive from such official such advice and assistance as may be within the official's respective powers and functions to render. (Ord. 1970-69. Passed 7-28-70.)

1373.02 - POWERS AND DUTIES OF THE BOARD

The Board shall have the power and duty to:

- (a) Supervise the execution of all laws, ordinances, rules, and regulations pertaining to air pollution as provided in this chapter.
- (b) Hold hearings relating to any aspect of or matter in the administration of this chapter.
- (c) Make such determinations and issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings.
- (d) Prepare and place before Council, proposals for additions or revisions to this chapter, or any other ordinance pertaining to air pollution abatement.
- (e) Encourage voluntary cooperation by persons or affected groups in the preservation and restoration of the purity of the outdoor atmosphere, and grant a reasonable time to comply to the provisions of this chapter.

(f) Maintain a register of air pollution sources. Require emission information from sources of air pollution in the City and organize such data into a detailed emission inventory. Become acquainted with such sources and their operators or owners.

(g) Collect and disseminate information on air pollution control.

(h) Work with planning and zoning agencies for the purpose of coordinating activities under provisions of this chapter with planning and zoning activities and foster the best possible management of the air resources of the City.

(i) Cooperate and work with federal, interstate, state, county, municipal, and other agencies concerned with air pollution with regard to aerometric studies, abatement program, public complaints, and other matters to the end that the air resources of Portsmouth shall be best conserved and improved.

(j) Do any and all acts which may be necessary for the successful prosecution of the purposes of this chapter and such other acts as may be specifically enumerated herein as duties.

(k) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their cause, effects, prevention, abatement and control.

(l) Conduct educational programs relating to air contamination and air pollution.

(m) Set fees for applications and permits authorized by this chapter. Such fees shall not exceed the estimated costs, as determined by the Board, of the respective services, and upon collection by the Board shall be deposited in the air pollution control fund in the City Auditor's office.

(n) Adopt, promulgate, amend and repeal standards, rules and regulations consistent with the general intent and purposes of this chapter to prevent, abate and control air pollution.

(Ord. 1970-69. Passed 7-28-70.)

1373.03 - DUTIES OF THE COMMISSIONER

The Commissioner of Air Pollution Control under the supervision and direction of the Board shall:

(a) Supervise the execution of all laws, rules and regulations pertaining to air pollution as provided in this chapter.

(b) Institute complaints against all violators of any provisions of this chapter and institute necessary legal proceedings, either personally or through his representatives.

(c) Issue and have served upon violators orders requiring the repair of equipment or abatement of conditions not in compliance with this Code.

(d) Compel the prevention and abatement of air pollution or odors or nuisances arising therefrom.

(e) Examine and approve or disapprove the plans for fuel-burning, refuse-burning, process and control equipment to be installed, constructed, re-constructed, altered or added to.

(f) Make inspections and tests of existing and newly installed equipment subject to this chapter to determine whether such equipment complies with this Code.

(g) Investigate complaints of violations of the provisions of this Code and make inspections and observations of air pollution conditions. Records shall be maintained of all such investigations, complaints, inspections and observations.

(h) Approve or reject applications for permits and administer the issuance of certificates of operation, notices, waiver citations, permits and other documents required under the provisions of this Code.

(i) Prepare and place before the Board for their consideration proposals for additions or revisions to this chapter, or other rules and regulations pertaining to air pollution.

(j) Encourage voluntary cooperation by persons or affected groups in the preservation and restoration of the purity of the outdoor atmosphere.

(k) Collect and remit to appropriate officials of the City fees collected for certificates of operation or examination of permits.

(l) Work with other City agencies for the purpose of coordinating activities for the common municipal good.

(m) Conduct tests and make studies of air contaminants, whether or not controlled by specific limitations of this Code. (Ord. 1970-69. Passed 7-28-70.)

1373.04 - PREPARATION AND ADOPTION OF RULES AND REGULATIONS

(a) The Commissioner of Air Pollution Control and Air Pollution Control Officer are authorized to adopt and promulgate, with the advice and approval of the Board and subject to the veto of such Board, rules and regulations for the installation and operation of such equipment and devices as are susceptible for use in such a manner as to violate this section.

(b) The Commissioner of Air Pollution Control and the Air Pollution Control Officer may, from time to time, alter, amend, or rescind with the advice and approval of the Board, such rules and regulations and promulgate such amended or additional rules and regulations as shall be deemed advisable. Such rules and regulations as may be prepared, revised, amended, or rescinded shall be effective thirty days after their publication and copies provided for distribution at the office of the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1373.05 - COORDINATION OF DEPARTMENTS

It shall be the duty of the various departments, officers and employees of the City, having charge of the inspection of the premises upon which such equipment is located to cooperate with the Commissioner of Air Pollution Control to determine that the extension of work so authorized by said permit shall be done in conformity with plans and specifications approved by the Board. (Ord. 1970-69. Passed 7-28-70.)

1373.06 - ADOPTED STANDARDS OR RECOMMENDED PRACTICES

Where reference is made in this chapter to the standards or recommended practices of national technical societies, associations, or other organizations, such information shall form and be considered an integral part of the chapter in the same manner and extent as if fully reproduced therein. Not less than two copies of such standards or recommended practices of national technical societies, associations, or other organizations shall be kept on file at all times in the office of the Commissioner of Air Pollution Control and shall be available for consultation by the public. (Ord. 1970-69. Passed 7-28-70.)

