

POLICY NUMBER: 205.17
DIVISION: Environmental Public Health
POLICY TITLE: Outdoor Air Pollution Nuisance Investigation and Enforcement
AGENCY: Lincoln-Lancaster County Health Department (LLCHD)
AUTHORITY: Board of Health
DRAFTED: 02/11/2015
APPROVED:
REVISED:
REVIEWED:

POLICY STATEMENT:

Section 8.06.150 of the Lincoln Municipal Code (LMC) and Section 14 of the Lancaster County Air Pollution Control Resolution (R-13-0073) establishes that it is unlawful for any person to cause, permit, or maintain an air pollution nuisance, which is defined as, "The emission or escape into the open air from any source or sources whatsoever of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety, or welfare of the public, or is unreasonably offensive and objectionable to the public, or shall cause unreasonable injury or damage to property or interfere with the comfortable enjoyment of property or normal conduct of business."

Persons who cause, permit, or maintain an air pollution nuisance can cause serious health problems. The purpose of this policy is to ensure:

- 1) That air pollution nuisance complaints are addressed in a fair and consistent manner;
- 2) That a resolution of air pollution nuisances and return to compliance is achieved quickly;
- 3) That enforcement is pursued appropriate to the air pollution nuisance; and
- 4) That investigating staff properly document all relevant information.

PROCEDURES:

I. Complaint Intake and Initiation of Investigation

- A. Department staff shall attempt to gather and document the following information:
 1. The name and contact information for the complainant, if he/she is willing to provide it;
 2. The date, time, and location the alleged nuisance and/or violation;
 3. A brief description of the nature and apparent cause of the alleged nuisance; and
 4. Staff should document all health impacts described by the complainant. If the complainant is experiencing any detrimental health effects, staff should advise the complainant to contact his or her medical care provider, as appropriate. If the complainant is unable to speak or breathe, staff shall:
 - a. Record the complainant's telephone number via caller identification;
 - b. Inform the complainant that staff will transfer his/her call to emergency services, and advise the complainant to remain on the line during the transfer;
 - c. Advise the complainant to call '911' if the call transfer fails;
 - d. Advise the complainant to vacate the area and seek clean air, if feasible; and
 - e. Transfer the call to emergency services. If the transfer fails, staff shall call 911 and inform emergency services of the call, and the concerns identified.

- B. Prior to investigating the complaint, staff shall:
 - 1. Check the electronic complaint tracking system to determine if the location of the alleged nuisance or violation has been identified in prior complaints;
 - 2. If any prior complaints exist for the described location, determine if the nature of prior complaints is the same as, or similar to the alleged nuisance or violation described by the complainant; and
 - 3. Determine the name of the person/company responsible for any prior alleged nuisances or violations.
- C. Staff shall respond to complaints as quickly as is practicable during regular work hours. Staff should bring the following supplies/equipment when conducting an inspection or investigation:
 - 1. Department-issued identification and business card(s);
 - 2. Writing instrument, clipboard, and all necessary forms and fact sheets;
 - 3. Any personal protective equipment (PPE) deemed necessary based on information gathered from the complainant; and
 - 4. Digital camera and/or video recorder.
- D. Upon arriving at the location of the alleged violation, staff shall investigate the source of the alleged violation.

II. **Complaint Investigation – Air Pollution Nuisance Is Not Observed**

- A. If staff do not identify the alleged air pollution nuisance, staff shall proceed with the following steps:
 - 1. Document all observations made during the course of the investigation.
 - 2. Attempt to make contact with owner/registered agent or occupant of the property associated with the source of the alleged air pollution nuisance, show identification, and provide them with a business card.
 - 3. Gather and document the following information:
 - a. If contact is made with the property owner/registered agent, obtain and record:
 - i. Owner/registered agent name and phone number.
 - ii. If the property is rented, the name and phone number of the primary occupant.
 - b. If contact is made with an occupant, obtain and record:
 - i. The occupant's name and phone number.
 - ii. The name and phone number of the property owner/registered agent.
 - c. The date and time of attempted contact with the owner/registered agent or occupant; and
 - d. Results of all observations, including the absence of an air pollution nuisance.
 - 4. Provide the 'Air Pollution Nuisance Fact Sheet' (Attachment B) to owner/registered agent or occupant. If no owner/registered agent or occupant is available at the time of investigation, a copy of the 'Air Pollution Nuisance Fact Sheet' should be left at the main entrance of the residence/business (if applicable).

5. Upon returning to the office, staff shall perform the following:
 - a. Attempt to contact and inform the complainant that no violation was found, and that the owner/registered agent or occupant has been informed of their duty to not cause, permit, or maintain an air pollution nuisance. The staff shall request that the complainant call the Department at (402) 441-8040 if nuisance conditions occur again.
 - b. Proceed to item **V. Documentation**.

