

# **Borough of Kulpmont Air Pollution Control Ordinance**

## **BOROUGH OF KULPMONT NORTHUMBERLAND COUNTY, PENNSYLVANIA ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF BOROUGH OF KULPMONT, NORTHUMBERLAND COUNTY, PENNSYLVANIA ESTABLISHING AIR QUALITY MONITORING AND EMISSION STANDARDS AND PROVIDING FOR CIVIL PENALTIES FOR AIR POLLUTION.

WHEREAS, the United States of America Clean Air Act, as amended, including Amendments of 1990, and the Commonwealth of Pennsylvania Air Pollution Control Act of January 9, 1960 (P.L. 2119) (35 P.S. Section 4001, et seq.), as amended, provide in part for the better protection of the health, general welfare and property of the people of the Commonwealth by the abatement, reduction and prevention of the pollution of the air by smokes, fumes, gases, odors, mists, vapors, and similar matter, or any combination thereof; and

WHEREAS, the Federal and Commonwealth Legislatures have granted the power to local municipalities to adopt more stringent air pollution standards than those provided within the cited Acts pursuant to 35 P.S. Section 4012; and

WHEREAS, local municipalities have been empowered with the right to enact ordinances in protecting and preserving the ambient air quality; and

WHEREAS, Borough of Kulpmont ambient air quality is a matter of vital concern to the residents of the Borough; and

WHEREAS, the Borough of Kulpmont Council is of the opinion that increased introductions of air contaminants within the Borough would have an adverse effect on the ambient air quality; and

WHEREAS, the Borough of Kulpmont Council has determined that the impact of increased air contaminants should be borne by those introducing the contaminants; and

WHEREAS, the Borough of Kulpmont Council has determined that existing Federal and Commonwealth standards of Air Pollution Control measures are less stringent than desired; and

WHEREAS, pursuant to the Borough Code of the Commonwealth of Pennsylvania to prohibit nuisances, including, but not limited to accumulations of garbage and rubbish, and the storage of abandoned or junked automobiles, on private or public property, and the carrying on any offensive manufacture or business.

WHEREAS, the Borough finds that the Pennsylvania Department of Environmental Protection does not possess sufficient staff, funding, or resources to continuously verify compliance with applicable environmental protection requirements;

WHEREAS, Pennsylvania ranks number one in releases of mercury pollution from coal and oil-fired power plants;

WHEREAS, Pennsylvania is one of 19 states with a statewide fish consumption advisory due to mercury contamination and is one of only 3 states where the *general population* is asked to restrict their consumption of *all* types of fish from *any* body of water in the state;

WHEREAS, Pennsylvania ranked third-highest for mercury contamination among the 13 states studied between 1997 and 2002;

WHEREAS, Pennsylvania's is heavily polluted with dioxin from power plants and incinerators, particularly the 30 years of excessively high dioxin pollution from the Harrisburg trash incinerator;

WHEREAS, the incineration of bodies, body parts, infectious and chemotherapeutic wastes collectively represent the second largest known sources of dioxin and mercury pollution in the U.S., according to the U.S. Environmental Protection Agency;

WHEREAS, incinerators in Pennsylvania are not required to use modern equipment that can continuously monitor mercury and dioxin emissions;

WHEREAS, as required by 35 P.S. §4012(a), the Borough finds that the provisions of this Ordinance are not less stringent than those of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or the rules and regulations promulgated thereunder;

NOW, THEREFORE, IT IS HEREBY ORDAINED AND ENACTED BY THE Borough of Kulpmont COUNCIL, Northumberland County, Pennsylvania, and IT IS HEREBY ENACTED AND ORDAINED by the authority of the same AS FOLLOWS:

## **ARTICLE I - TITLE, PURPOSE AND AUTHORITY**

### **Section 1. SHORT TITLE**

This Ordinance shall be known and may be cited as the "Borough of Kulpmont Air Pollution Control Ordinance".

### **Section 2. PURPOSE**

The purpose and intent of this ordinance is to ensure that the operation of any incinerator of bodies, body parts, infectious and/or chemotherapeutic wastes within Borough of Kulpmont, Northumberland County, Pennsylvania does not degrade the ambient air quality so as to adversely impact the health, safety, general welfare and property of the people of Borough of Kulpmont and does not adversely impact plant and animal life or the comfort and convenience of the public and the natural resources of the Commonwealth through the addition of mercury or dioxin/furan pollution to the ambient air and to exercise the authority granted to the Township under the Pa. Air Pollution Control Act.