1373.07 - SECRET PROCESS

Any records or other information furnished to Portsmouth Air Pollution Control concerning one or more air contaminant sources, which records or information, as certified by the Commissioner of Air Pollution Control, relate to process or production unique to the owner or operator, or which tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the Commissioner of Air Pollution Control in the administration of this chapter unless such owner or operator shall expressly agree to their publication or availability to the general public or unless the disclosure of such information is required for the prosecution of a violation of this chapter. Nothing herein shall be construed to prevent use of such records or information by the Board in compiling or publishing analyses or

summaries relating to the general condition of the ambient atmosphere, provided that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section. (Ord. 1970-69. Passed 7-28-70.)

1373.08 - INSPECTIONS

(a) Any duly authorized officer of Portsmouth Air Pollution Control may enter and inspect any property, premises or place on or at which an air contaminate source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules and regulations in force pursuant thereto.

(b) No person shall refuse entry or access to any authorized representative of the Portsmouth Air Pollution Control program who requests entry for purposes of inspection and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any inspection.

(c) If requested, the owner or operator of the premises shall receive a written report setting forth all facts found which relate to compliance status. (Ord. 1970-69. Passed 7-28-70.)

1373.09 - CIRCUMVENTION AND RIGHT OF ENTRY

(a) No person shall build, erect, install or use any article, machine, equipment, or other contrivance, the sole purpose of which is to dilute or conceal an emission without resulting in a reduction in the total release of air contaminants to the atmosphere nor shall a person do anything nor commit any act with the intent to distort stack test emission results.

(b) Any person who in any manner hinders, obstructs, delays, resists, prevents, or in any manner interferes or attempts to interfere with the Commissioner or his representatives in the performance of any duty enjoined, or shall refuse to permit the Commissioner or such representatives to perform their duty by refusing them or either of them, entrance at reasonable hours to any premises in which the provisions of this chapter are being violated, or are suspected of being violated, or refuse to permit testing, or permit the inspection or examination of such premises for the purposes of the enforcement of this chapter shall be subject to cancellation of the certificate of operation or such other action as may be provided at law or by provisions of this Code. (Ord. 1970-69. Passed 7-28-70.)

CHAPTER 1375 - Registration, Inventory, Permits, Fees and Certificate of Operation

- 1375.01** Registration and emission inventory.
- 1375.02** Data registration.
- 1375.03** Exemptions from the registration and inventory system.
- 1375.04** Application required.
- 1375.05** Approval of plans and specifications before issuing a permit.
- 1375.06** Action on permit applications.
- 1375.07** Alternate action on permit application.
- 1375.08** Applicability of permit.
- 1375.09** Permit violation.
- 1375.10** Time limit on permits.
- 1375.11** Exceptions.
- 1375.12** Emergency repairs.
- 1375.13** Certificate of operation.
- 1375.14** Denial or revocation of certificates of operation.
- 1375.15** Renewal of certificate of operation.
- 1375.16** Prima facie evidence of unlawful emission.
- 1375.17** Fees.
- 1375.18** Schools, churches and governmental operations.

CROSS REFERENCES

Administration, enforcement and penalty - see BLDG. Ch. [1373](#)

1375.01 - REGISTRATION AND EMISSION INVENTORY

(a) Good business and conservation practices as well as air resource management practices indicate the desirability of determining and recording the amounts and kinds of materials lost or discharged to the outdoor atmosphere. Therefore, all persons owning or operating any process, fuel-burning, or control equipment pertaining thereto, which may be a source of air pollutants, may be required to register and cooperate fully and without reservation with the Board, supplying required information for a comprehensive emission inventory.

(b) The above information shall include the form and dimensions of the process, fuel-burning, refuse-burning, or control equipment, including the means provided for admitting the air for combustion process; the character of the fuel to be used; the maximum quantity of such fuel to be burned per hour; the kind and amount of raw materials processed; the expected air pollutant emission rate; the operating requirements; the use made of such process, fuel-burning, refuse-burning, or control equipment; pollutant concentration, gas volume, and gas temperature at the emission point; physical characteristics; the location and elevation of the emission point relative to nearby structure, window opening, etc.; and any other reasonable and pertinent information, that may be required by the Board.

(c) The Board shall supply necessary forms on which such data will be recorded and submitted to the Board. Registration shall be valid for a period of two years from the date of registration. At the end of that time the source must again be registered and up to date information on the source's emissions as the Board shall require must be submitted to the Board. (Ord. 1970-69. Passed 7-28-70.)

1375.02 - DATA REGISTRATION

(a) The Commissioner of Air Pollution Control may require periodic data registration and shall prepare appropriate forms for such purpose. The data shall include plans and specifications for equipment, and the submission required under this section is in addition to the submission of plans and specifications under Section [1375.04](#). The Commissioner of Air Pollution Control may use such information to prepare emission inventories.

(b) Plans and specifications for process, refuse-burning, and fuel-burning equipment shall show type of installation, the form and dimension of such equipment, the location of sources or emissions, dimensions of the building or part thereof in which equipment is located, amount of work to be accomplished by such equipment, type of fuel used, means of limiting emissions to conform to limitations set forth in this chapter and written evidence to substantiate information required, such as test data, calculated values, material balance, maximum quantity of fuel to be burned per hour, operating requirements, purpose and use of equipment, means of ventilating room in which equipment is located, raw material used, products produced, operating schedules, and such other information as may be required by the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1375.03 - EXEMPTIONS FROM THE REGISTRATION AND INVENTORY SYSTEM

The provisions of this registration and inventory system shall not apply to:

- (a) Fuel-burning and cooking equipment utilized in connection with any structure designed and used exclusively as a dwelling for not more than four families;
 - (b) Laboratory equipment used exclusively for chemical or physical analysis or experimentation;
 - (c) Portable brazing, soldering, or welding equipment;
 - (d) All gas and distillate fuel-oil-burning equipment of less than 500,000 BTU/hr. capacity.
- (Ord. 1970-69. Passed 7-28-70.)