III. Complaint Investigation – Air Pollution Nuisance Is Observed

- A. If staff do identify and observe the alleged air pollution nuisance, staff shall proceed with the following steps:
 1. Take photographs and/or video recordings of the source and/or cause of the alleged nuisance, and also any measures that are being employed to mitigate the alleged nuisance.
 2. Observe and document the source and/or cause of the alleged nuisance, and also any measures that are being employed to mitigate the alleged nuisance.
 3. Attempt to make personal contact with owner/registered agent or occupant of the property associated with the source of the alleged air pollution nuisance, show identification, and provide them with a business card. If the owner/registered agent or occupant is not available at the time of inspection, proceed to item III.A.8.b. below.
 4. Advise the owner/registered agent or occupant (if available) that a complaint of an air pollution nuisance has been received, and of his/her duty to not cause, permit, or maintain an air pollution nuisance.
 5. Staff shall direct the owner/registered agent or occupant of the property associated with the source of the air pollution nuisance to discontinue causing/allowing an air pollution nuisance. If the owner/registered agent or occupant fails or refuses to discontinue causing/allowing an air pollution nuisance, staff shall contact the Air Quality Program (AQP) Supervisor or the Environmental Public Health (EPH) Division Manager for guidance.
 6. Gather and document the following information:
 - a. If contact is made with the property owner/registered agent, obtain and record:
 - i. Owner/registered agent name and phone number.
 - ii. If the property is rented, the name and phone number of the primary occupant.
 - b. If contact is made with an occupant, obtain and record:
 - i. The occupant's name and phone number.
 - ii. The name and phone number of the property owner/registered agent.
 - c. The date and time of attempted contact with the owner/registered agent or occupant;
 - d. Photographs and/or video of the nuisance condition; and
 - e. Results of all observations, including the presence of an air pollution nuisance.
 7. Provide the 'Air Pollution Nuisance Fact Sheet' to owner/registered agent or occupant. If no owner/registered agent or occupant is available at the time of investigation, a copy of the 'Air Pollution Nuisance Fact Sheet' should be left at the main entrance of the residence/business (if applicable).

8. Staff shall issue an AQP "OFFICIAL NOTICE" (Attachment A) to the owner/registered agent or occupant in accordance with the following:
 - a. If the owner/registered agent or occupant is available at the time of investigation, the "OFFICIAL NOTICE" should be addressed to the person who is thought to be responsible for causing/allowing the air pollution nuisance, and should also be signed by the addressee.
 - b. If the owner/registered agent or occupant is unavailable at the time of investigation, or if the owner/registered agent or occupant refuses to sign the "OFFICIAL NOTICE", the "OFFICIAL NOTICE" should be addressed to "Owner/Registered Agent or Occupant". In the signature space provided on the "OFFICIAL NOTICE", staff should note that the owner/registered agent or occupant was unavailable or refused to sign.
 - c. Staff shall determine whether to issue the "OFFICIAL NOTICE" as either a warning or a violation. Whenever necessary, staff may consult with the AQP Supervisor and/or the EPH Division Manager to determine whether the "OFFICIAL NOTICE" should be issued as a warning or a violation.
 9. If an "OFFICIAL NOTICE" is issued as a warning, staff shall advise the person who is responsible for causing/allowing the air pollution nuisance to cease causing/allowing the nuisance condition within one (1) hour of receiving the "OFFICIAL NOTICE". The notice shall state the date and time by which compliance must be achieved. Staff shall keep the original signed "OFFICIAL NOTICE" and provide the carbon copy to the responsible party.
 10. If an "OFFICIAL NOTICE" is issued as a violation, staff shall advise the responsible party that the case may be referred to the City/County Attorney's office for prosecution. Staff shall keep the original signed "OFFICIAL NOTICE" and provide the carbon copy to the responsible party.
- B. Upon returning to the office, staff shall:
1. Attempt to contact and inform the complainant that the responsible party has either, (a) agreed to cease causing/allowing an air pollution nuisance, or (b) failed or refused to cease causing/allowing an air pollution nuisance, and the appropriate legal action will be taken. Staff should request that the complainant call the Department at (402) 441-8040 if the air pollution nuisance conditions persist or reoccur.
 2. If an "OFFICIAL NOTICE" is issued as a violation, staff shall proceed with the steps set forth in items **IV. Enforcement**.
 3. If an "OFFICIAL NOTICE" is issued as a warning, staff shall proceed with the steps set forth in item **V. Documentation**.

IV. Enforcement

- A. Following issuance of an "OFFICIAL NOTICE" as a violation, staff shall return to the office and proceed as follows:
1. Staff shall prepare a letter to the person who is thought to be responsible for causing/allowing the air pollution nuisance and to the property owner/registered agent (if different). The letter should describe the findings of the investigation, the corrective action(s) that should be taken, and the potential for enforcement through the City or County Attorney's office.