### **Section 3. APPLICABILITY**

This ordinance shall apply and be in full force and effect in Borough of Kulpmont, Northumberland County, Pennsylvania.

### **Section 4. AUTHORITY**

This Ordinance is enacted pursuant to the authority granted to Borough of Kulpmont by all relevant Federal and State laws and their corresponding regulations, including, without limitation, the following:

Pennsylvania Constitution, Article I, Section 27;

Air Pollution Control Act 35 P.S. § 4012, which preserves the rights of municipalities to adopt air pollution ordinances and regulations not less stringent than the requirements of the Clean Air Act, the Pennsylvania Air Pollution Control Act, or rules and regulations promulgated thereunder;

Solid Waste Management Act, 35 P.S. § 6018.101 et seq., which preserves the rights and remedies of municipalities concerning solid waste within their borders;

Municipal Waste Regulations, 25 Pa. Code §§ 271 and 275, et seq; and

Clear Air Act, 42 U.S.C. § 7401, et seq.

## **ARTICLE II - DEFINITIONS**

The following words and phrases when used within this Ordinance, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Article:

(1) Corporation – Any corporation organized under the laws of any state of the United States or any country. The term "corporation" shall include all entities that possess limited liability characteristics, including limited partnerships, limited liability partnerships, non-profit organizations, business trusts, limited liability corporations, governmental bodies and municipal authorities organized under the laws of any state or the United States or any country.

(2) Person – Natural persons, not including corporations.

(3) Biowaste Incinerator – Any structure or machine operated for the combustion (oxidation) of any combination of the following: deceased human or other animal bodies or body parts, or waste that is otherwise regulated as pathological, infectious or chemotherapeutic waste. Biowaste incinerators shall include, but are not limited to medical waste incinerators, pathological waste incinerators and crematoria.

(4) Facility – a biowaste incinerator.

(5) TEQ<sub>DF</sub>-WHO<sub>98</sub> – a unit of measurement for dioxins and furans, standardized to toxic equivalents, calculated in accordance with the World Health Organization's 1998 method.

(6) Continuous Emissions Monitoring System (or "CEMS") – a pollution monitoring system that can provide emissions data for a sampling period that covers the entire operating time of a facility. Such devices used in this Ordinance must be certified by the U.S. Environmental Protection Agency's Environmental Technology Verification (ETV) Program or its successor agency.

(7) Borough Council – The Borough of Kulpmont, Northumberland County, Pennsylvania Council.

(8) Owner – The person or corporation that has the legal right of proprietorship of a facility. In cases of emergency, facility operators may be notified in lieu of owners to promote timely responses to the emergency.

(9) Responsible Party – If the facility is owned and operated by a person, the responsible party is that natural person. If the facility is owned and/or operated by a corporation, this term shall include all officers and directors of any corporation that owns or operates the facility.

### **ARTICLE III - CERTIFICATIONS AND MONITORING**

**Section 1.** Certifications Required By Owners to the Borough Council. As a requirement for the operation of a biowaste incinerator which may release mercury or dioxins/furans and thereby cause air pollution or adverse environmental effects, the Borough Council shall, in considering the type of facility and degree of potential air pollution or potential adverse environmental effects, require certain certifications by the owner of said facility.

(a) The owner of a facility shall certify that any facility under their control will not exceed the limits for contaminants specified within this ordinance.

(b) The owner of a facility shall certify that funds are available in escrow to cover any fine or penalty levied by this ordinance for reason of exceeding set limits of contaminants from any source under their control.

(c) The owner of a facility shall certify that monies will be made immediately available to fund any and all air pollution monitoring of the facility.

(d) The Borough Council may demand any further proof or require the posting of a bond by the owner of a facility as deemed necessary to ensure compliance with any certification and may require the owner to recertify on an annual basis.

(e) Certifications shall not be transferred or assigned to any other person or corporation.

(f) All certifications required under this ordinance shall be made under oath, and subject to the penalties of perjury and false swearing.