1375.04 - APPLICATION REQUIRED

(a) No person shall construct, install, re-construct, or alter any process, fuel-burning, or refuse-burning equipment, or control equipment pertaining thereto, that may be a source of air contaminant, for use within the City until an application, including not less than two sets of properly prepared plans and specifications of the process, fuel-burning, refuse-burning, or control equipment and structure or buildings used in connection therewith have been filed by the person or his agent in the office, and have been approved by the Commissioner of Air Pollution Control, and until an installation permit has been issued by the Air Pollution Control Officer for such construction, installation, reconstruction or alteration.

(b) Such plans and specifications shall show the form and dimensions of the process, fuel-burning, refuse-burning, or control equipment, together with the description and dimensions of the building or part thereof in which such equipment is to be located including the means provided for combustion process; the character and composition of the fuel to be used; the maximum quantity of such fuel to be burned per hour; the kind and amount of raw materials to be processed; the expected air contaminant emission rate; the operating requirements; the use to be made of such process, fuel-burning, refuse-burning, or control equipment; contaminant concentration, gas volume, and gas temperature at the emission point; physical characteristics of particulates emitted; the location and elevation of the emission point relative to nearby structures and window openings; a flow diagram showing the equipment under consideration and its relationship to other process, if any, and a general description of these processes; and any other

reasonable and pertinent information that may be required by the Commissioner of Air Pollution Control.

(c) Applications for a permit to operate existing fuel-burning, refuse-burning or process equipment within the City limits must be received in the office of the Commissioner of Air Pollution Control within 180 days from the effective date of this section, except with Commissioner's approval, within one year.

(d) The Air Pollution Control Officer shall issue a permit only if he determines from the plans and specifications that the proposed installation will not create a condition of air pollution. Failure to comply with any requests for information made by the Control Officer or Commissioner of Air Pollution Control shall be cause for rejection of an application. (Ord. 1970-69. Passed 7-28-70.)

1375.05 - APPROVAL OF PLANS AND SPECIFICATIONS BEFORE ISSUING A PERMIT

(a) The Building Department of the City shall review and approve all building plans for the erection, construction, reconstruction, alteration or occupancy of any building or structure when the plans and specifications for such structure or occupancy include any fuel-burning or refuse-burning device, or any chimney or smoke stack, or the occupancy of any building for industrial purpose, before the Board may issue a permit for installation of or for operating such fuel-burning, refuse-burning or process equipment.

(b) No operating permit shall be issued if the Board finds that emission from the building or structure will violate the provisions of this chapter.

(c) Failure of the Board to approve or reject such plans within thirty days of acknowledgment of receipt of such plans or specifications from a decision of the Building Department, shall be deemed approval. (Ord. 1970-69. Passed 7-28-70.)

1375.06 - ACTION ON PERMIT APPLICATIONS

An application shall be acted upon within thirty calendar days after it is filed in the office of the Commissioner of Air Pollution Control. Approval of the application for a permit may, at the discretion of the Commissioner, include a condition requiring emission tests to be made upon completion of installation for which the permit has been issued, to establish compliance with the emission limitations of this chapter. The Commissioner shall notify the person applying for the permit of the approval or reasons for rejection of the application in writing. Upon the approval of the application and upon the payment of the prescribed fees, the Commissioner shall issue a permit for the construction, reconstruction, installation, or alteration of such process, fuel-burning, refuse-burning, or control equipment. (Ord. 1970-69. Passed 7-28-70.)

1375.07 - ALTERNATE ACTION ON PERMIT APPLICATION

In the event the plans, specifications and information submitted to the Commissioner of Air Pollution Control pursuant to Section [1375.04](#) reveal a proposal to construct, install, reconstruct or alter any process, fuel-burning, refuse-burning, or control equipment of complex design, involving technological ingenuity or advance of considerable magnitude, the Commissioner may, at his option, and in lieu of issuing an installation permit, require the applicant to file with the Commissioner a statement certifying that the proposed equipment or installation will comply with all the applicable provisions and limitations set forth in this Code. Upon filing of such certificate of compliance, the applicant may proceed with the proposed installation, subject, however, to all of the provisions of this Code. (Ord. 1970-69. Passed 7-28-70.)

1375.08 - APPLICABILITY OF PERMIT

No construction, installation, reconstruction, or alteration shall be made which is not in accordance with the plans, specifications, and other pertinent information upon which the installation permit was issued without the written approval of the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1375.09 - PERMIT VIOLATION

Violation of the installation permit shall be sufficient cause for the Commissioner of Air Pollution Control to stop all work in connection with said permit and he is hereby authorized to seal the installation without notice. No further work shall be done until the Commissioner of Air Pollution Control is assured that the condition in question will be corrected and that the work will proceed in accordance with the installation permit. (Ord. 1970-69. Passed 7-28-70.)

