

ARTICLE 1. RESOLUTION, ORGANIZATION, ADMINISTRATION

**Sec. 1-1 Resolution**

A joint resolution by the Buncombe and Haywood Boards of County Commissioners and the Council of the City of Asheville establishing the Western North Carolina Regional Air Pollution Board consisting of seven (7) members.

WHEREAS, Article 21, Chapter 143, as amended, North Carolina General Statutes, sets forth the policy of the state with respect to the conservation of air resources;

WHEREAS, Section 143-215.3 (a) (11) g. authorizes Boards of County Commissioners and municipalities to establish and administer a Regional Air Pollution Control Program by participating in the appointment of a Regional Board; and

WHEREAS, The governing bodies of Buncombe and Haywood Counties, the governing body of the City of Asheville have determined that it is in the best interest of the citizens of their respective localities that a Regional Air Pollution Control Program be established to administer and enforce an effective Air Pollution Control Program throughout Buncombe and Haywood Counties and the City of Asheville;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Boards of County Commissioners of Buncombe and Haywood Counties and the Council of the City of Asheville, hereby agree to the formation of a Regional Air Pollution Control Board to be called the Western North Carolina Regional Air Pollution Agency which shall consist of seven (7) members, with the members to be chosen in the following manner:

The County Commissioners of Buncombe County shall choose three (3) members, one of whom shall be appointed for a two year term: the second shall be appointed for a four year term; the third shall be appointed for a six year term. The County Commissioners of Haywood County shall appoint two (2) members, one of whom shall be appointed for a four year term; the other for a six year term: The Asheville City Council shall appoint two (2) members; one of whom shall be appointed for a two year term: the other for a six year term. Upon the expiration of the terms of the initial members of the Western North Carolina Regional Air Pollution Board, the respective governing bodies shall choose successors to those members they appointed. The successors shall serve six year terms. The Board shall select a chairman among its members for a two year term.

The chairmanship shall rotate between the delegations from the City and Counties at the expiration of each two year term.

2. Financial support for the Air Pollution Control Program shall be provided by the participating governing bodies.

The funds shall be dispersed to the Board in equal quarterly payments.

The Air Pollution Control Board shall each year submit to the governing bodies an estimate of funds required to carry out its program for the ensuing year.

3. Additional counties and municipalities may join this Regional Air Pollution Control Program by agreement and compliance with the requirements of the General Statutes of North Carolina.

4. Any Air Pollution Control Regulations of standards now in effect in the region shall remain in effect and shall be enforced by the Western North Carolina Regional Air Pollution Agency until amended or rescinded by the authorized action of said Western North Carolina Regional Air Pollution Agency.

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**Sec. 1-2 Ordinance**

It is declared that the conservation and protection of air resources is a public responsibility; therefore, it is necessary to promote and encourage air pollution control.

Now therefore the Western North Carolina Regional Air Pollution Control Board adopts the following ordinance establishing the policies and procedures under which the Board will conduct the air pollution control program.

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**Sec. 1-3 Authority**

Section 143-215.3 (a) (11) of Article 21, Chapter 143 of the General Statutes of North Carolina. authorizes the governing body of any county, municipality, or group of counties or municipalities within a designated area of the State, subject to the approval of the Environmental Management Commission, to establish, administer and enforce a local air pollution control program for the county, municipality, or designated area of the State.

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## **Sec. 1-4 Organization**

### **(a) Air Pollution Control Board.**

1. The Boards of County Commissioners of Buncombe and Haywood Counties and the Council of the City of Asheville, her by agree to the formation of a Regional Air Pollution Control Board to be called the Western North Carolina Regional Air Pollution Control Board which shall consist of seven (7) members, with the members to be chosen in the following manner:

The County Commissioners of Buncombe County shall choose three (3) members, one of whom shall be appointed for a four (4) year term, the second for a two (2) year term and the third shall be appointed for a six (6) year term. The County Commissioners of Haywood County shall appoint two (2) members, one of whom shall be appointed for a four (4) year term; the other for a six (6) year term. The Asheville City Council shall appoint two (2) members; one of whom shall be appointed for a two (2) year term; the other for a six (6) year term. Upon the expiration of the terms of the initial members of the Western North Carolina Regional Air Pollution Board, the respective governing bodies shall choose successors to those members they appointed. The successors shall serve six (6) year terms. All namers of the Board shall reside within the area of jurisdiction.

2. The Chairman is to be selected by vote of the Board.
3. A meeting may be called by the Chairman or any two (2) Members of the Board.
4. The secretary of the Board will be the Air Pollution Control Program Director, or his authorized representative.
5. The Board must meet at least once every three months.
6. The Board shall meet separately from the Council and the members shall serve without compensation; although, subsistence and travel expenses incurred in the fulfillment of duty may be reimbursed.

### **B. Advisory Council.**

There shall be established an Air Control Advisory Council, hereinafter called the Council. The Board shall appoint the members of the Council which shall have at least five (5) members.

All members shall reside within the area of jurisdiction. One half of the original members shall be appointed for a two (2) year term and the other half shall be appointed for a three (3) year term. All subsequent appointments or reappointments to the Council shall be for term of three (3) years.