## **Section 2. Air Pollution Monitoring.**

(a) The operator of a facility must monitor for mercury and dioxins/furans at all times when the facility is in operation. A Continuous Emissions Monitoring System (CEMS) must be used to monitor mercury and dioxins/furans. CEMS for which there exist U.S. Environmental Protection Agency or Pa. Department of Environmental Protection standards must also comply with all such standards. CEMS must be used to measure mercury concentrations on a standard basis for direct comparison with the mercury standard in Article IV Section 1(a). CEMS must be used to measure dioxin/furan concentrations on a standard basis for direct comparison with the dioxin/furan standard in Article IV Section 1(b). It shall be unlawful for any person or corporation to construct, assemble, install or modify, operate or continue to operate any facility which emits or which may emit mercury or dioxins/furans within Borough of Kulpmont, Northumberland County without full compliance with the provisions of this Section.

(b) Pollution monitoring shall be conducted by an engineering firm approved by the Borough Council with results becoming the property of Borough of Kulpmont, Northumberland County, Pennsylvania. All costs of monitoring shall be borne by the person or corporation owning the facility, with the owner of the facility receiving immediate notice if emissions which are subject to the CEMS requirements under this Ordinance exceed 85% of any emissions limitation established by law or regulation, and also if such limitation is exceeded. The owner of the facility shall furnish funding for the monitoring on an advance quarterly basis by cash or certified check made payable to the Borough and drawn upon a bank authorized to do business within the Commonwealth of Pennsylvania. Failure to make advance payment within two working days of the end of each quarter shall require cessation of operation of the facility until such time as payment is received by the Borough.

(c) The engineering firm shall ensure that monitoring data is available in real-time to Borough computers in a format acceptable to the Borough, where they shall be archived and made immediately available on the Borough's website at the expense of the facility owner. Quarterly summary data, specifying mercury and dioxin levels compared to the limits specified in this Ordinance shall be published in the most widely-read local newspaper at the expense of the facility owner. The engineering firm shall ensure that the Borough Council and the facility owner or operator are immediately notified when contaminant levels exceed 85% of, or violate, the maximum levels allowed under this Ordinance and shall duly note the person(s), date and time such notification was given.

(d) CEMS must be started up at least twelve (12) hours before the commencement of facility operation, unless the manufacturer of the CEMS certify, and Borough engineers agree, that the equipment can sample accurately with a shorter warm-up time.

(e) Exhaust gases may not be released into the atmosphere until they have cooled to below 200 degrees Centigrade in order that all dioxins and furans can be monitored. Dioxin/furan emissions monitors must be placed at a point where the exhaust gases have cooled to below 200 degrees Centigrade. Dioxin and furan measurements must be standardized to TEQ<sub>DF-WHO98</sub> units.

(f) Where applicable, non-detects shall be measured at half the detection limit.

(g) The facility owner and operator shall furnish written consent for the inspection of the facility at any time by the designees of the Borough Council for the purpose of assuring compliance with this Ordinance. Such designees shall be permitted entry upon any property or into any building, premises or place on which or within which a biowaste incinerator may be located and to inspect the emissions monitoring equipment as may be necessary to ensure that such equipment is operational, is operating properly and is being used as intended by the manufacturer and in accordance with this Ordinance.

(h) Exceeding the established levels of contaminant releases as may be shown by continuous emissions monitoring shall constitute prima facie evidence that a violation has occurred.

(i) The facility owner and operator shall permit the installation of such monitoring devices, measuring equipment, indicators or alarms as deemed necessary by the engineering firm approved by the Borough Council.

(j) Violation(s) of any provision within this section shall constitute a misdemeanor and penalties may be assessed whether or not the violations were willful.

**Section 3. Proof of Financial Responsibility.** As a requirement for the operation of any biowaste incinerator which may release mercury or dioxins/furans and thereby cause air pollution or adverse environmental effects, the Borough Council shall, in considering the type of facility and degree of potential air pollution or potential adverse environmental effects, require proof of financial responsibility or security assuring the proper construction, operation, and maintenance of CEMS in the form of a bond or other legal instrument of a form acceptable to the Borough Council, payable to Borough of Kulpmont which guarantees proper construction, repair, operation and maintenance, inspections and monitoring of the facility and removal if necessary. The amount of such bond or legal instrument shall be sufficient to cover all costs of entry, correction, repair, operation, maintenance, inspection, or monitoring of the CEMS in the event of failure by the owner to comply with the provisions of this ordinance, or any order issued hereunder.