1375.10 - TIME LIMIT ON PERMITS

If construction, reconstruction, installation, or alteration is not begun within six months, nor completed within one year from the date of the issuance of the permit, such permit shall automatically become void and all fees paid shall be forfeited unless an extension of time is granted by the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1375.11 - EXCEPTIONS

The provisions of this Code shall not apply to any combustion device erected, constructed, altered or installed in any style in any single or two-family house not used for commercial purpose, or retail business; or any single or two-family dwelling that has not more than one retail establishment attached thereto or included therein, said retail establishment being the secondary or incidental function of the building or serving not more than two dwelling units, nor shall the provisions of this Code apply to the erection, construction, alteration, installation or inspection of any warm air furnace, any unit heater, direct fired unit heater or ceiling type unit heater provided, however, that if the operation of such equipment violates Section [1377.01](#) of this Code, and a complaint is received, the Air Pollution Control Officer shall take the necessary steps to abate the violation. (Ord. 1970-69. Passed 7-28-70.)

1375.12 - EMERGENCY REPAIRS

An emergency repair may be made prior to the application for installation permit if serious air pollution consequences may result if the repair were deferred. When such repair is made the person concerned shall notify the Commissioner of Air Pollution Control or his representative on the first business day after the emergency occurred and file an application for an installation permit if directed to do so by the Commissioner. (Ord. 1970-69. Passed 7-28-70.)

1375.13 - CERTIFICATE OF OPERATION

(a) No person shall operate or cause to be operated, any process, fuel-burning or refuse-burning, or control equipment pertaining thereto for which an installation permit was required or was issued under this Code until an inspection has been made by the Commissioner of Air Pollution Control or his representative.

(b) The person responsible for the installation, construction, reconstruction or alteration of any process, fuel-burning, refuse-burning, or control equipment for which an installation permit is required shall notify the Air Pollution Control Officer when the work is completed and ready for final inspection.

(c) No equipment shall be operated for any other purpose or in any other manner than that for which the installation permit was approved and for which a certificate of operation has been issued unless otherwise authorized in writing by the Commissioner of Air Pollution Control.

(d) After the installation permit has been issued and it is demonstrated to the satisfaction of the Commissioner of Air Pollution Control that the process, fuel-burning, refuse-burning, or control equipment can be operated in compliance with this Code, an initial certificate of operation shall be issued by the Commissioner of Air Pollution Control.

(e) Emission tests may be required by the Commissioner of Air Pollution Control before the issuing of an initial certificate of operation.

(f) Said certificate of operation shall be kept posted on or near the installation for which it was issued.

(g) The issuance of a certificate of operation shall not operate as a guarantee of immunity from the prosecution or other legal action for violations occurring during the period covered by the certificate. Failure to operate under test within the limitations and requirements of this Code shall constitute sufficient grounds for ordering changes in the process, fuel-burning, refuse-burning, or control equipment or appurtenances thereto before an initial certificate of operation can be granted.

(h) When the Commissioner of Air Pollution Control refuses to issue a certificate of operation, the Air Pollution Control Officer is authorized to seal the process, fuel-burning, refuse-burning, or control equipment until the person required to procure the certificate of operation has complied with the provisions of this chapter.

(i) The Commissioner of Air Pollution Control may, by rule or regulation, require periodic inspection of designated classes of equipment. No period of time between inspections shall exceed two years. (Ord. 1970-69. Passed 7-28-70.)

1375.14 - DENIAL OR REVOCATION OF CERTIFICATES OF OPERATION

(a) A certificate of operation may be denied, or, once granted, may be revoked:

(1) Incident to any discontinuance and seal order;

(2) In any emergency where operation of the subject equipment may be dangerous to persons or property;

(3) Where no air pollution control equipment or modification, if required has been installed to permit operation in conformity with the provisions of this Code;

(4) Where equipment is of such or so installed that it cannot be or is not being operated in conformity with the provisions of this Code;

(5) Upon failure or refusal of the person responsible to submit information required by this Code;

(6) Upon failure or refusal of the person responsible to comply with an abatement order issued under the provisions of this Code.

(b) Notice in writing must be sent by the Commissioner or by the Air Pollution Control Officer to persons in violation of subsections (a)(1), (a)(4) and (a)(5) hereof, demanding compliance within a time limit set forth therein or within a time limit extension granted by the Commissioner prior to the revocation of an existing certificate.

(c) Denial or revocation of a certificate of operation shall not be a bar to prosecution for violation of any of the provisions of this Code. (Ord. 1970-69. Passed 7-28-70.)

1375.15 - RENEWAL OF CERTIFICATE OF OPERATION

(a) The Commissioner of Air Pollution Control shall require:

(1) The renewal of certificates of operation on all installations for which an installation permit was obtained;

(2) Application for certificates of operation on equipment existing prior to the adoption of this Code and for which no certificate of operation has been issued;

(3) Payment of appropriate fees for such certificates.

(b) Certificates shall be renewed according to the schedule for periodic inspections.

(Ord. 1970-69. Passed 7-28-70.)

1375.16 - PRIMA FACIE EVIDENCE OF UNLAWFUL EMISSION

In any hearing of the municipal court or any court of competent jurisdiction, the fact of operation without a valid certificate of operation, together with testimony as to ownership or responsibility from the records of the Portsmouth Air Pollution Control shall be prima facie evidence of unlawful emissions and that the equipment for which the certificate of operation is not in effect is being operated in violation of the provisions of this chapter.

(Ord. 1970-69. Passed 7-28-70.)