A Chairman shall be elected annually from within the Advisory Council membership, and shall serve at the pleasure of the Council. The Council shall meet at least quarterly, and at more frequent intervals if called by the Chairman or majority of the Council. A simple majority of the membership shall constitute a quorum. The Air Pollution Control Program Director, -or his authorized representative shall act as secretary to the Council, and shall attend all meetings.

The Council shall serve only-in an advisory capacity to the board and shall assist the Board in the development of rules, regulations, air quality and emission control standards, and shall advise in other matters relating to the Air Pollution Control Program which may be submitted to it by the Board.

The Council shall meet separately from the Board and the members shall serve without compensation; although, subsistence and travel expenses incurred in the fulfillment of duty may be reimbursed. Council members may from time to time be asked by the Board to attend Board meetings.

#### C. Administration.

The Board, as established, shall:

1. Develop a comprehensive plan for the control and abatement of new and existing sources of air pollution.
2. Conduct air quality monitoring to determine existing air quality and to define problem areas, as well as, to provide background data to show the effectiveness of a pollution abatement program.
3. Develop an emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere.
4. Establish and keep current annually, a register of air contaminant sources within the area, and the registration of all persons operating or responsible for the operation of air contaminant sources. Such persons shall also, upon written request, file reports containing information concerning location, size and height of outlets, processes employed, fuels used, nature and rate and duration of emissions, and any other information which may be required.
5. Adopt, after notice and public hearing, of air quality and emission control standards, or adoption by reference, with00;t public hearing, of any applicable rules, regulations and standards duly adopted by the North Carolina Environmental Management Commission.
6. Provide for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources.
7. Declare an emergency when it is found that a generalized condition of air pollution is causing danger to the health or safety of the public and to issue an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants. The person or persons so ordered immediately appeal to the Board for a hearing. Upon request for such a hearing, the secretary shall fix a time and a place and such hearing shall be held not later than twenty-four (24) hours after the request is received. After commencement of such a hearing and without adjournment thereof, the Board shall affirm, modify, or set aside the order previously issued.

D. Staff.

The Air Pollution Control Program Director shall be appointed by the Board and shall be qualified in administration and technology. The Board shall also retain, employ and compensate such technical and other personnel as may be necessary to carry out the provisions of the ordinance and to secure necessary scientific, technical, administrative and operational services including laboratory facilities, as may be required.

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## **Sec. 1-5 Administrative Procedures**

### **A. Adoption of Air Quality Standards, Emissions Control Standards, and Regulations Governing Air Pollution.**

Rules, regulations and standards duly adopted by the Environmental Management Commission may be adopted by reference, without public hearing, pursuant to NCGS 143-215.112 (c) (1) (d).

Prior to adoption of air quality and emission control standards, other than those adopted by the Environmental Management Commission and adopted by the reference by this Board, this Board shall give notice and hold a public hearing in accordance with the following requirements:

(1) Notice of any such hearing be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing, the subject of the hearing and the action which the Board proposes to take. The notice shall include details of such proposed action or, where the proposed action is too lengthy for publication, the notice shall specify that copies of such detailed proposed action shall be obtained upon request from the office of the Board.

(2) Any such notice shall be published at least once in a newspaper of a general circulation circulated within Buncombe and Haywood Counties.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board may set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement in relation to any proposed action of the Board anytime within 30 days following the conclusion of any public hearing, or within any such additional time as the Board may allow by notice as specified above. Upon completion of the hearings and consideration of submitted evidence and arguments concerning the proposed action of the Board with respect to the adoption of standards, rules, regulations, the Board shall adopt its final action with respect thereto. Upon approval by the State Board, the Regional Board shall publish such final action as part of its official standards, rules and regulations. Final action of the Board shall specify the effective date.

### **B. Control of Sources of Air Pollution.**

1. Existing sources - after the effective date established for any air quality standard, emissions control standard, or regulations, 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's Powers as to Permits, Construction Permits and Operating Permits.

1. The Board shall act upon all 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 permit 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 request 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 from 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 Article XIII entitled "Air Pollution Emergencies" of the Rules and Regulations Governing the control of Air Pollution in Buncombe and Haywood Counties of the Western North Carolina Regional Air Pollution Agency and shall not relieve the holder of such permit from compliance with said Article XIII.

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) and NCGS 143-215.3 (g), 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. Confidentiality of Records

The Board may require, as a part of its investigation of the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air cleaning devices, written statement or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment - works: Provided that any records, reports of information obtained under Articles 21 and 21 B of Chapter 143 of the North Carolina General Statutes (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Board by any person that records, reports, or information or particular part thereof (other than effluent or emission data), to which the Board has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Board shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Board shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment.

F. 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.

G. 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.

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**Sec. 1-6 Appeals to and other appearances before Board**

Any person taking exception to any decision ruling, violation notice or order issued by the director may appeal to Board. Any person wishing to bring a matter before the Board shall notify the director in writing, and furnish all facts necessary to enable the Board to consider the matter. To that end, any person is privileged to appear before the Board and bring representatives, consultants and witnesses to be heard relative to the matter concerning which he seeks action by the Board, provided advance notice is given to the director of the subject matter to be considered.

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**Sec. 1-7 Opinions not binding.**

Opinions rendered by the director are not binding, but shall be recommendatory only to the Board.

Effective date - from and after July 1, 1970.

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**Secs. 1-8 - 1-24 Reserved.**