## **ARTICLE IV - MERCURY AND DIOXIN EMISSION LIMITS**

### **Section 1. Emission Limits.**

(a) Mercury Emissions – The mercury emissions limit for each biowaste incinerator shall be 0.05 mg/Nm<sup>3</sup>. It shall be unlawful to emit more than this limit. In calculating compliance with this limit, data may be averaged on a three hour basis. Such averaging shall not include data from times when combustible materials are not being burned in the incinerator.

(b) Dioxin/Furan Emissions – The dioxin/furan emissions limit for crematoria and other facilities that operate sporadically and which burn human bodies or animal carcasses shall be 400 nanograms per body TEQ<sub>DF-WHO<sub>98</sub></sub>. For other types of biowaste incinerators, the dioxin/furan emissions limit shall be 2 nanograms per kilogram (ng/kg) TEQ<sub>DF-WHO<sub>98</sub></sub>. It shall be unlawful to emit more than this limit. In calculating compliance with this limit, data may be averaged on a weekly basis. Such averaging shall not include data from times when combustible materials are not being burned in the incinerator.

(c) In cases where the average weekly emissions exceed the mercury or dioxin/furan emissions limit, waste feed shall be cut off and operations shall be immediately ceased until corrective action is taken.

### **Section 2. Adoption and Incorporation of Other Limits and Standards**

To the extent a more stringent standard, limit, or requirement for the emission of air contaminants or a standard of performance for any facility defined in this Ordinance as a biowaste incinerator is not expressly set forth herein, the Borough adopts and incorporates by reference herein the standards, limits, and requirements for the emission of air contaminants, and standards of performance for stationary sources, as promulgated by the U.S. Environmental Protection Agency pursuant to the Clean Air Act or by the Commonwealth of Pennsylvania pursuant to the Air Pollution Control Act or any other relevant statutes. It is expressly the intent of the Borough in adopting these standards, limits, requirements, and standards of performance, to make them independently enforceable by the Borough of Kulpmont.

### **Section 3. Best Available Technology**

To the extent that either the U. S. Environmental Protection Agency or the Pennsylvania Department of Environmental Protection determines that a control technology is reasonably available to reduce or minimize the emission of air contaminants from a stationary source, each stationary source within the Borough shall modify its facility so as to utilize the control technology within such time as the Borough Council may reasonably determine. The Borough Council shall notify the facility of the time period within which it must modify the facility to utilize the control technology. It shall be the responsibility of the facility to obtain such permits and approvals for the modification of the facility as are necessary under state and federal law.

### **Section 4. Unlawful Conduct.**

It shall be unlawful for any person or corporation to:

(a) Fail to comply with any provision of this Ordinance including but not limited to the provisions of section 2 above;

(b) Violate or assist in the violation of any of the provisions of this ordinance.

(c) Attempt to circumvent any provision of this Ordinance through misrepresentation or failure to disclose all relevant facts. Nothing in this Ordinance shall be construed to affect the application of provisions of the Crimes Code, Title 19 of the Pennsylvania Consolidated Statutes relating to perjury, false swearing or unsworn falsification to authorities.

(d) Intentionally obstruct, impair or interfere with the administration of this Ordinance by the Borough Council or their designees by force, violence, physical interference or obstacle or any other unlawful act. Nothing in this Ordinance shall be construed to affect the application of Section 5101 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes as to obstructing administration of law or other governmental function.

(e) Tamper or interfere with any sample, process, device, equipment, computer hardware or software, indicator or alarm, report, electrical power, pipe, gas or other media so as to affect or alter any sample, process, device, equipment, indicator or alarm, report, electrical power, pipe, gas or other media used in the gathering and analysis of samples or the reporting of sample analysis as may be required by the Borough Council in the administration of this ordinance.

#### **ARTICLE V - DECLARATION OF PUBLIC NUISANCES**

The emission of mercury or dioxins/furans into the atmosphere of Borough of Kulpmont except in conformity with this Ordinance is hereby declared to be public nuisance, abatable in the manner prescribed by law.