1375.17 - FEES

(a) The fees for the examination, handling, inspection, review, and storage of applications for an Environmental Protection Agency permit to operate or registration for each air contaminant source within the jurisdiction of this Code shall be on an annual basis as follows:

(1)	Particulate:	0-25 tons per year	\$100
		25-50 tons per year	250
		50-100 tons per year	500
		100-250 tons per year	1,000
		250-500 tons per year	2,000
		500-1,000 tons per year	2,500
		Over 1,000 tons per year	3,500
(2)	SO ₂ :	0-25 tons per year	100
		25-50 tons per year	250
		50-100 tons per year	500
		100-250 tons per year	1,000
		250-500 tons per year	2,000
		500-1,000 tons per year	2,500
		Over 1,000 tons per year	3,500

(3) Coal crushing and loading facilities are assessed a fee of five hundred dollars (\$500.00) since these are significant pollution sources.

(4) Aggregate screening and crushing facilities are assessed a fee of two hundred fifty dollars (\$250.00).

(5) Gasoline dispensing facilities are assessed a fee of one hundred dollars (\$100.00).

(b) Exemptions.

(1) No fee imposed under this section may be charged the State or any political subdivision thereof, including educational facilities or medical facilities owned by the State or a political subdivision.

(2) No fee imposed under this section may be charged any person exempted from taxation by Ohio R.C. 5709.07 or 5709.12.

(c) Payment.

(1) The fees listed in this section shall be paid annually and are due no later than June 30 of each calendar year.

(2) All fee payments are to be made payable to the Portsmouth Local Air Agency, 740 Second Street, Portsmouth, Ohio 45662, and credited to the 2301 Air Division Account.

(Ord. 1983-22. Passed 4-12-83.)

1375.18 - SCHOOLS, CHURCHES AND GOVERNMENTAL OPERATIONS

No fee shall be demanded or collected under the provisions of this Code for the required inspection of combustion devices installed or to be installed in any public or parochial schools, churches or any governmental operation in the City. (Ord. 1970-69. Passed 7-28-70.)

CHAPTER 1377 - Emission Regulations

- 1377.01** Visible emissions; odors.
- 1377.02** Exceptions and special provisions.
- 1377.03** Emission of odors into the atmosphere.
- 1377.04** Rendering plants.
- 1377.05** Emission of sulfur oxides.
- 1377.06** Emission of particulate matter from transporting and material handling in open air.
- 1377.07** Emission of particulate matter from fuel burning equipment.
- 1377.08** Emission of particulate matter from refuse burning equipment.
- 1377.09** Emission of particulate matter from process equipment.
- 1377.10** Breakdown of equipment.
- 1377.11** Open fires.
- 1377.12** Other emissions.
- 1377.13** Nuisance.

CROSS REFERENCES

Variances - see BLDG Ch. [1381](#)

1377.01 - VISIBLE EMISSIONS; ODORS

(a) Visible Emissions; Smoke and Equivalent Opacity. No person shall discharge or cause to be discharged, into the atmosphere from any new source of process equipment or fuel burning equipment, approved for installation after the effective date of this Code, emission of any air contaminant whatsoever which is:

(1) Of a shade or density darker than that designated as a Number 1 on the Ringlemann Chart, or

(2) Of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (a)(1) hereof, or

(3) Of a shade or density darker than that designated as Number 2 on the Ringlemann Chart for a period or periods aggregating more than 3 minutes in any one hour, but not to exceed nine minutes in any eight-hour period, or

(4) Of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (a)(3) hereof for a period or periods aggregating more than three minutes in any one hour, or nine minutes in any eight-hour period.

(b) No person shall discharge, or cause to be discharged, into the atmosphere from existing sources of process equipment, fuel-burning equipment or open fire, approved in accordance with Section [1377.11](#), emission of any air contaminant whatsoever, which is:

(1) Of a shade or density equal to or darker than that designated as a Number 2 on the Ringlemann Chart or,

(2) Of such opacity as to obscure an observer's view to a degree greater than does smoke described in subsection (b)(1) hereof, or

(3) Of a shade or density equal to or darker than that designated as a Number 3 on the Ringlemann Chart for a period or periods aggregating more than five minutes in any one hour, but not to exceed fifteen minutes in any eight- hour period, or

(4) Of such opacity as to obscure an observer's view to a degree greater than does the smoke described in subsection (b)(3) hereof for a period or periods aggregating more than five minutes in any one hour, or fifteen minutes in any eight-hour period.

(c) No person shall discharge or cause to be discharged into the atmosphere from any refuse-burning equipment emission of any air contaminant which is darker in shade or density than that designated as Number 1 on the Ringlemann Chart or of such opacity as to obscure an observer's view to a degree equal or greater than that designated as Number 1 on the Ringlemann Chart for smoke.

(d) No person shall discharge or cause to be discharged into the atmosphere from any diesel vehicle emission of any air contaminant which is darker in shade or density than that designated as Number 1 on the Ringlemann Chart or of such opacity as to obscure an observer's view to a degree greater than that designated as Number 1 on the Ringlemann Chart for smoke or of a shade or density equal to or darker than that designated as Number 3 on the Ringlemann Chart or equivalent opacity for a period or periods aggregating more than thirty seconds in any three consecutive minutes or four minutes in fifteen consecutive minutes.

(Ord. 1970-69. Passed 7-28-70.)

1377.02 - EXCEPTIONS AND SPECIAL PROVISIONS

(a) The limitations on visible emissions established by Section [1377.01](#)(a), (b) and (c) shall not apply to fire started for the purpose of training or research, when approved by the Air Pollution Control Officer, or the Fire Chief.

(b) Where the presence of uncombined water is the only reason for the failure of an emission to meet the limitations established by Section [1377.01](#)(a), (b) and (c), the limitations set forth in such paragraph shall not apply.

(c) All process equipment or fuel burning equipment existing prior to the effective date of this Code must be in compliance with the limits in Section [1377.01](#)(a) by June 30, 1973.

(Ord. 1970-69. Passed 7-28-70.)

1377.03 - EMISSION OF ODORS INTO THE ATMOSPHERE

No owner, occupant or person in charge, by himself, his agent, or employee, shall cause, suffer or allow the emission of odorous matter into the atmosphere such as to cause an objectionable odor, as determined by the Commissioner of Air Pollution Control or his duly authorized representative:

(a) On or adjacent to residential, recreational, institutional, retail sales, hotel or educational premises;

(b) On or adjacent to industrial premises when air containing such odorous matter is diluted with twenty or more volumes of odor-free air;

(c) On or adjacent to premises other than those in subsections (a) and (b) hereof when air containing such odorous matter is diluted with four or more volumes of odor-free air. (Ord.

1970-69. Passed 7-28-70.)

1377.04 - RENDERING PLANTS

(a) As used in this section the term "rendering plant" includes the land, buildings, machinery, apparatus and fixtures employed in a process by which through the use of heat or other methods, unsalable, spoiled or contaminated animal, poultry, or fish matter is treated so as to convert it into fats and oils, food or poultry, livestock or pets, fertilizer or other products.

(b) No person shall operate or cause to be operated a rendering plant unless:

(1) All vents to the atmosphere from such rendering are substantially free of any odor causing air pollution;

(2) Appropriate and suitable air cleaning equipment is so placed and operated and air pollution control measures are so instituted that air contaminants are removed or recycled to the process in such manner that the effluent air will not create air pollution;

(3) Odor producing materials are confined and handled in such a manner that odors produced within or outside the rendering plant from this source can be controlled;

(4) Excessive accumulations of odor producing materials resulting from spillage or escape do not occur;

(5) Air contaminant emissions arising from unit operations or unit processes, as well as from the handling of general materials, are confined at the point of origin;

(6) All finished products, by-products, and waste materials are either odor free or so treated as to eliminate or prevent air pollution.

(c) No person in charge, by himself, his agent or employee shall cause, suffer or allow the violation of any of the provisions of subsection (b)(3) hereof so as to cause a nuisance. Such nuisance may be the subject of any order for abatement as provided in Section [1373.11](#). (Ord. 1970-69. Passed 7-28-70.)

1377.05 - EMISSION OF SULFUR OXIDES

(a) No person shall cause or allow the emission of gas containing sulfur oxides in excess of 2,000 ppm (volume) from any existing process equipment or in excess of 1,000 ppm (volume) from any new process equipment.

(b) For the purpose of this section all emissions of sulfur oxides shall be expressed as concentrations of sulfur dioxide.

(c) All process equipment existing prior to the effective date of this Code must be in compliance with the limits in subsection (a) hereof by June 30, 1973. (Ord. 1969-70. Passed 7-28-70.)

1377.06 - EMISSION OF PARTICULATE MATTER FROM TRANSPORTING AND MATERIAL HANDLING IN OPEN AIR.

No person shall cause or allow the handling, processing, transporting, or storage of any material on any premises in a manner which allows or may allow particulate matter to become air-borne which exceeds either of the following standards:

(a) Ringlemann No. 1 or its equivalent opacity.

(b) A suspended particulate matter value of 500 micrograms per cubic meter at or beyond the property lines measured at normally occupied levels for a sampling period of one hour.

(Ord. 1970-69. Passed 7-28-70.)

1377.07 - EMISSION OF PARTICULATE MATTER FROM FUEL BURNING EQUIPMENT

(a) No person shall cause or allow to be emitted into the atmosphere from any fuel-burning equipment or premises, or to pass a convenient measuring point near the stack outlet, particulate matter in the gases to exceed 0.75 lbs. 1,000,000 BTU heat input for installations using less than 10,000,000 BTU per hour total input. Figure I shall be used to determine the allowable particulate emission limitation for sources with a rated heat input equal to or greater than 10,000,000 BTU per hour.

(b) The burning of refuse in fuel-burning equipment is hereafter prohibited.

(c) All fuel-burning equipment existing to the effective date of this Code must be in compliance with the limits in subsection (a) hereof by June 30, 1973. (Ord. 1970-69. Passed 7-28-70.)

1377.08 - EMISSION OF PARTICULATE MATTER FROM REFUSE BURNING EQUIPMENT

(a) No person shall cause or allow to be emitted into the atmosphere from any refuse- burning equipment or premises, or to pass at a convenient measuring point near the stack outlet, particulate matter in the gases to exceed 0.40 lb. per hour for installations charging equal to or less than 175 pounds per hour of total refuse. For installations charging greater than 175 pounds per hour of total refuse, Figure II and Table II shall be used to determine the allowable particulate emission limitation.

(b) All refuse-burning equipment existing prior to the effective date of this Code must be in compliance with the limits in subsection (a) hereof by June 30, 1973.
(Ord. 1970-69. Passed 7-28-70.)

1377.09 - EMISSION OF PARTICULATE MATTER FROM PROCESS EQUIPMENT

(a) No person shall cause or allow the emission of any particulate matter from any process equipment whatsoever in excess of the permitted emission as provided for in Figure III, Table III. To use the table, find the process weight per hour in the table, and note the allowable rate of emissions in pounds per hour for said process weight per hour. If two or more process units connect to a single back or chimney, each unit shall for the purpose of computing the maximum allowable emission rate be considered a separate entity with the allowable emission rate for the stack or chimney being the sum of the individual computations. A more severe limitation may be imposed depending upon the quantity and the degree of toxicity of individual components of the particulate emission.

(b) All process equipment existing prior to the effective date of this Code shall be in compliance with the limits in subsection (a) hereof by June 30, 1973.
(Ord. 1970-69. Passed 7-28-70.)

Table II
Maximum Allowable Particulate Emissions from Refuse Burning Equipment

Total Refuse Charge Pounds per Hour	Allowable Emissions Pounds Per Hour
175 or less	0.40
200	0.45
250	0.56
300	0.67
400	0.88
500	1.10
750	1.61
1,000	2.14
2,500	5.20
5,000	10.15
7,500	15.10
10,000	19.50
20,000	39.00
50,000	95.05
100,000	186.20

Interpretation of the data in this table for refuse burning equipment over 175 pounds per hour capacity shall be accomplished by use of the equation $E=0.00263 R^{0.91}$, where E is the rate of emission in pounds per hour and R represents refuse charged in pounds per hour.

TABLE III
Allowable Rate of Emission Based on Process Weight Rate

Process Weight Rate		Rate of Emission	Process Weight Rate		Rate of Emission
Lb/Hr	Tons/Hr	Lb/Hr	Lb/Hr	Tons/Hr	Lb/Hr
100	0.05	0.551	16,000	8.00	16.5
200	0.10	0.877	18,000	9.00	17.9
400	0.20	1.40	20,000	10.	19.2
600	0.30	1.83	30,000	15.	25.2
800	0.40	2.22	40,000	20.	30.5
1,000	0.50	2.58	50,000	25.	35.4
1,500	0.75	3.38	60,000	30.	40.0
2,000	1.00	4.10	70,000	35.	41.3
2,500	1.25	4.76	80,000	40.	42.5
3,000	1.50	5.38	90,000	45.	43.6
3,500	1.75	5.96	100,000	50.	44.6
4,000	2.00	6.52	120,000	60.	46.3
5,000	2.50	7.58	140,000	70.	47.8
6,000	3.00	8.56	160,000	80.	49.0
7,000	3.50	9.49	200,000	100.	51.2
8,000	4.0	10.40	1,000,000	500.	69.0
9,000	4.50	11.2	2,000,000	1,000.	77.6
10,000	5.00	12.0	6,000,000	3,000.	92.7
12,000	6.00	13.6			

Interpretation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by use of the equation $E=4.10.P^{0.67}$, and interpolation and extrapolation of the data for process weight rates in excess of 60,000 lb/hr shall be accomplished by use of the equation $E=55.OP^{0.11} - 40$, where E=rate of emission in lb/hr and P = process weight rate in tons/hr. (Ord. 1970-69. Passed 7-28-70.)

1377.10 - BREAKDOWN OF EQUIPMENT

(a) Emissions exceeding any of the limits established under Sections [1377.05](#), [1377.07](#), [1377.08](#) and [1377.09](#) of this Code as a direct result of the breakdown of any such equipment shall not be deemed to be in violation of such limits provided the owner or operator by telephone, messenger or in person immediately advised the Air Pollution Control Officer or the Commissioner of Air Pollution Control of the circumstances and outlines a corrective program acceptable to the Commissioner and confirms to the Commissioner such program in writing by registered or certified mail within five days after the occurrence of such breakdown and provided further that the Commissioner shall give written approval of the proffered corrective program.

(b) If under this section the number of breakdowns of any piece of equipment exceeds three in any one- year period, the Commissioner may require an owner or operator to submit a satisfactory maintenance program for such equipment. Failure to maintain equipment in accordance with such maintenance program shall be grounds for revocation of a certificate of operation. (Ord. 1970-69. Passed 7-28-70.)

1377.11 - OPEN TIRES

No person shall cause or allow the burning of paper, wood, leaves, or other combustible matter, waste material, or a motor vehicle or any part thereof within the corporate limits of the City in any open fire without prior written approval of the Air Pollution Control Officer or the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1377.12 - OTHER EMISSIONS

Air contaminants not specifically covered by provisions of this Code may be the subject of tests and studies subject to review by the Board. (Ord. 1970-69. Passed 7-28-70.)

1377.13 - NUISANCE

(a) No owner, occupant or person in charge, by himself, his agent or employee, shall cause, suffer or allow the emission of air contaminants into the atmosphere so as to cause a nuisance as determined by the Commissioner of Air Pollution Control, or his duly authorized representative.

(b) An emission may also be deemed a nuisance, when by processing, storing, handling, or transporting of solids, semi-solids, liquids or gases in such a manner as to create toxic, obnoxious, or offensive gases or visible evidence of particulate matter so as to deny the occupant, or occupants the enjoyment of their life or property in the affected area, as determined by the Air Pollution Control Officer. The affected person or persons may file a complaint in writing with the Commissioner of Air Pollution Control.

(c) After an emission is deemed a nuisance as provided in subsection (b) hereof or by the Commissioner or his duly authorized representative under subsection (a) hereof, the Commissioner shall issue an order for abatement as provided in Section [1373.11](#) of this Code. (Ord. 1970-69. Passed 7-28-70.)

CHAPTER 1379
Sampling and Testing

- 1379.01** Sampling and testing
- 1379.02** Test facilities and access.
- 1379.03** Emission test methods.
- 1379.04** Tests costs.

CROSS REFERENCES

Emission regulations - see BLDG. Ch. [1377](#)

1379.01 - SAMPLING AND TESTING

(a) The Commissioner of Air Pollution Control is hereby authorized to conduct or cause to be conducted, any test or tests of any new or existing process, fuel-burning, refuse-burning, or control equipment the operation of which in his judgment may result in emissions in excess of the limitations contained in Chapter [1377](#) or when the emissions from any such equipment may exceed the limits of emissions provided for herein.

(b) All tests shall be conducted in a manner determined by the Commissioner and a complete detailed test report of such test or tests shall be submitted to him.

When tests are taken by the owner or independent testers employed by the owner, the Commissioner shall require that said tests be conducted by reputable qualified personnel and shall stipulate that a qualified representative or representatives of the Portsmouth Air Pollution Control be present during the conduction of such tests. The Commissioner may stipulate a reasonable time limit for the completion of such test and the submission of test reports.

(c) Nothing in this section concerning tests conducted by and paid for by any person or his authorized agent shall be deemed to abridge the right of the Commissioner or his representative to conduct separate or additional tests of any process, fuel-burning, refuse-burning, or control equipment on behalf of the City, whether or not such tests related to emissions controlled by specific limitations under this Code. (Ord. 1970-69. Passed 7-28-70.)

1379.02 - TEST FACILITIES AND ACCESS

(a) It will be the responsibility of the owner or operator of the equipment tested to provide, at his expense, utilities, facilities and reasonable and necessary openings in the system or stack, and safe and easy access thereto, to permit samples and measures to be taken. All new sources of air contaminants created after the effective date of this section may be required by the Commissioner of Air Pollution Control to provide utilities, facilities and adequate openings in the system or stack and safe and each access thereto, to permit measures and samples to be taken.

(b) When any process equipment, fuel-burning equipment or refuse-burning equipment has caused an air pollution nuisance as determined by the Commissioner or has violated a provision of this Code, the Commissioner may at his discretion require that said equipment be equipped with an air contaminant recording device with an audible alarm set so as to become activated upon reaching prohibited levels of emission, which device shall be maintained in proper operating conditions at all times. Records from such recording device shall be made available to the Commissioner for periods up to one year. (Ord. 1970-69. Passed 7-28-70.)

1379.03 - EMISSION TEST METHODS

Emission tests shall be undertaken by generally recognized standards or methods of measurement. Methods found in the A.S.M.E Test Code for Determining Dust Concentrations in Gas Streams P.T.C. 27-1957, the Los Angeles County Source Testing Manual or recommended procedures of the National Air Pollution Administration shall be used but these may be modified or adjusted by the Commissioner of Air Pollution Control to suit specific sampling conditions or needs based upon good practice, judgment and experience. Updating of these standards and modifications thereof shall be published in rules and regulations of the Commissioner of Air Pollution Control. (Ord. 1970-69. Passed 7-28-70.)

1379.04 - TESTS COSTS

(a) If emission tests conducted as a result of the action of the Commissioner of Air Pollution Control substantiate that a violation exists, the person or persons responsible for the violation shall be responsible for paying all attendant costs for conducting said tests. If said tests do not show that a violation exists, then the City shall be responsible for paying all costs for conducting said test. In no event shall the City assume costs of providing facilities, utilities and access for such testing.

(b) When the person responsible elects to conduct his own stack emission tests, then the person so electing shall pay for the test or tests notwithstanding other provisions of this section, and irrespective of the result.

(c) The costs of emission tests required by the Commissioner on newly installed equipment for the issuance of the initial permit to install and the issuance of the initial certificate of operation shall not be at the expense of the City regardless of the results. The tests for existing sources relating to contaminants not specifically controlled by this Code shall be at the expense of the City except for facilities, utilities and access required to be provided by Section [1379.02](#). (Ord. 1970-69. Passed 7-28-70.)

CHAPTER 1381 – Variances

1381.01 Variance procedure.

CROSS REFERENCES

Administration; enforcement and penalty - see BLDG. Ch.[1373](#)

1381.01 - VARIANCE PROCEDURE

(a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the Appeals Board for a variance from provisions of this Code. The Appeals Board may grant such variance upon satisfactory proof by the applicant if it finds that:

(1) The emissions occurring or proposed to occur do not endanger or will not threaten to endanger human health or safety.

(2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the Appeals Board has considered the relative interests of the applicant and other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) hereof and for time periods and under conditions consistent with the reasons thereof, and with the following limitations:

(1) If the 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 only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Appeals Board may prescribe.

(2) If the variance is granted on the grounds that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period, not to exceed such reasonable time as, in the view of the Appeals Board is requisite for the taking of the necessary measures. A variance granted on the grounds specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the grounds that it is justified to relieve or prevent hardship of any kind other than provided for in terms of subsections (c)(1) and (c)(2) hereof, it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Air Pollution Control Officer or to the Commissioner on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint, the Appeals Board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Commissioner of Air Pollution Control shall give public notice of such application in accordance with rules and regulations of the Board.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the Appeals Board. However, any person adversely affected by a variance or

renewal granted by the Appeals Board may obtain judicial review thereof by a proceeding in the Municipal Court.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of this Code to any person or his property. (Ord. 1970-69. Passed 7-28-70.)

CODIFIED ORDINANCES OF PORTSMOUTH