2. Staff shall consult with the AQP Supervisor and/or the EPH Division Manager to determine whether it is appropriate to pursue enforcement for the violation through the City or County Attorney's office. If it is determined that such enforcement is warranted, staff shall proceed as follows:
 - a. Staff shall draft an 'Arraignment Report' within fifteen (15) days of reaching a decision to pursue enforcement;
 - b. Staff shall route the 'Arraignment Report' to the AQP Supervisor, the EPH Division Manager, and the Air Pollution Control Officer (Health Director) for review and approval; and
 - c. Once approved by the AQP Supervisor, the EPH Division Manager, and the Air Pollution Control Officer (Health Director), the 'Arraignment Report' shall be routed to the City or County Attorney's office (as appropriate) by the Health Director's support staff.

V. Documentation

- A. Within one (1) business day of completing an investigation, staff should open a complaint case in the electronic complaint tracking system, unless an open case already exists for the same person/company and property. Within the electronic record, staff shall:
 1. Document all information required under items II.A.3., and III.A.6.
 2. Document all communication (in-person, phone, e-mail, or written) that takes place during the investigation, as well as any follow-up communication that may take place with the complainant and/or the alleged violator.
 3. Upload any photos taken, as well as scanned copies of any letters or notices that are issued.
- B. If the initial complaint investigation indicates that there is no air pollution nuisance condition, or concludes with the responsible party no longer causing/allowing the air pollution nuisance, then the investigating staff shall close the case.
- C. If the decision is made to pursue enforcement through the City or County Attorney's office, staff shall continue to document any communication that takes place, and upload any documents relevant to the case to the electronic record. Upon final resolution of the enforcement case, staff shall close the case in the electronic complaint tracking system.

Attachment A



LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT

3140 N Street, Lincoln, NE 68510
(402) 441-8000 lincoln.ne.gov/health

OFFICIAL NOTICE

Name: _____

Address: _____

City/State/ZIP: _____

Date: _____ Time: _____ AM PM

Location: _____

YOU ARE HEREBY NOTIFIED THAT YOU ARE ALLEGED TO BE IN VIOLATION OF CITY/COUNTY HEALTH CODES AND/OR LINCOLN-LANCASTER COUNTY AIR POLLUTION CONTROL PROGRAM REGULATIONS AND STANDARDS, AS INDICATED BELOW:

- Causing or permitting an air pollution nuisance.
- Causing or permitting fugitive dust to be emitted in such quantities that it is visible beyond the premises.
- Causing or permitting the prohibited open burning of refuse materials.
- Causing or permitting an odor nuisance.
- Causing or permitting smoking in a public place (non-compliant smoking area).
- Causing or permitting a noise disturbance.
- Causing or permitting stack emissions of greater than or equal to 20% opacity as measured by Method 9.
- Failure to operate control equipment as required by a valid permit.
- Failure to obtain a required air quality construction and/or operating permit.
- Other: _____

WARNING The conditions must be corrected within _____. Failure to correct said conditions may result in referral to the City or County Attorney, or in the issuance of a Complaint and Order. Charges may be brought against you in County Court, District 3.

VIOLATION This matter may be referred to either:
 The Health Director for issuance of a Complaint and Order; or
 The City or County Attorney. If charges are brought against you in County Court, District 3, the Attorney's Office will advise you of your court appearance date.

I acknowledge receipt of this notice.

✘ _____
 Owner Occupant Manager/Supervisor Employee Other

Environmental Health Specialist / Engineer

Phone Number

Attachment B**Lincoln-Lancaster County Health Department****Air Quality Program****Air Pollution Nuisance Fact Sheet**

The Lincoln-Lancaster County Health Department (LLCHD) Air Quality Program has received a complaint alleging that an occupant of this property is causing, allowing, or maintaining an air pollution nuisance.

Section 8.06.150 of the Lincoln Municipal Code (LMC) and Section 14 of the Lancaster County Air Pollution Control Resolution (R-13-0073) establish that it is unlawful for any person to cause, permit, or maintain an air pollution nuisance, which is defined as, "The emission or escape into the open air from any source or sources whatsoever of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety, or welfare of the public, or is unreasonably offensive and objectionable to the public, or shall cause unreasonable injury or damage to property or interfere with the comfortable enjoyment of property or normal conduct of business."

Any person who causes, permits, or maintains an air pollution nuisance may be charged with a misdemeanor, and upon conviction thereof may be punished by imprisonment in the county jail for a period not to exceed six (6) months or by a fine of no more than five hundred dollars (\$500.00), or both such fine and imprisonment.

Persons who cause, permit, or maintain an air pollution nuisance can cause serious health problems. The LLCHD Air Quality Program encourages you to be a good neighbor, and avoid engaging in activities that may negatively impact the quality of life, and more importantly, the health of others.

If you have any questions, please contact the LLCHD Air Quality Program at (402) 441-8040.

v. May 2015