#### **ARTICLE VI - COMPLIANCE ORDERS**

Whenever the Borough Council has reason to believe that there has been a violation of this Ordinance or other State or Federal Law, or any of the rules and regulations promulgated pursuant thereto or a misrepresentation of any certification, the Borough Council shall, in addition to any other remedy available to it, and in the absence of an emergency situation requiring prompt action, give written notice of such violation to, the owner or operators of the facility, and therein order such corrective measures as are deemed reasonable and necessary to cure the violation. This notice shall state the nature of the violations and shall allow a reasonable time for the performance of the necessary corrective measures. If the owner or operator of the facility fails to carry out the corrective measures set forth in the notice, within the time period stated therein, the Borough Council shall institute such other actions as may be deemed necessary to terminate the violation.

#### **ARTICLE VII - CRIMINAL PENALTIES**

In accordance with the Pa. Air Pollution Control Act, 35 P.S. 4012(g), providing that civil and criminal penalties for air pollution violations be uniform throughout the Commonwealth, and further providing that "the penalties and remedies set forth in this act be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations" the criminal and civil penalties for violation of this Ordinance shall be the following:

**Section 1.** Notwithstanding any other provisions herein, any responsible party that violates any provision of this Ordinance or any of the rules and regulations pursuant hereto or who misrepresents any certification upon conviction of such offense in a summary proceeding shall be subject to a fine or no less than Two Hundred Dollars (\$200) and no more than Two Thousand Five Hundred Dollars (\$2,500), plus costs of prosecution or, in default of the payment of such fine, be imprisoned for not less than one (1) day and no more than one (1) year. Each day of violation or misrepresentation of certification shall constitute a separate offense and each one percent (1%) above the mercury or dioxin/furan emissions limit shall also constitute a separate offense. Violations of both the mercury and dioxin/furan limit shall constitute separate offenses.

**Section 2.** Any responsible party that, within two years after a conviction in a summary proceeding as provided in Section I above engages in unlawful conduct as defined in this ordinance is guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000) for each separate offense or, in default of the payment of such fine, to imprisonment for a period of not less than one (1) day and no more than one year. Each day of violation or occurrence of misrepresentation of certification shall constitute a separate offense.

In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this Ordinance, the Borough may initiate criminal proceedings against the responsible party pursuant to 35 P.S. Section 4009.

#### **ARTICLE VIII - CIVIL PENALTIES**

(a) Any responsible party that violates any provision of this Ordinance, or any compliance order issued pursuant to Article VI hereof, shall pay to the Borough of Kulpmont a civil penalty in the amount assessed by Borough Council. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed may not exceed Ten Thousand Dollars (\$10,000.00) per day for each violation. In determining the amount of the penalty, the Borough may consider the willfulness of the violation; damage to air, soil, water or other natural resource or their uses; financial benefit to the person or corporation in consequence of the violation; deterrence of future violations; cost to the Borough; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation is voluntarily reported; other factors unique to the owners or operators of the source or facility; and other relevant factors.

(b) When the Borough proposes to assess a civil penalty, it shall inform the owner of the proposed amount of the penalty. The owner charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or if the owner wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the owner shall forward the proposed amount of the penalty to the Borough within the thirty (30) days period for placement in an escrow account with any Commonwealth bank.

#### **ARTICLE IX - ABATEMENT AND INJUNCTIONS**

Notwithstanding any other provision herein, if the Borough Council finds any person or corporation is operating a facility without complying with the requirements of this Ordinance, or any of the rules and regulations promulgated thereunder, the Borough Council may, in addition to other remedies that may be available to it, order the immediate discontinuance of such violations, or order other compliance. Failure to comply with such an order of discontinuance, or any other order of compliance issued by the Township, shall constitute a violation of this Ordinance. In addition to all other remedies, upon a failure to comply with such order, the Borough may secure a temporary restraining order, a preliminary injunction, a permanent injunction or other appropriate relief or declare the operation a public nuisance, and order the immediate abatement of same, with the costs of such abatement to be borne and assessed in accordance with law.

#### **ARTICLE X - SEVERABILITY**

Each separate provision of this Ordinance shall be deemed independent of any other provision of this Ordinance, and if any provision, sentence, clause, section or part hereof is held to be illegal, invalid or unconstitutional or inapplicable to any person, corporation or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their application to other parts or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included herein, and as if the person, corporation or circumstances to which this Ordinance, or any part hereof is inapplicable had been specifically exempted therefrom.

#### **ARTICLE XI - EFFECTIVE DATE**

That this Ordinance shall become effective upon enactment

DULY ENACTED AND ORDAINED THIS    DAY OF    2006.

ATTEST: