



City of Biddeford, Maine
205 Main St.
P.O. Box 586
Biddeford, Maine 04005

Air Toxics Control Ordinance

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PREFACE

GENERAL

The City of Biddeford Air Toxics Control Ordinance is a comprehensive regulatory plan to prevent, control, abate and limit the emission of toxic air pollutants into the ambient air. Reaching beyond the State of Maine's current program to promote voluntary reductions in toxic air pollutants, the Ordinance prescribes 24-hour and annual ambient air limits which are intended to promote public health by reducing actual and potential human exposure to toxic air pollutants which are known to cause, or may be reasonably anticipated to cause adverse health effects, including increased cancer risk. The Ordinance establishes a permit system administered and enforced by the Biddeford Environmental Board to regulate the emission of toxic air pollutants. The Ordinance initially regulates toxic air emissions sources which are now regulated by the State of Maine as minor or major sources of air pollution for other pollutants. The Ordinance also requires a newly created Environmental Officer to conduct a comprehensive emissions inventory of other sources of toxic air emissions not now regulated by the State and directs the Environmental Code Officer to recommend regulating additional sources of such emissions after evaluation of the inventory.

The Ordinance is authorized under 30-A M.R.S.A. §3001, 38 M.R.S.A. §597, and all other applicable laws of the State of Maine.

ORGANIZATION AND HISTORY

The Ordinance is divided into chapters for general application and for specific environmental concerns.

Chapter 1 encompasses the purposes and policies of the Ordinance, statement of authority, and general definitions.

Chapter 2 establishes the organization and powers of the Environmental Board and the Environmental Code Officer, and sets forth the system for permit administration, investigation, enforcement and penalties.

Chapter 3 sets forth general content requirements for applications, procedures for hearings on applications, fees and appeal procedures.

Chapter 4 regulates toxic air pollutant emissions.

Chapter 5 regulates recordkeeping, reporting and monitoring of permitted toxic air pollution sources.

The City Of Biddeford may revise the Ordinance in accordance with applicable state and local law to accommodate changes in state and federal law. Persons referring to this Ordinance should obtain from the City Clerk any amending ordinances subsequent to the Ordinance in order to review a current and complete version of the Ordinance.

CHAPTER 1 GENERAL PROVISIONS

Part

1. Short Title, Purposes, Policies and Authority
2. General Definitions

PART 1

SHORT TITLE, PURPOSES, POLICIES AND AUTHORITY

Section

- §1-101 Short Title
- §1-102 Purposes and Policies
- §1-103 Authority
- §1-104 Territorial Application
- §1-105 Severability
- §1-106 Effective Date and Applicable Dates
- §1-107 Savings Clause
- §1-108 Other Rights

§1-101 SHORT TITLE

This Ordinance shall be known and may be cited as the “City of Biddeford Air Toxics Emissions Control Code.

§1-102 FINDINGS, PURPOSES AND INTENT

- a. In enacting this Ordinance, the City finds that:
 1. chemical substances and mixtures are used each year by the manufacturing, production, service, educational, research, and health sectors of our economy, including within the City;
 2. among the many chemical substances and mixtures which are being developed, produced and used, there are many whose manufacture, processing, use and disposal may present an unreasonable risk of injury to health or to the environment;
- b. It is the intent of the City that the Biddeford Environmental Code Officer and the Biddeford Environmental Board shall carry out the purposes and policies of this Ordinance in a reasonable and prudent manner.
- c. The purposes and policies of this Ordinance are:

The City of Biddeford has enacted this Ordinance in order to reduce the risks associated with exposure to toxic air pollutants and thereby promote and protect the public health by inventorying, controlling, abating and limiting the emissions of air toxics into the ambient air. This Ordinance is enacted pursuant to the Home Rule powers bestowed upon the City of Biddeford by the Constitution and laws of the State of Maine. This Ordinance is intended to provide a comprehensive scheme of air toxics regulation at the local level in furtherance of the policies reflected in federal and state environmental laws and regulations for the protection of the human public health and environment. It is enacted to identify, prevent, reduce and eliminate threats to the public health and environment posed by the discharge of toxic air pollutants. This Ordinance seeks to be consistent with federal, state and local

environmental laws and regulations, while imposing stricter standards where permitted by applicable law. Therefore, to the extent feasible, procedures under this Ordinance will encourage cooperation and sharing of information with other permitting agencies of government and devising forms and filing requirements which correspond to or can be satisfied by those employed by other governmental agencies. Where it aids the timely execution of these duties, the Board may consent to hold hearings jointly with other agencies of government considering similar permits or approvals.

In addition to the foregoing, the purposes and policies of this Ordinance are:

1. To help ensure the protection of human health and the environment in the City of Biddeford by reducing the potential for exposure to air toxics in local commercial, industrial and residential areas;
 2. To help conserve and protect the City of Biddeford's natural resources;
 3. To control and monitor through a permitting system the amount of air toxics which can be discharged or emitted into the City of Biddeford's environment;
 4. To foster local control of the environment through the exercise of the City of Biddeford's home rule authority;
 - A. By bestowing certain powers and duties upon the City of Biddeford's Environmental Board and the City of Biddeford's Environmental Code Officer;
 - B. By establishing uniform procedures and guidelines for the protection of public health, welfare and safety and the environment, including during emergency conditions which create or are likely to create a substantial and immediate danger;
 - C. By providing procedures to inventory, abate, reducing and control the air toxics emissions within the City of Biddeford's environment; and
 - D. By providing a system for the imposition of penalties, stop orders and injunctions for violations of this Ordinance in order to foster compliance with this Ordinance and the terms and conditions of any permits, orders or approvals issued pursuant to this Ordinance;
 5. To implement Federal and State policies that encourage municipalities to regulate the environment;
 6. To provide for the careful planning, analysis, and management of air toxics emissions within the City of Biddeford to prevent damage to human health and the environment;
 7. To maintain and improve the chemical, physical, and biological integrity of the City of Biddeford's air;
 8. To encourage pollution prevention through appropriate voluntary, cooperative and collaborative activities involving representatives of the City and others including individuals and companies residing or doing business in the City of Biddeford; provided, however, nothing said or done by any one or more members of the Environmental Board or the Environmental Code Officer or any other representative of the City of Biddeford in any such collaborative or cooperative program shall be legally sufficient to work any estoppels or otherwise to commit or bind the Board or the City on any issue relating to any provision of this Ordinance or any permit or order issued hereunder.
- d. This Ordinance shall be liberally construed to effectuate its purposes and policies.

§1-103 AUTHORITY

This Ordinance is enacted pursuant to the Constitution of the State of Maine, 30-A M.R.S.A. §3001, 38 M.R.S.A. § 597, and all other applicable laws of the State of Maine and the United States.

§1-104 TERRITORIAL APPLICATION

This Ordinance applies to all persons conducting activities in the City of Biddeford which are regulated by this Ordinance.

§1-105 SEVERABILITY

If any provision or section of this Ordinance, or the application thereof to any person or circumstance, is held void or invalid, such invalidity shall not effect other provisions or applications of this Ordinance that can be given effect in whole or in part without the invalid provision or application, and to this end each provision of this Ordinance is declared to be severable and independent. It is the intent of the City of Biddeford that each and every part, clause, paragraph, section and subsection of this Ordinance be given effect to the degree possible.

§1-106 EFFECTIVE DATE AND APPLICABLE DATES

- a. This Ordinance shall be effective on March 1, 2002. It shall apply to all existing and new sources of air toxics pollution, the construction or operation of which begins after the effective date.
- b. The Board shall approve and furnish forms as required by this Ordinance for each permit or approval. Within six (6) months of the Board's approval of the form of application for any permit or approval required under this Ordinance, every person subject to this Ordinance shall file with the Board an application for each such permit or approval required.
- c. Any existing source, activity or discharge of a regulated pollutant within the City of Biddeford at the time of enactment of this Ordinance is deemed an "existing source." Any person owning or operating an existing source shall make application for all permits or approvals governing activities subject to this Ordinance within six (6) months after the Board approves the forms for applications under any provision of this Ordinance. During this period for application an existing source may continue to operate under permits, licenses and approvals issued pursuant to state and federal law.

Existing sources may not continue to operate without the required permit(s) or approval(s) under this Ordinance beyond a point six (6) months after the Board approves the forms for applications under any provision of this Ordinance; provided, however, that the owner or operator of an existing source who has made timely application for all necessary permits or approvals under this Ordinance and pays the application fees when due in accordance with Section 3-114 shall be allowed to operate under its existing state and federal permits, licenses, and approvals until such time as the Board has denied a particular required permit or approval. An existing source may continue to operate pending a decision of the Board upon a timely filed petition for reconsideration or timely filed judicial appeal of a denial of an application for a permit. Nothing in this provision is intended to supercede the authority of any state or federal agency of government to protect the public health, safety, welfare and environment against public nuisances or imminent threats.

- d. Prior to the termination of an existing permit or approval under this Ordinance, an applicant subject to this Ordinance shall reapply for a renewed permit or approval. If such application

is deemed to be complete for processing prior to the expiration of the permit, the applicant shall be entitled to continue operation under the current permit or approval, until the Board renders a decision on the application for permit renewal.

§1-107 SAVINGS CLAUSE

Nothing in this Ordinance may be construed to affect any substantive right or obligation gained by any person solely under the provisions of any law repealed or amended by this Ordinance. All substantive rights and obligations created under the provisions of any law repealed or amended by this Ordinance continue in effect.

All officers, officials or other persons elected, appointed, hired or otherwise selected to act in any capacity under provisions repealed or amended by this Ordinance shall continue in that capacity under the provisions of this Ordinance.

§1-108 OTHER RIGHTS

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right of any person to damages or other relief on account of injury to persons or property due to any violation of this Ordinance or to activity subject to this Ordinance and to maintain any action or other appropriate procedure therefore; nor to so affect the powers of the City to initiate, prosecute and maintain actions to abate public nuisances.

Nothing in this Ordinance is intended, nor shall be construed, to limit, impair or abridge, substantively or procedurally, the powers of the City of Biddeford under state or common law to protect the general health, safety and welfare by initiating, prosecuting and maintaining actions concerning activities not in violation of this Ordinance.

PART 2

GENERAL DEFINITIONS

Section

§1-201 GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent Chapters of this Ordinance which are applicable to specific parts or parts thereof, and unless the context otherwise requires, in this Ordinance the following terms have the following meanings:

- a. **"ACGIH"** or **"ACGIH 2001 Edition"** means the publication entitled "The Threshold Value Limits (TLVs) and Biological Exposure Indices (BIEs)" published in 2001 by the American Conference of Governmental & Industrial Hygienists.
- b. **"Actual emissions"** means the actual rate of emissions of a pollutant from a device or process. In general, actual emissions as of a particular date shall equal the average rate, in pounds, at which the unit actually emitted the pollutant. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.
- c. **"Air contaminant"** means soot, cinders, ashes, any dust, fume, gas, mist (other than water), odor, toxic or radioactive material, particulate matter, or any combination thereof.
- d. **"Ambient air"** means the unconfined atmosphere that envelops the earth.

- e. **"Ambient air limit"** means the standard that establishes the maximum allowable concentration of emissions of a specific regulated toxic air pollutant at or beyond the compliance boundary.
- f. **"Applicant"** means any person applying for a permit, certification, approval, or similar form of permission, or a modification, repeal or renewal thereof, from the Biddeford Environmental Board.
- g. **"Area source"** means a two-dimensional horizontal source from which air emissions are being released at a relatively uniform rate from every part of its surface.
- h. **"Begin actual construction"** "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipe work, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change .
- i. **"Biddeford Air Toxics Emissions Permit"** means the permit, which may be issued by the Biddeford Environmental Board pursuant to this Ordinance.
- j. **Biomedical waste.** "Biomedical waste" means a waste that may contain human pathogens of sufficient virulence and in sufficient concentrations that exposure to it by a susceptible host could result in disease. Such wastes shall include, but not be limited to, those wastes defined in 06 096 CMR 900(7)(A).
- k. **"Board"** means the City of Biddeford Environmental Board.
- l. **"B.T.U."** means British Thermal Units.
- m. **"City Council"** means the city officers elected to the City of Biddeford Council by the residents of the city.
- n. **"Compliance boundary"** means the boundary of the property on which the stationary source is located or an alternate compliance boundary, located beyond the said boundary of the property established in a permit issued in accordance with this Ordinance.
- o. **"Day"** means calendar day.
- p. **"Device"** means any burner, furnace, machine, equipment, or article which emits a regulated toxic air pollutant into the ambient air.
- q. **"Emission"** means a release of an air contaminate into the ambient air.
- r. **"Environmental Code Officer" ("ECO")** means the City of Biddeford Environmental Code Officer.
- s. **"Excess Emissions"** means an air emission rate of a regulated air toxic pollutant which exceeds any applicable emission or ambient air limitation.
- t. **"Existing Source"** means any source of regulated air toxics emissions within the City of Biddeford which began actual construction, operation or discharge prior to the time of enactment of relevant portions of this Ordinance.
- u. **"Facility"** means any stationary source which emits or has the potential to emit regulated air toxics.
- v. **"Hazardous waste"** means a waste substance or material, in any physical state, designated as hazardous under 06 096 CMR 850(3)(A)(3). It does not include waste resulting from normal household or agricultural activities. The fact that a hazardous waste

or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

- w. **“Interested Person”** means any person having a property right or interest in a facility or who may be aggrieved by the granting, modification, repeal or denial of any permit, approval or order by any proceeding under this Ordinance.
- x. **“Issuing Authority”** means the Board.
- y. **“Minor Modification”** means a permit amendment for (a) the correction of typographical errors, (b) the identification of an administrative change, (c) a change in monitoring and reporting requirements, (d) the emission of a regulated toxic air pollutant not identified on a permit issued under this Ordinance in an amount above the established de minimus levels which will not exceed the ambient air limits for the regulated pollutant established in Table I (e) any other changes approved by the ECO which meet the criteria of a minor modification.
- z. **“Modification”** means any physical or operational change in a stationary source or device which increases the amount of a specific regulated toxic air pollutant emitted by such source or device, or which results in the emission of any additional regulated toxic air pollutant in excess of the ambient air limits for the regulated pollutant established in Table I and which is not a minor modification.
- aa. **“MDEP”** means the Maine Department of Environmental Protection.
- bb. **“New sources of pollution”** means any source of a regulated pollutant or contaminant which begins construction, operation or discharge after the effective date of relevant portions of this Ordinance.
- cc. **“Ordinance”** means the several chapters comprising this Ordinance, as may be amended from time to time.
- dd. **“Permit”** means any permit, certificate, approval, registration, schedule of compliance or similar form of permission required or authorized by this Ordinance.
- ee. **“Permit Deviation”** means any occurrence that results in an excursion from any emission limitation, ambient air limit, operating condition or work practice standard as specified in a permit or compliance schedule issued under this Ordinance.
- ff. **“Permit holder”** means a person who has received a permit pursuant to any chapter of this Ordinance.
- gg. **“Person”** means an individual, corporation, partnership, association, federal, state or local governmental entity, or a combination thereof, and the agents of same.
- hh. **“Person Aggrieved”** means any person who because of an act or failure to act by the issuing authority, may suffer an injury, in fact, which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in this Ordinance. Such person must specify in writing sufficient facts to allow the Board to determine whether or not the person is aggrieved.
- ii. **“Pollution control equipment”** means any device that treats, removes, restricts, or otherwise controls the release or discharge of regulated toxic air pollutants that is not vital to normal production or operations.
- jj. **“Process”** means any operation which combines devices, equipment, raw materials, utilities, and manpower for the production of goods, services, energy, pollution control, or other purposes which emits a regulated toxic air pollutant into the ambient air.

- kk. **"Reference concentration limit"** means an estimate established by the United States Environmental Protection Agency of a daily exposure to the human population, including sensitive subgroups, that is likely to be without an appreciable risk of deleterious non cancer effects during a lifetime.
- ll. **"Refuse derived fuel"** means municipal solid waste which has been processed prior to combustion to increase the heat input value of the waste.
- mm. **"Regulated toxic air pollutant"** means any substance or compound emitted into the ambient air by a stationary source or process in an amount exceeding the facility threshold amounts established for the substances and compounds listed in Appendix B to Chapter 115 of the Maine DEP air emission rules (06 096 Code of Maine Rules Chap. 115, as amended) and designated a regulated toxic air pollutant under the applicable provisions of this Ordinance. Regulated toxic air pollutants are :
1. Those hazardous air pollutant chemical substances for which a facility threshold limit has been established by the Maine Department of Environmental Protection pursuant to 06 096 CMR 115 (Appendix B), as amended and which appear on Table I attached to this Ordinance; and
 2. Those substances and compounds which are designated as regulated toxic air pollutants by being added to Table I in accordance with the applicable provisions of this Ordinance.
- nn. **"Stationary source"** means any building, structure, facility, device, or installation that emits or may emit a regulated toxic air pollutant or air contaminant into the ambient air.
- oo. **"Threshold facility limit value"** means the total facility limit in pounds per year as set forth in Table C of Appendix B attached to Chapter 115 of the Maine DEP air emission rules, as amended (06 096 CMR 115).
- pp. **"Ultimate Fuel Analysis"** means an analysis for hydrogen, carbon, nitrogen, oxygen and chlorine, as approved by the ECO.
- qq. **"Uncontrolled emission"** means any emission of a regulated toxic air pollutant from a device or process at a stationary source that is not subject to treatment or removal by pollution control equipment prior to being emitted to the ambient air, or is emitted to the ambient air in amounts which have not been limited by conditions in an enforceable permit or document.

CHAPTER 2 CODE ADMINISTRATION AND ENFORCEMENT

Part

1. Environmental Board
2. Environmental Code Officer
3. Permit Administration and Enforcement

PART 1

ENVIRONMENTAL BOARD

Section

- §2-101 Short Title
- §2-102 Establishment
- §2-103 Composition
- §2-104 Appointment
- §2-105 Terms of Office
- §2-106 Vacancies
- §2-107 Removal
- §2-108 Officers
- §2-109 Meetings, Quorum, Agenda, Materials, Conflict of Interest
- §2-110 Powers and Duties
- §2-111 Appeals

§2-101 SHORT TITLE

This Chapter shall be known and may be cited as the "City of Biddeford Air Toxics Permit Administration and Enforcement Code."

§2-102 ESTABLISHMENT

The Biddeford Environmental Board is hereby established pursuant to Article VIII, Part Second of the Maine Constitution and the laws of the State of Maine, including, but not limited to, 30-A M.R.S.A. §3001.

§2-103 COMPOSITION

The Board shall consist of seven (7) voting members who shall serve until their term ends or until their resignation, two City Councilors who shall serve as non-voting liaisons and such number of alternate members as the Mayor and City Council deem necessary. Members and alternate members of the Board shall be registered voters and residents of the City of Biddeford at all times during their terms. No member or alternate member shall be an officer or employee of the City of Biddeford or a member of the Police Commission, Fire Commission, Planning Board, Zoning Board of Appeals, Board of Assessment Review, or the Saco River Corridor Commission.. No member or alternate member shall be an officer, employee or member of any state or federal government agency which either directly or indirectly has duties or jurisdiction over any aspect of an applicant's operations which are subject to this ordinance. Of the seven voting members, one shall be a representative of business, one a representative of the engineering profession, one a representative of the environmental community, and one by reason of education and/or employment a member of the legal profession. When a member is unable to act because of interest, physical incapacity, absence or any other reason satisfactory

to the Chairman, the Chairman shall designate an alternate member to sit and vote in his or her place.

§2-104 APPOINTMENT

The members and alternate members of the Board shall be nominated by the Mayor no later than sixty (60) days after the effective date of the Ordinance and shall serve upon approval of the City Council.

§2-105 TERMS OF OFFICE

Members of the Board shall be appointed for staggered five-year terms. Voting members shall be appointed initially for one, two, three, four and five years, with two members initially being appointed for one year. City Council liaisons shall serve for five (5) years or until replaced by the City Council. Alternate members shall be appointed for a term of five (5) years. This structure is intended to establish continuation of "institutional knowledge" by the Board as a whole. Members of the Board, prior to the end of their terms, may be reappointed by the City Council.

§2-106 VACANCIES

The City Council may declare a vacancy on the Board upon the non-acceptance, resignation, death, removal, permanent disability or relocation of a member's place of residence outside of Biddeford. In such circumstances, the Mayor, upon approval of the City Council, shall fill all positions; pending any such action, the Chairman may designate an alternate member to act to fill a vacancy.

§2-107 REMOVAL

- a. Members of the Board may be removed from office by the City Council for the following reasons:
 - A member is no longer a resident of the City of Biddeford; or
 - A member is absent from three (3) consecutive regular Board meetings without prior satisfactory explanation; or
 - A member is absent from six (6) workshops of the Board without prior satisfactory explanation; or
 - A member knowingly fails to excuse him or herself on a matter in which the member has a conflict of interest.
- b. Removal action shall be initiated by the Board. The Chair shall submit in writing a letter to the City Council stating the reasons for the removal request.
- c. The Board member in question shall be provided a copy of the Chair's letter and shall be given the opportunity to reply to the City Council.

§2-108 OFFICERS

a. Election of Officers.

The Board shall, by majority vote, elect a Chair and Vice Chair and shall fill any vacancies in said offices as soon as practical after they occur. The Chair and Vice Chair shall each serve

a term of one year or until his or her successor is duly elected by the Board. The Chair and Vice Chair may serve successive terms, if so elected.

b. **Chair**

The Chair shall preside at all meetings.

c. **Vice Chair**

In the absence of the Chair, the Vice Chair shall act as chairperson and shall have all the powers of Chair.

§2-109 MEETINGS, QUORUM, AGENDA, MATERIALS, CONFLICT OF INTEREST

a. **Meetings.**

Regular meetings of the Board shall be held at least monthly, or as provided by rule of the Board unless excused by the Chair.

Special meetings may be called by the Chair, the Chair designated for a particular matter, or any four (4) members of the Board.

The Board may hold executive sessions as provided in the Maine Freedom of Access Act, 1 M.R.S.A. 401 et seq. ("Freedom of Access Law"); otherwise all meetings, hearings, proceedings and deliberations of the Board shall be open to the public in accordance with the Freedom of Access Law.

Workshops may be called by the Chair or by a member designated by the Chair for the presentation of information. Workshops shall be informational only, shall not be used by the Board for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board for the formulation of formal decisions on any matter.

b. **Quorum.**

No business shall be transacted by the Board without a quorum. A quorum shall consist of four (4) members authorized to vote. The Board shall act by majority vote, calculated on the basis of the number of members present and voting. If less than a quorum is present, the meeting may be adjourned for a period not exceeding three (3) weeks at any one time.

c. **Agenda.**

No item of business or plan shall be placed on the Board agenda for any meeting unless such item or plan shall have been submitted to the Board not less than seven (7) days prior to the date of a meeting or other proceeding; provided, however, that the Board may upon request by an interested person or on its own motion, waive the seven (7) day advance submission requirement.

d. **Materials.**

Submittals associated with an item of business or plan placed on the Board agenda shall be provided to the Board not later than five (5) days prior to Board consideration of that submittal provided, however, that the Board may, upon request or on its own motion, waive the 5 day advance submission requirement.

e. **Conflict of Interest.**

Any member of the Board shall voluntarily disqualify himself or herself from voting on a particular matter in which the member has a private interest distinct from the public interest. In addition, a member shall be disqualified from voting on a particular matter for cause by a majority vote of the members present and voting, except the member whose disqualification is at issue shall not vote on his or her own disqualification.

f. **Public Notice.**

At least seven (7) days prior to the date of a regular meeting and at least three (3) days prior to the date of a special meeting, the Board shall publish in one issue in a newspaper of general circulation in the City a notice of the time and place of the meeting.

§2-110 POWERS AND DUTIES

The Board shall have the following powers and duties:

- a. To hear and review applications for a Biddeford Air Toxics Emissions Permit and to grant, grant with conditions, modify, repeal or deny a Biddeford Air Toxics Emissions Permit;
- b. To hear and review petitions for an addition, deletion, or modification of the List of Regulated Air Pollutants, or for the modification of a parameter for any substance or compound named on the list entitled Table I to this Ordinance.
- c. To issue such orders as necessary to properly administer and to ensure compliance with the Ordinance;
- d. To administer enforcement proceedings including, but not limited to conducting enforcement hearings, to assure compliance with this Ordinance;
- e. To exercise such powers as are provided to the Board by this Ordinance consistent with the Constitution and laws of the State of Maine;
- f. To perform such duties as delegated and requested by the City Council; and to perform such duties as requested by other public agencies, as the Board determines is proper and appropriate;
- g. To obtain such goods and services, and employ or contract with such staff, including but not limited to attorneys, engineers and other professionals as may be necessary to carry out its duties hereunder and to pay for such expenses within the limits of appropriations made for the purpose, upon the approval of the City Council as may be necessary;
- h. To hold hearings jointly with other agencies of the government in connection with activities which are subject to the provisions of this Ordinance;
- i. To issue such orders as necessary to properly administer and to ensure compliance with the Ordinance; and
- j. To issue subpoenas for the attendance of witnesses or for the production of documents as follows:
 1. General. At the request of the Board, or any member thereof, or at the request of the Environmental Code Officer, or an applicant or respondent in any proceeding under Chapter 3, the presiding officer may issue subpoenas for the attendance of witnesses and/or for the production of documents.
 2. Form. Every subpoena so issued shall bear the name of the Board, the name of the issuing officer and shall command the person to whom it is directed to attend and give testimony and/or produce specified documents or things at a designated time

and place. The subpoena shall also advise of the quashing procedure provided herein.

3. Service. Unless receipt of the subpoena is acknowledged by the witness, it shall be served by a person who is not a party to the proceeding and is not less than 18 years of age. Service shall be made by delivering a copy of the subpoena to the person named in it and tendering the fees and mileage paid to witnesses in the superior courts of this state.
4. Return. The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the Board. Failure to make such proof of service shall not affect the validity of such subpoena and service.
5. Quashing. On motion made promptly, and in any event before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Board may (a) quash or modify the subpoena on a finding that it is unreasonable or required evidence not relevant to any matter in issue, or (b) condition denial of the motion on just and reasonable terms. Any person requesting a hearing on a motion to quash a subpoena shall be granted a hearing before the Board upon such motion.
6. Denial of Subpoena. The Board may condition the granting of the subpoena upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents or tangible items.

§2-111 APPEALS

An appeal from any final decision or action of the Board may be taken by any aggrieved party in accordance with Section 3-113.

PART 2

ENVIRONMENTAL CODE OFFICER

Section

§2-201 Establishment

§2-202 Appointment; Term

§2-203 Powers and Duties

§2-204 Compliance

§2-205 Investigation

§2-206 Enforcement

§2-201 ESTABLISHMENT

The City of Biddeford hereby establishes the office of Environmental Code Officer "ECO".

§2-202 APPOINTMENTS; TERMS

The ECO shall be selected by the Mayor and City Council in accordance with the City Charter. In addition, the City Council may appoint assistants as necessary to the ECO.

The ECO and an assistant, if any, shall be residents of the State of Maine, at least 18 years of age and citizens of the United States at all times during his or her term. The ECO shall be appropriately qualified by reason of education and experience. The City Council may remove an ECO or his assistant for cause, after notice and hearing utilizing the same procedures

specified in Section 2-107 herein for the removal of a Board member. The term “cause” shall mean conduct or conflict affecting the ability and fitness of the ECO or his assistant, to perform his or her duties. If an ECO or his assistant, if any, is unable to act because of interest, physical incapacity, absence or other reason satisfactory to the City Council, the City Council shall designate another person to fill the vacancy.

§2-203 POWERS AND DUTIES

a. Powers Generally.

1. The ECO shall be empowered to execute the duties of his or her office in a manner necessary and proper to implement the provisions of this Ordinance.
2. The ECO shall investigate potential violations of the Ordinance, including, but not limited to potential violations referred by the Board or Code Enforcement Officers, report to the Board when appropriate and commence and maintain enforcement proceedings.
3. The ECO shall have the power to enter any property at reasonable hours and to enter any building with the consent of the property owner, occupant or agent, to inspect the property or structure for compliance with this Ordinance.
4. The ECO shall have the power to represent the City of Biddeford in District Court in the prosecution of alleged violations of this Ordinance.
5. The ECO, upon approval of the Board, and of the City Council as may be necessary, shall have the power to obtain such goods and services and to contract with attorneys, engineers and other professionals as may be necessary to carry out his or her duties hereunder within the limits of appropriations made for the purpose.

b. Duties.

1. In addition to any other duties specified within the Ordinance, the ECO will generally be responsible for all day to day operations of the Ordinance, including but not limited to the following:
 - Communications and meetings with City Manager and the Board.
 - Compliance inspections of affected industries.
 - Continued compliance assurance monitoring of affected industries.
 - Issue compliance orders as provided in the Ordinance.
 - Respond and investigate air pollution complaints by local citizens.
 - Coordinate air pollution control activities with the Maine DEP and USEPA as warranted.
 - Represent the City in the prosecution of alleged Ordinance violations.
 - Assist the Board in the implementation of the Ordinance.
2. In addition to the duties specified in A, above, and any other duties specified in this Ordinance, the ECO will be specifically responsible for the following areas related to the Ordinance:
 - Assist the Board in formulating standard complaint, permit application, investigation and other forms.

- Review all permit applications, related data, modeling, calculations, engineering data, process data, assumptions and test data.
 - Review all permit applications to ensure they comply with all Ordinance requirements.
 - Draft permit conditions which will ensure compliance with the Ordinance.
 - Develop, in consultation with the Board, an inventory of annual emissions of regulated air toxic pollutants from all significant sources within the City and, no later than two (2) years from the effective date of this Ordinance, submit recommendations to the Board identifying additional sources of regulated pollutants to be regulated under the Ordinance, together with a report of their estimated annual emissions.
 - Develop an hourly and annual RTAP emission inventory for all affected facilities.
 - Review the RTAP table annually, and, as new and revised data is published through OSHA, the ACGIH, and IRIS, submit to the Board no less frequently than once per year proposed additions, deletions and modifications to RTAPs in accordance with the provisions of this Ordinance.
- c. The ECO shall attend all regular and special meetings of the Biddeford Environmental Board and enforce this Ordinance.

§2-204 COMPLIANCE

The ECO shall be responsible for overseeing compliance with the provisions of the Ordinance and the terms of any permits issued pursuant to the Ordinance as set forth in Chapter 3.

§2-205 INVESTIGATION

The ECO may investigate alleged violations of this Ordinance as set forth in Chapter 2.

§2-206 ENFORCEMENT

The ECO shall be responsible for, undertake and oversee enforcement proceedings, including enforcement hearings as set forth in Chapter 2.

PART 3

PERMIT INVESTIGATION AND ENFORCEMENT

Section

§2-301 General

§2-302 Investigation

§2-303 Emergencies

§2-304 Commencement of Enforcement Proceedings

§2-305 Response to Complaint

§2-306 Default Order

§2-307 Board Decision

§2-308 Prehearing Conference

§2-309 Enforcement Hearings

§2-310 Enforcement Orders

§2-311 Penalties

§2-312 Judicial Review
 §2-313 Stay
 §2-3145 Judicial Enforcement

§2-301 General

- a. **General.** The Environmental Code Officer shall generally oversee the administration of, and compliance with, all permits issued by the Board.
- b. **Compliance Facilitation.** Whenever it appears to the ECO that there is or may be any irregularity in the administration of, or compliance with, any permit issued by the Board, the ECO may contact the permitted and may attempt to secure satisfactory permit administration and compliance. The ECO is authorized, but not required, to meet at reasonable times and places with representatives of the permittee to discuss issues or problems relating to administration of, or compliance with, any permit. Notwithstanding any effort undertaken by the ECO pursuant to this section, responsibility for compliance with the permittee's obligations under any permit remains with the permittee.

§2-302 INVESTIGATIONS

- a. The ECO may at any time, consistent with the applicable provisions of the Ordinance, conduct an investigation of a possible violation of the Ordinance or of any permit, approval, or order of the Board. On receipt of a written complaint signed by a person residing or conducting business in Biddeford, and alleging with reasonably sufficient information one or more violations of this Ordinance or a violation of any permit, approval or order of the Board, the allegations of the complaint shall be investigated by the ECO.
- b. In all cases not within the provisions of Section 2-303 (Emergencies), the investigation shall be conducted in a reasonably expeditious manner.
- c. After an investigation under this section has been completed, the ECO shall report to the Board. The ECO may commence an enforcement proceeding in accordance with the provisions of this Chapter. If the ECO determines that commencement of an enforcement proceeding is inappropriate or inadvisable, the ECO shall so report to the Board and the report of investigation conducted by the ECO shall be placed on file and the matter shall be considered closed without prejudice.

§2-303 EMERGENCIES

Whenever the Board, determines that there is or may be an ongoing violation of any provision of this Ordinance or of the terms or conditions of any permit, approval or order of the Board which is creating or is likely to create a substantial and immediate danger to public health, welfare or safety or significant environmental harm, the Board may in accordance with this subsection order the person or persons causing or contributing to such hazard to take such immediate actions as are necessary to reduce or alleviate the danger. Service of a copy of the order issued under this emergency procedure shall be made by Sheriff, Deputy Sheriff, constable, or Biddeford Police Officer to the person to whom the order is directed. Before issuing such order, the Board or ECO may consult and coordinate with appropriate state and federal agencies in responding to the emergency.

Each person to whom such order is directed shall comply with it immediately. Any such person may apply to the Board for a hearing on such order within two (2) business days of receipt of the order, or, after providing written notice to the City, seek judicial review pursuant to Section 2-312

of this Ordinance. The filing of an appeal of an emergency order of the Board does not stay the Board's order. If requested, a hearing shall be held by the Board within two (2) business days of service of the request for hearing. Such hearing shall be conducted in accordance with Section 2-309 of this Ordinance to the extent possible under the circumstances, but to the extent that the circumstances require expedited action the presiding officer may apply such procedural rules as required by the circumstances and shall clearly state such procedures at the start of the proceeding. Within three (3) days after such hearing, the Board shall make findings of fact and continue, revoke or modify the order. The findings of fact and order shall be served as specified above in this subsection. The decision of the Board shall be considered final Board action which may be appealed in accordance with Section 3-113. This subsection is additional to and independent of any and all other remedies that might otherwise be available at law or in equity.

§2-304 COMMENCEMENT OF ENFORCEMENT PROCEEDINGS

- a. **Commencement of Proceedings.** Whenever it appears to the ECO, after investigation, that there is or has been a violation of this Ordinance or of the terms or conditions of a license, permit or order issued by the Board under this Ordinance, the ECO shall commence an enforcement proceeding by filing and serving a complaint upon the alleged violator (herein called "Respondent"), provided, however, that prior to serving such complaint pursuant to this paragraph, the ECO shall issue a notice of violation to the person or persons the ECO considers likely to be responsible for the alleged violation or violations.
- b. The notice of violation issued pursuant to Paragraph A, above, must describe the alleged violation or violations, to the extent then known by the ECO; cite the applicable law, term or condition of the license, permit or order alleged to have been violated; and provide the alleged violator a time period not to exceed thirty (30) days in which to take necessary corrective action. For violations the ECO finds to be minor, the notice may state that further enforcement action will not be pursued if compliance is achieved within the time period specified in the notice or under other appropriate circumstances. A notice of violation is not required before issuing an emergency order pursuant to Section 2 -303 of this Ordinance.
- c. **Complaint: Form and Content.** Each complaint for the assessment of a penalty and/or for the suspension, revocation or modification of a permit shall include:
 1. A statement reciting the section(s) of the Ordinance authorizing the issuance of the complaint;
 2. A specific reference to each provision of the Ordinance or any applicable permit which Respondent is alleged to have violated or to other legal grounds for the complaint;
 3. A concise statement of the factual basis for the alleged violation;
 4. Either a demand for specific penalties or forms of relief authorized by this Ordinance or a statement that the complaint seeks whatever outcome may be appropriate under the circumstances; and
 5. Notice of Respondent's rights to (a) admit to the violation, consent to the penalty or other action specified in the complaint; or (b) admit to the violation, but request a hearing before the Board to contest the penalty or other action sought in the complaint; or (c) deny the alleged violation.
- d. **Copy of Ordinance.** A written statement of the enforcement provisions contained in this Ordinance shall be served with the complaint.

- e. **Service.** A complaint under this section shall be served upon the Respondent by certified mail, return receipt requested, or by Sheriff, Deputy Sheriff, constable or Biddeford Police Officer. If service is by certified mail, the return receipt, properly endorsed and postmarked shall be prima facie evidence of the completion and date of such service. If service is made in hand, the Maine Rules of Civil Procedure shall apply to the making of such service and proof thereof.

§2-305 RESPONSE TO COMPLAINT

The Respondent shall file and serve upon the ECO a written response to the complaint within twenty (20) days following service of the complaint:

- a. If Respondent admits to all of the allegations contained in the complaint and consents to the penalty or other action requested in the complaint, the response shall unequivocally and unambiguously so state;
- b. If Respondent admits to the violation as alleged in the complaint, but contests either the amount of the penalty or the terms of any other action sought in the complaint or both, the response shall expressly admit the allegations and specifically state all of the factual and legal circumstances which Respondent contends support a different disposition; and
- c. In all other instances, the response shall specifically and clearly admit or deny each of the factual allegations in the complaint or state clearly that Respondent lacks knowledge or information sufficient to form a belief as to the truth of any allegation, which allegation shall be deemed to have been denied. Each and every allegation not specifically addressed in the response shall be deemed to have been admitted. The response shall also state all factual or legal matters upon which Respondent bases any defense or affirmative defense and identify any additional factual or legal issues which Respondent intends to place at issue in the proceeding.

§2-306 DEFAULT ORDER

- a. **Default.** A Respondent may be found to be in default by the Board: (1) after motion, upon failure to file a timely response to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the presiding officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the Respondent unless the ECO presents sufficient evidence to the Board to establish a prima facie case against the Respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by Respondent constitutes, for purposes of the pending enforcement action only, an admission of all facts alleged in the complaint and a waiver of Respondent's right to a hearing on such factual allegations. Default by the ECO shall result in the dismissal of the complaint with prejudice.
- b. **Procedures Upon Default.** Upon finding that default has occurred, the presiding officer shall issue a default order against the defaulting party.
- c. **Contents of a Default Order.** A default order shall include findings of facts showing the grounds for the order, conclusions regarding all material issues of law or discretion, the penalty to be assessed and/or the terms and conditions of permit revocation, suspension or modification as appropriate.

- d. **Relief From Default.** For good cause shown, the presiding officer, as appropriate, may set aside a default order.

§2-307 BOARD DECISION

After receipt of Respondent's response to the complaint or after the deadline for receipt of such response, the Board may take any of the following actions:

- a. In the event that the Respondent admits to the violation and agrees to any monetary penalty and/or the terms and conditions of the revocation, suspension or modification recommended in the complaint by the ECO, the Board shall ratify or disapprove those sanctions.
- b. In the event the Respondent admits to the violation set forth in the complaint, but contends that the amount of the monetary penalty and/or the terms and conditions of the suspension, revocation or modification recommended by the ECO are inappropriate, or in the event the complaint does not seek specific monetary penalties or other specific sanctions but Respondent does not contest the allegations, the Board will conduct a hearing limited to the amount of the monetary penalty and/or the terms of the revocation, suspension or modification. The Board will determine the amount of the monetary penalty and/or the terms and conditions of the suspension, revocation or modification;
- c. In the event the Respondent denies that a violation occurred, the Board will decide whether to dismiss the enforcement action or to proceed with a hearing.

§2-308 PREHEARING CONFERENCE

- a. Purpose of Prehearing Conference. Unless the conference appears unnecessary, the presiding officer, at any time before an enforcement hearing begins, shall direct the ECO and the Respondent, either personally or through a representative, to appear at a conference presided over by the Chair or a member of the Board designated by the Chair to consider: (1) a schedule for the filing of motions and other pleadings; (2) a schedule for the exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof; (3) the designation of the number of expert or other witnesses; (4) setting a time and place for the hearing; and (5) any other matters which may expedite the disposition of the proceeding.
- b. Exchange of Witness Lists and Documents. Unless otherwise ordered by the presiding officer, the ECO and Respondent shall exchange (1) the names of the expert and other witnesses each intends to call, together with a brief narrative summary of their expected testimony; and (2) copies of all documents and exhibits to be offered as evidence. Documents and exhibits shall be marked for identification as ordered by the presiding officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify at the enforcement hearing without permission of the presiding officer.
- c. Record of the Prehearing Conference. No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the presiding officer upon motion of a party or sua sponte. The presiding officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements and all rulings and appropriate orders.

- d. Unavailability of a Prehearing Conference. If a prehearing conference is unnecessary or impracticable, the presiding officer, on motion or sua sponte, may direct other arrangements to accomplish any of the objectives set forth in this section.

§2-309 ENFORCEMENT HEARINGS

This section shall apply to all hearings which may result in the modification, suspension or revocation of any permit, approval or order or the imposition of a monetary penalty whenever such hearings are based upon the alleged violation of any provisions of this Ordinance or the terms or conditions of any permits, approvals or orders issued by the Board pursuant to this Ordinance.

a. Duties and Responsibilities of the Presiding Officer

1. The presiding officer at all hearings shall be either (a) the Chair of the Board, if present and willing to preside, Vice Chair of the Board, if present and willing to preside in the absence of the Chair, or (b) a member of the Board selected by those members present at the hearing.
2. The presiding officer shall have the authority to:
 - A. Hold a pre-hearing conference for the simplification of issues;
 - B. Issue subpoenas requested by the parties;
 - C. Place witnesses under oath;
 - D. Take action necessary to maintain order;
 - E. Rule on motions and procedural questions arising before and during the hearing;
 - F. Call recesses or adjourn the hearing; and
 - G. Prescribe and enforce general rules of conduct and decorum.

b. **Role of Board Members.** The voting members of the Board, including the presiding officer, collectively shall be responsible for reviewing evidence and hearing testimony and argument in order to determine the appropriate disposition of the complaint.

c. **Role of Biddeford Code Enforcement Officer and Advisory Staff to the Board.** The Code Enforcement Officer of the City of Biddeford shall advise the Board upon request with regard to documentary evidence produced and testimonial evidence heard at the enforcement hearing. The Code Enforcement Officer will not act as an advocate at the hearing. The Board may also retain legal counsel or expert witnesses as it deems necessary.

d. Ex parte Communications Prohibited throughout any enforcement proceeding :

1. No presiding officer, Board Member or City Council Liaison in a proceeding shall communicate, directly or indirectly, in connection with any issue relating to the merits with either the ECO or Respondent, or any other person legally interested in the outcome of the proceedings except upon notice and opportunity for all parties to participate pursuant to order of the presiding officer.
2. Nothing in this section prohibits inquiry by an ECO, Respondent, presiding officer, or Board Member concerning the scheduling or rescheduling of any event contained in the procedural schedule, any filing or any motion, order, or other pleading.

3. Except as otherwise provided by law, this section shall not prohibit the Board from communicating in any respect with legal counsel retained by the Board who has not participated and will not participate in the enforcement proceeding in an advocate capacity.
- e. **General Conduct**
1. Opening statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
 2. Complaint. The presiding officer shall read or otherwise have inserted in the official record of the proceeding the complaint and the response.
 3. Transcription of Testimony. All testimony at hearings before the Board shall be recorded.
 4. Witnesses. Witnesses shall be sworn and shall testify under oath. Witnesses will be required to state for the record their names, residence, and business or professional affiliation for purposes of the hearing. Witnesses may be compelled to attend, testify and produce records if subpoenaed by the Board.
 5. Continuance. All hearings conducted pursuant to this section may be reasonably continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice of the time and place of such a reconvened hearing to any person who so requests in writing, to the Respondent and to the public.
- f. **Order of Proceedings.** The order of proceedings, unless modified by the presiding officer to facilitate the hearing, shall be as follows:
1. The ECO may offer an opening statement;
 2. The Respondent may offer an opening statement;
 3. The ECO may present evidence. Witnesses may be cross-examined by Respondent and questioned by Board Members, Staff or Board counsel after the completion of the witness' direct testimony;
 4. The Respondent may present evidence. Witnesses may be cross-examined by the ECO and questioned by Board Members, Staff, or Board counsel after the completion of the witness' direct testimony;
 5. The ECO may offer rebuttal evidence;
 6. The ECO may offer a closing statement;
 7. The Respondent may offer a closing statement; and
 8. The ECO may offer a rebuttal.
- g. **Varying Order of Appearance.** When circumstances warrant, the Board or the presiding officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses are questioned.
- h. **Record.** A full and complete record shall be kept of all enforcement hearings. The records shall include, but not be limited to, the complaint, supporting documents, all exhibits, proposed findings of fact and conclusions submitted by either party or by Board Staff and

counsel, if any, staff documents, Respondent's answer and supporting documents, consent orders, if any, Board findings of fact and orders and the recording or transcript of the proceedings, if prepared.

At any time prior to the Board's final decision after the close of the enforcement hearing, the Board may reopen the record for further proceedings consistent with this section, provided, however, that the Board shall give written notice of such further proceedings at least ten (10) days prior to such proceedings. After the close of an enforcement hearing held pursuant to Section 2-309, the Board may reopen the record after giving notice to the parties and to the public.

- i. **Burden of Proof.** The ECO has the burden of proving, by a preponderance of the evidence, that the alleged violation occurred and that proposed penalty, revocation, suspension, or modification of the permit is appropriate. Following the establishment of a prima facie case, Respondent shall have the burden of presenting and of going forward with any defenses, affirmative defenses, or mitigating circumstances.
- j. **General Evidence.**
 1. **Admissibility.** Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the presiding officer. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board. Existence and duration of a violation may be established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence.
 2. **Official Notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and non-confidential Board records. Facts officially noticed shall be included and indicated as such in the record.
 3. **Official Record.** An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure, as amended from time to time.
 4. **Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefore shall be timely stated at the time of such ruling during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.
 5. **Offer of Proof.** An offer of proof may be made in connection with an objection to a ruling of the presiding officer excluding or rejecting any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.
- k. **Documentary and Real Evidence.**

1. All documents, materials and objects offered in evidence, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.
2. All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the City Office or as otherwise ordered, during normal business hours, except for documents, materials and object deemed confidential pursuant to section 3 -104.

§2-310 ENFORCEMENT ORDERS

- a. Following the conclusion of an enforcement hearing, or in the event of a default by Respondent, the Board shall within 30 days thereafter make findings of fact based on the record. The Board shall issue an order aimed at abating or correcting the violation and ensuring that the violation does not recur, and, in addition, may assess a penalty, or modify or condition any permit, approval or order in whole or in part, whenever the Board find s:
 1. The Respondent violated any term or condition of the permit, approval or order;
 2. The Respondent obtained a permit, approval or order by false statement, misrepresentation or failure to disclose fully all relevant facts;
 3. There has been a change in any condition or circumstance that requires modification or conditioning of the terms of the permit, approval or order; or
 4. The Respondent violated any provision of this Ordinance.
- b. The order shall state the date upon which it becomes effective and shall advise the Respondent that it may seek judicial review. The findings and order shall be served on the Respondent as provided in Section 2-304. All orders entered by the Board pursuant to this section shall be considered final Board action as of the date of the order for purposes of judicial review.

§2-311 PENALTIES

- a. Any person who violates any provision of this Ordinance or terms or conditions of any order, permit, approval or decision of the Board shall be subject to the following civil penalties, due and payable to the City of Biddeford:
 1. For violations of any requirement of Chapters 4 and 5, or of any term of condition of a permit, approval or order implementing or assuring compliance with requirements of Chapters 4 and 5: A penalty of not less than \$100 nor more than \$2,500, unless it is demonstrated that the person has violated a requirement of Chapter 4 or 5, or of any term of condition of a permit, approval or order implementing or assuring compliance with requirements of Chapters 4 and 5 within the past two years. If such a previous violation has occurred, the maximum penalty may exceed \$2,500 but shall be no more than \$25,000. Penalties may be assessed on a per day basis for a continuing violation. If the economic benefit resulting from the violation exceeds the maximum applicable penalties, the maximum penalties may be increased. When so

increased, the maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit shall, without limitation, include the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable requirements.

- b. In setting penalties, the Board may consider all relevant factors including any one or more of the following:
1. Prior violations by the same person;
 2. The nature and scope of environmental harm that cannot be abated or corrected;
 3. The extent to which the violation continued;
 4. Economic benefit derived by the person as a result of the violation;
 5. Importance of setting a civil penalty substantial enough to deter future violation;
 6. Whether penalties have been imposed by another governmental agency for the same incident(s);
 7. The economic impact of the penalty on the violator; and
 8. The duration of the violation as established by any credible evidence including but not limited to observations, operating parameters, reporting information, records, correlations, operating data, environmental indices, health indices, compliance assurance data, test results, opinion evidence or other evidence. The Board is not required to make itemized express findings on these factors.
- c. Payment of any penalty assessed shall be made in cash or by a certified check drawn on a recognized financial institution, made payable to "City of Biddeford" in an amount equal to the full amount of the penalty.
- d. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the Board finds that special circumstances make the award of these fees and costs unjust. If the respondent is the prevailing party, the respondent may be awarded reasonable attorney fees, expert witness fees and costs unless the Board otherwise specifically directs.
- e. In lieu of all or a portion of any penalty assessment, the Board may elect to request the respondent to submit for review and approval by the Board one or more supplementary environmental projects (SEP) that will yield environmental benefits to the regulated source and to the City and its residents. Such SEPs shall not include actions at the permitted facility that were otherwise required under any license, permit, order or consent agreement issued or approved by the City of Biddeford, State of Maine or federal government.

§2-312 JUDICIAL REVIEW

Any person aggrieved by a final action or decision of the Board in an enforcement or emergency proceeding pursuant to this section may seek judicial review in accordance with state law within thirty (30) days of the date of issuance of the final Board action. The filing of a motion for reconsideration on an enforcement or emergency order is not a prerequisite to judicial review.

§2-313 STAY

The filing of an appeal of a decision of the Board in an enforcement action shall operate as a stay of the final Board action. The filing of an appeal of a decision of the Board on an emergency order shall not operate as a stay of the Board's emergency order.

§2-314 JUDICIAL ENFORCEMENT

- a. General. In the event of a violation of any provision of this Ordinance or of any order, permit, approval or final decision or action of the Board or decree of court, as the case may be, the City of Biddeford may institute judicial proceedings in accordance with state law for an order enjoining those acts or practices which constitute such a violation, for an order directing compliance with this Ordinance, or any order, permit, approval, condition or final decision or action of the Board pursuant to this Ordinance; for an order assessing penalties or any appropriate combination of actions.
- b. Substantial and Immediate Danger to Public Health, Safety or Environment. If the Board finds that the violation of any provision of this Ordinance or the failure to comply with any order, permit, approval, condition, or final decision or action of the Board constitutes a substantial and immediate danger to the public health, safety or welfare of any person(s), or property, or the environment of the City of Biddeford, the City of Biddeford may initiate immediate injunction proceedings to abate or correct such violation.
- c. Recovery of Costs. In any action that the City of Biddeford institutes before the Court to enforce any provisions of this Ordinance, the prevailing party in such action shall be allowed to recover reasonable costs, including attorneys fees, incurred in connection with such action.

CHAPTER 3 ADMINISTRATION AND APPEALS

Part

1. Administrations and Appeals

Section

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PART 1

ADMINISTRATION AND APPEAL

§3-101 APPLICATION REQUIREMENTS

a. Contents of Application.

1. **Forms.** Application forms shall be designed and approved by the Board and shall require sufficient information as the Board deems necessary or desirable in order to process the application for a permit in accordance with the provisions of this Ordinance.
2. **Modification of a Permit.** Any request by an applicant for a modification of a permit issued pursuant to this Ordinance shall comply with the provisions for application for a permit as contained in this Ordinance. The Applicant shall submit all information required to determine whether the modification will comply with the requirements of this Ordinance. The Board may request the applicant to reproduce additional copies of materials previously filed for the convenience of the Board or the Board's Staff in reviewing the modification application.
3. **Title, Right or Interest.** The Board will consider an application only when the applicant has evidenced sufficient title, right, or interest in all of the property which is the subject of such permit. An applicant shall demonstrate in writing, and by affidavit when so requested by the Board, sufficient title, right, or interest, as follows:

- A. When the applicant owns the property or an easement(s) on the property, a copy of the deed(s) or easement(s) to the property shall be supplied;
 - B. When the applicant is a lessor or lessee of the property, the applicant shall submit a memorandum of lease describing all but the business terms of the lease;
 - C. When the applicant has an option to buy or lease the property, the applicant shall submit a memorandum of option agreement describing all but the business terms of the option agreement;
 - D. When the applicant has eminent domain power over the property, evidence shall be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right, or interest as determined by the Board;
 - E. When the applicant has either a valid preliminary permit or a notification of acceptance for filing of an application for a license or amendment of a license from the Federal Energy Regulatory Commission for the site which is proposed for development or use, a copy of that permit or notification shall be supplied; or
4. **Service.** All applications shall designate a person in the State of Maine on whom all orders and notices may be served and to whom all other correspondence regarding the application should be sent.
5. **Copies of Federal and State Permits.** The applicant shall, as part of the application process, submit to the Board copies of all federal and state air pollution control permits, approvals and licenses, including renewals, modifications, or extensions thereto, regulating the source or process for which a permit is sought under this Ordinance, for the five (5) year period prior to application. In addition, upon the request of the ECO, the applicant shall provide, for inspection and copying, all monitoring reports required by any state or federal air pollution permits and licenses; operating and maintenance records, accidental or excess emissions, and all other unlicensed discharges, emissions and releases; and reports on which the permits or licenses were based for the same five (5) year period.
6. **Continuing Data Requirements.** The applicant shall have a continuing duty to provide copies of all renewed or modified federal and state air pollution control permits, approvals and licenses as well as to inform the Board promptly in writing of any modification, suspension or revocation of any such federal and state air pollution permits, approvals and licenses, and of any enforcement action initiated by any federal or state official or agency alleging non-compliance with any air pollution ordinance, statute, rule, regulation, permit, approval or license.

§3-102 PUBLIC NOTICE OF APPLICATION

The Board shall, within ten (10) days of the date an application for a new permit or permit renewal has been deemed to be complete for processing by the Board in accordance with Section 3-105(a), cause to be given public notice of the Board's determination, inviting within twenty (20) days written comments on the application and requests for public hearing. Requests for public hearing shall indicate the interest of the person filing such request and the reasons why a hearing is warranted.

Such notice shall include the following information:

- 1. Name and address of the applicant;

2. Citation of the Ordinance under which the application is being processed;
3. Location of the activity;
4. Summary of the activity; and
5. Telephone number and mailing address of the City official to whom written comments and hearing requests should be directed.

§3-103 PUBLIC ACCESS TO INFORMATION

- a. Except as expressly made confidential by law and by this Ordinance, the Board shall make all documents and records available to the public in accordance with the Maine Freedom of Access Act, 1 M.R.S.A. §401 et seq., for inspection and copying including but not limited to the following:
 1. All applications or other forms and documents submitted in support of any permit application;
 2. All correspondence, into or out of the Board, and any attachments thereto;
 3. Written comments received from any source regarding any application for a permit or any hearings or proceedings held pursuant to Section 2 or 3 of this Ordinance;
 4. The transcripts of hearings, if made, tape recordings of hearings, if made, and the official, approved minutes of all Board meetings; and
 5. All orders, permits, approvals, or other determinations.
- b. The City of Biddeford shall provide facilities for the inspection of such documents, records, correspondence and other information during reasonable hours. Persons wishing to copy papers and documents shall arrange to do so with the Board.
- c. Copies of documents may be made at the following costs, as may reasonably be adjusted from time to time:
 1. Copies shall be 50 cents per page;

Payment shall be made to the City of Biddeford by cash, check or money order and shall be paid prior to the release of copies by the Board.

- d. Except as expressly authorized by the Board, all Board files shall remain in the City of Biddeford Office.

§3-104 CONFIDENTIALITY

The Board shall keep confidential those documents which may remain confidential pursuant to the Maine Freedom of Access Law 1 M.R.S.A. Section 401 et seq. The Board shall also keep confidential information demonstrated by the person submitting it to be a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of that person and would make available information not otherwise publicly available. The Board shall make determinations of confidentiality and any person aggrieved by such determination may appeal to court in accordance with state law. The Board shall withhold disclosure of such information pending a final judicial determination on any claim of confidentiality.

3-105 BOARD DECISIONS

- a. **Acceptable for Processing.** The ECO shall notify the applicant in writing of the official date on which the application was accepted as complete for processing or the reasons the application was not accepted. If a written notice of acceptance or nonacceptance is not mailed to the applicant within 15 business days of receipt of the application, the application is deemed to be accepted as complete for processing on the 15th business day after receipt by the City. If the application is not accepted, the ECO shall return the application to the applicant with the reasons for nonacceptance specified in writing. For the purposes of this Ordinance, complete for processing shall mean that the applicant provided responses to each and every item on the application and signed the application and certifications as required.
- b. **Requests for Further Information.** The fact that an application is deemed acceptable for processing does not prohibit the Board from requesting further information and data deemed necessary to evaluate the permit application. At any time during the review of an application for a permit, the Board or staff may request any additional information that is reasonably necessary to make any finding or determinations required by this Ordinance.
- c. **Public Hearing.** Within 60 days after an application has been determined acceptable for processing, the Board shall notify the applicant in writing of the date, time and location of a public hearing, if the Board decides to hold one. The Board shall also provide public notice of the public hearing in a manner designed to inform interested and potentially interested persons.

If the Board decides to hold a public hearing, the hearing shall take place within 120 days of the date the Board mails written notice to the applicant that a permit application is acceptable for processing. All hearings shall be held and additional notice given in accordance with Section 3-107.

- d. **Board Action.** Within 30 days of the close of the public hearing, or any continued hearing thereto, on a permit application, or within 120 days of acceptance of the application if no hearing is held, or within such other time limits as the Board may establish by order, either with the applicant's consent or for good cause after giving the applicant notice and an opportunity to be heard, the Board shall take any of the following actions:
 - 1. Approve the application, with or without conditions necessary for the applicant to satisfy the requirements of the Ordinance and set forth in writing its findings that the applicant has met each of the criteria of the appropriate chapter of this Ordinance and its reasons for the imposition of conditions;
 - 2. Deny the application and set forth, in writing, its findings and reasons for its denial. The Board may deny an application for failure of the applicant to comply with the informational requirements of this Ordinance or if the information supplied is untrue or misleading. Should the Board be evenly divided as to whether to approve or deny an application, such a vote shall have the effect of denying the application for failure to receive a majority in support.
- e. **Written Decisions.** Every decision of the Board on an application shall be in writing and shall include findings of fact, conclusions of law, a plain statement of the appropriate rights of administrative and judicial review, and the time within which those rights must be exercised.
- f. **Projects Requiring More Than One Application.** If an applicant submits to the Board for more than one application at any one time, the deadlines specified in this section for Board

review and decisions on applications may be extended by the Board for reasonable cause for a reasonable period. The Board shall provide written notice to the applicant, intervener(s) and the public of any such extension.

§3-106 ACTION PRIOR TO HEARING OR FINAL DECISION

The following procedures may apply to any application pending before the Board.

- a. **Procedure and Scheduling Orders.** In its discretion, the Board may issue scheduling orders governing all proceedings occurring between acceptance of the application for processing and decision by the Board. Such orders may but need not necessarily include provisions directing or authorizing:
 1. Presentation of evidence or argument by the applicant or by members of the public;
 2. Opportunities for the Board or staff to seek or provide amplification or clarification of any matter under consideration by the Board;
 3. Particular methods or formats for the submission of information such as pre-filed testimony or affidavit;
 4. Procedures for participation by members of the public that have a direct and substantial interest which may be affected by the proceedings including but not limited to adequate notice of the hearing or related Board deliberations, opportunities for discovery, and manner of presentation of evidence; and such other procedural issues as may in the discretion of the Board facilitate orderly consideration of the issues presented during consideration of the application.

§3-107 PUBLIC HEARINGS

The following procedures shall apply to all public hearings held by the Board except enforcement hearings or proceedings which are governed by Section 2 -309.

- a. **Requirement for Notice.** Unless otherwise specified in this Ordinance, prior to any hearing conducted by the Board, the Board shall provide notice as follows:
 1. To the applicant at least 10 days prior to the hearing date by certified mail, return receipt requested;
 2. At least 10 days prior to the hearing by regular mail to persons who have filed a written request to be notified of hearings;
 3. At least 10 days prior to the hearing to persons who have made timely requests to be notified of a specific hearing;
 4. By publication twice in a newspaper of general circulation in the City of Biddeford. The date of the first publication shall be at least 14 but no more than 21 days prior to the date of the hearing and the second publication shall be at least 7 but no more than 10 days prior to the date of the hearing; and
 5. The Board may, by scheduling order, provide for additional notice.

For purposes of this Section, all notices shall be deemed to be delivered when deposited, postage prepaid in the United States mail.

- b. **Contents of Notice.** Notice of hearings shall contain the following minimum information:
 1. Reference to the Ordinance authority under which the Board is acting;

2. The purpose of the hearing;
 3. Time, date, and place of hearing;
 4. The manner in which views may be submitted for consideration;
 5. The place and time where relevant material may be examined prior to the hearing; and
 6. The name, address and telephone number of the City official to contact for information.
- c. **Amendment of Applications after Public Notice of Hearings Has Been Given.** After the first public notice of hearing, no amendment of any application shall be permitted except by order of the Board on motion of the applicant for good cause shown.
1. In its discretion, the Board may reschedule the public hearing, conduct the public hearing as originally scheduled, or conduct the hearing as originally scheduled and direct or authorize other appropriate steps to assure that the public's opportunity to comment on the application as amended is preserved.
 2. Following the determination of the Board pursuant to subsection 1, the applicant shall place a public notice in the same newspaper in which the original public notice appeared stating:
 - A. That the application has been changed, and the nature of the change; and
 - B. The information provided in the original notice pursuant to subsections B(3), (4), (5) and (6), amended as necessary.
- d. **Presiding Officer**
1. The presiding officer at all hearings shall be either (a) the Chair of the Board, if present and willing to preside, or (b) the Vice Chair, if present and willing to preside, or (c) a member of the Board selected by a majority of those members present at the hearing.
 2. The presiding officer shall have the authority to:
 - A. Regulate the course of the hearing;
 - B. Rule upon issues of procedure;
 - C. Rule upon issues of evidence;
 - D. Hold conferences before or during the hearing for settlement or simplification of issues or procedure;
 - E. In special cases, where good cause appears, permit deviation from the procedural rules insofar as compliance therewith is found to be impractical or unnecessary; and
 - F. Take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with this Ordinance and applicable statutes.
 3. The presiding officer may be overruled by a majority vote of the Board members present on any decision or ruling relating to a hearing.

e. General Conduct

1. Opening statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
2. Transcription of Proceedings. All proceedings at hearings before the Board may be recorded and, as necessary, transcribed. The tape recordings and transcript of testimony, if made, shall constitute part of the hearing record.
3. Witnesses. Witnesses shall be required to state for the record their names, residence, business or professional affiliation, and whether or not they represent another individual, firm, association, organization, government agency or other legal entity, for purposes of the hearing.
4. Statements in Written Form. At any time prior to or during the course of a hearing, the presiding officer may require that all or part of the statements to be offered at such hearing be submitted in written form at such time and in such form as may be specified.

All persons offering statements in written form shall be subject to questioning. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who requests and is granted time to testify at a hearing.

5. Submission of Proposed Findings and Conditions. All persons participating in any hearings shall have the right to submit to the Board in writing proposed findings of fact and conclusions of law, briefs, and recommended conditions, providing that such documents shall be submitted in writing not later than seven (7) days after the close of the hearing or within such other time as ordered by the presiding officer or the Board.
6. Continuance. All hearings conducted pursuant to this section may be continued for reasonable cause and reconvened from time to time and from place to place by the Board or presiding officer, as circumstances require. All orders for continuance shall specify the time and place at which such hearings shall be reconvened. The Board or presiding officer shall provide reasonable notice to any person at the hearing who so requests in writing and to the public of the time and place of such a reconvened hearing.

f. Public Participation

1. Members of the Public. Any person may participate in a public hearing by making oral or written statements of such person's position on the issues, by introducing evidence and by submitting written or oral questions through the presiding officer, with such limits and on such terms and conditions as may be fixed by the Board or presiding officer.
2. State, Federal and Municipal Agencies. The presiding officer shall afford a representative of any interested federal, state, municipal or other governmental agency a reasonable opportunity to participate in such hearing and introduce evidence and question witnesses. Such representatives shall be permitted such rights as are granted by this section only if representing the views and position of the agency on whose behalf that representative appears and not personal views and opinions.

- g. Oral Statements.** The following procedures shall apply in those hearings in which oral statements are to be received by the Board:

1. The order of witnesses shall be determined by the presiding officer with due regard to the time available, the number of witnesses to be heard, considerations of fairness and efficiency including redundancy, and matters of time and distance with respect to witnesses having travel constraints. Absent such considerations, the applicant should generally be permitted to present its witnesses before any other witnesses testify and in such order as the applicant considers most effective.
2. Board members, staff, counsel and consultants may be permitted by the presiding officer to ask questions of any witness at any time.
3. The applicant's representatives shall be given a reasonable opportunity, subject to the presiding officer's discretionary authority to schedule the Board's business, to question witnesses directly.
4. The Board may designate times during the hearing when representatives of federal, state or other governmental agencies, persons deemed to have a direct and substantial interest or members of the public may make statements, and may set time limits on such questions or statements.

§3-108 GENERAL EVIDENCE

- a. **Admissibility.** Evidence which is relevant and material to the subject matter of the hearing shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted to the Board. The Maine Rules of Evidence shall not apply to hearings held under this Section.
- b. **Official Notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within its specialized knowledge and of statutes, regulations and non-confidential Board records. Facts officially noticed shall be included and indicated as such in the record.
- c. **Official Record.** An official record or lack thereof may be evidenced in the manner provided in Rule 44 of the Maine Rules of Civil Procedure.
- d. **Objections.** All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. If during the course of, or after the close of, the hearing and during its deliberations the Board determines that the ruling of the presiding officer was in error, it may reopen the hearing or take such action as it deems appropriate to correct such error.
- e. **Offer of Proof.** Consists of a statement of the substance of the proffered evidence or that which is expected to be shown by the answer of the witness.

§3-109 DOCUMENTARY AND REAL EVIDENCE

- a. **Exhibits and Evidence.** All documents, materials and objects offered in evidence as exhibits, shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require, after prior oral or written reasonable notice, that any person offering any documentary or photographic evidence shall provide the Board with a specified number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably suitable for reproduction.

- b. **Availability.** All written testimony and documents, materials and objects admitted into evidence shall be made available during the course of the hearing for public examination. All such evidence will be available for public examination at the City Office during normal business hours.
- c. **Record of Application.** In any proceeding involving an application, the application filed with the Board, including exhibits and amendments thereto, shall be placed into evidence.

§3-110 THE RECORD AND BURDEN OF PROOF

The record upon which any Board decision is to be made shall consist of the application, proposed findings of fact and conclusions, all documentary and real evidence properly submitted and received by the Board, all statements whether pre-filed or delivered in person which has been admitted by the Board and, if prepared, the recording or transcript of the proceedings. The record shall remain open for other evidence or testimony for ten (10) days following the close of any public hearing unless otherwise provided by the Board, and if no public hearing is held, then according to Board scheduling order. All parties to the proceedings and members of the public may submit additional evidence or testimony during the 10-day period that the record remains open. Once the record has been formally closed, no further evidence of any kind may be placed in the record except by order of the Board and after appropriate notice is given.

An applicant for a new, renewed, modified or transferred permit shall have the burden of proof on all matters unless otherwise expressly provided by law or by this Ordinance. It shall be the applicant's burden to present sufficient admissible evidence to enable the Board to make each and every affirmative finding necessary under the Ordinance to enable the Board to take the action being sought by the applicant.

§3-111 PROPOSED FINDINGS AND CONDITIONS

- a. By procedural order, the Board shall establish a date by which the applicant and any other person may submit in writing proposed findings of fact, conclusions of law, and recommended conditions supported by written explanation and argument but not by new evidence. If any person other than the applicant makes any submission, that person shall mail or deliver a copy to the applicant.
- b. By procedural order, the Board shall establish a date by which the Board's staff, consultants and counsel shall file with the Board and serve upon the applicant a draft permit or proposed findings of fact and conclusions of law, and recommended conditions.
- c. By procedural order, the Board shall establish a reasonable opportunity for the applicant to submit comment or argument concerning any draft permit or proposed findings and conditions submitted by any person or the Board staff.
- d. The Board's deliberations with respect to any and all such draft permits or proposed findings and conditions shall be conducted in a meeting open to the public provided, however, that neither the applicant nor members of the public shall have any right to participate in the deliberation except as may be specifically permitted by the presiding officer.

§3-112 PERMIT CONDITIONS

The Board may impose any appropriate and reasonable conditions in any permit issued under this Ordinance in order to ensure compliance with the provisions of this Ordinance. In addition,

and except as otherwise provided, every permit shall be subject to the following standard conditions:

- a. **Inspection.** The ECO and any employees and agents of the City of Biddeford may enter any property at reasonable hours and enter any building with the consent of the property owner, occupant or agent, or pursuant to an administrative search warrant, in order to inspect the property or structure, including the premises of a facility which is regulated under this Ordinance or believed to be emitting regulated pollutants, and to take samples, inspect records relevant to any regulated activity or conduct tests as appropriate to determine compliance with any laws administered by the department or the terms and conditions of any order, regulation, license, permit, approval or decision of the Board.
- b. **Modification.** A new or modified permit shall be required prior to the change or modification of any activity regulated by permit under this Ordinance, except as provided for a minor modification.
- c. **Record Keeping.**
 1. The permit holder shall maintain sufficient records to complete the application for any permit or permit renewal under this Ordinance.
 2. The permit holder shall comply with the record retention requirements of Chapter 5 of this Ordinance.
 3. Record keeping information shall be accessible at the permit holder's facility or otherwise readily available upon request of the Board.
- d. **Time Limit for Construction.** Unless a chapter of this Ordinance provides otherwise, approval to conduct any activity subject to permit shall become invalid if such activity is not commenced within 18 months after receipt of such approval or if such activity is discontinued for a period of 18 months or more. The Board may extend such time period upon a satisfactory showing that an extension is justified.
- e. **Monitoring.** The holders of all permits shall be subject to the following monitoring conditions:
 1. Any regulated facility shall be required, as provided by its permit or otherwise ordered by the Board, to allow the City to obtain real time reports of monitoring equipment that is installed at the facility in order to monitor those activities which are the subject of the permit.
 2. The permit holder shall monitor the activity regulated by permit under this Ordinance according to test procedures approved under this Ordinance and applicable federal and state law or regulations, unless other test procedures have been specified in the permit. Samples and measurements taken for the purpose of monitoring shall be representative of the volume and nature of the regulated activity over the sampling and reporting period.
 3. Monitoring records shall include information on:
 - A. The date, exact place, and time of sampling or measurements;
 - B. The individual(s) who performed the sampling or measurements;
 - C. The date(s) analyses were performed;
 - D. The individual(s) who performed the analyses;
 - E. The analytical techniques or methods used; and

F. The results of such analyses.

- f. **Assignment or Transfer of Permits.** Every permit issued by the Board is nontransferable unless prior written consent is obtained from the Board. Written consent must be obtained no later than two (2) weeks prior to any transfer or assignment of property which is subject to a permit. Any proposed transferee or assignee shall demonstrate to the satisfaction of the Board its technical and financial capacity and intent to: (1) comply with all conditions of the applicable permit; and (2) to satisfy all applicable criteria of this Ordinance. The permit holder and proposed transferee or assignee shall be jointly and severally liable for failing to comply with the permit transfer requirement.
- g. **Signatory Requirement.** All applications, petitions, reports and other papers submitted to the Board shall be signed by the party, or its duly authorized officer or agent, and shall include the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

§3-113 APPEALS

Any person aggrieved by a final decision of the Board on a permit application or a petition to amend or modify a Biddeford permit may seek reconsideration by the Board or judicial review thereof in accordance with this Chapter. A motion for reconsideration is not a prerequisite for judicial review. Any person aggrieved by a final decision of the Biddeford Environmental Code Officer may appeal such decision to the Board under this Section and the Board shall render a final decision on such appeal consistent with Section 3-105. An appeal of any decision of the ECO shall act as a stay of the decision until the Board has acted on such appeal.

- a. **Petition for Reconsideration.** Within (30) days of receipt of notice of the decision of the Board on a permit application or a petition to amend or modify a Biddeford permit, an applicant, permit holder, or any person aggrieved by the decision may petition the Board in writing for reconsideration of the decision. A Board member who voted on the prevailing side of the decision may move to reconsider at any time within such 30 -day period.

The petition shall identify the findings, conclusions or conditions objected to or believed to be in error, the basis of the objections or challenge, the nature of the relief requested and the nature of any new or additional evidence to be offered. Any person aggrieved by a final decision of the Board may only petition the Board for reconsideration of the decision once.

The Board shall, within 30 days of receipt of such a petition, commence its review of such petition and determine whether or not to hold a public hearing. Any public hearing shall be held within 60 days of receipt of the petition in accordance with the procedures specified in Section 3-107. Within 90 days of receipt of the petition, the Board shall approve, approve with conditions or deny the petition in full or in part. Should the Board be evenly divided as to whether to approve or deny the petition, such a vote shall have the effect of denying the application. The Board shall promptly provide written notice of its decision on reconsideration to the person who petitioned for reconsideration, to the applicant and all other parties, and shall promptly publish its decision in a newspaper of general circulation in the City of Biddeford. The Board's decision on a petition for reconsideration shall constitute its final decision.

In accordance with Subsection B, the petitioner shall have 30 days from receipt of notice of the Board's decision on reconsideration to appeal to Court the Board's final decision on the petition for reconsideration.

- b. **Judicial Appeal.** Any person aggrieved by a final decision of the Board may seek judicial review in accordance with applicable state law within 30 days from the date of the Board's decision or within 30 days from the date of the Board's decision on reconsideration. The filing of an appeal of a Board decision to grant a permit with or without conditions shall not operate as a stay of the Board's decision. Application for a stay shall ordinarily be made first to the Board, which may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public. A motion for relief may also be made to the Superior Court pursuant to the provisions of 5 M.R.S.A § 11004, as amended.

§3-114 ENVIRONMENTAL RESERVE FUND AND FEES

a. Environmental Reserve Fund

The Environmental Reserve Fund is hereby established. The purpose of the Environmental Reserve Fund is to promote all the purpose, policies and objectives of this Ordinance as expressed therein. All fees required to be paid to the City of Biddeford for permits issued pursuant to this Ordinance, and all other sums of money paid to or given to the City of Biddeford pursuant to this Ordinance including, without limitation, all fines and penalties shall be credited to the Environmental Reserve Fund and only the expenditures authorized by this Ordinance shall be charged to the Environmental Reserve Fund.

Money in the Environmental Reserve Fund shall be deposited, invested and administered by the City Council and the Treasurer of the City of Biddeford and may be invested as provided by Maine law. Interest on the investments shall be credited to the Environmental Reserve Fund.

The City Council may receive, apply for, or accept, on behalf of the City, funds, grants, bequeaths, gifts or contributions from any person. All such funds shall be deposited in the Environmental Reserve Fund.

b. Annual Fees

Permit holders of a Biddeford Air Toxics Emissions Permit shall pay to the City of Biddeford an annual base fee and emission fees, as follows:

1. **Annual Base Fee.** Any facility whose stationary sources or processes are required to obtain a permit pursuant to Chapter 4 of this Ordinance shall pay to the City of Biddeford on an annual basis a base fee of \$1,000. The annual fee shall be assessed beginning for the calendar year in which the Ordinance becomes effective and is payable to the City no later than December 15 of the first calendar year and no later than June 1 of each calendar year thereafter. A regulated facility shall obtain a credit of up to the full amount of the annual base fee for direct expenditures on compliance with any applicable ambient air limit for a regulated air toxic under this Ordinance upon submission to the Biddeford Environmental Board of information sufficient to establish such expenditures made by the facility.
2. **Emission Fees.** Any facility whose stationary sources or processes are required to obtain a permit pursuant to Chapter 4 of this Ordinance shall pay to the City of Biddeford on an annual basis emission fees as follows:

A. Any substance or compound classified on Table I as Class I: lb/yr.	\$1.75
B. Any substance or compound classified in Table I as Class II: lb/yr.	\$1.00
C. Any substance or compound classified in Table I as Class III: lb/yr.	\$0.50

Emission fees are to be assessed for regulated emissions reported beginning for the calendar year in which the Ordinance becomes effective and for each calendar year thereafter. The emissions fees are to be based upon a regulated facility's annual emissions report, except for the emissions fees due for calendar year 2002 which are to be based upon a separate emissions report required by the City, and are due and payable no later than March 1, 2003 for calendar year 2002 and, for each year thereafter, June 1 of the calendar year following the year for which emissions are reported. Emission fees are to be assessed only upon regulated air toxic emissions exceeding, on an uncontrolled basis, the de minimus levels established in Table s I of the Ordinance.

Any facility whose stationary sources or processes are required to obtain a permit pursuant to Chapter 4 of this Ordinance, and which facility emits any dioxin compound in excess of 0.1 ng TEQ/m³ shall pay to the City of Biddeford on an annual basis no later than January 30 of each year beginning for the calendar year following the effective date of this Ordinance an emission fee of \$25,000. The dioxin fee shall be assessed for regulated emissions beginning in calendar year 2002. The dioxin emissions fee is to be based upon a regulated facility's annual emissions report and are due and payable no later than June 1 of the calendar year following the year for which emissions are reported.

These annual fees have been based upon the City's best estimate of the actual costs necessary for the city to administer and enforce this Ordinance. If the date on which an annual fee or emission fee is due falls on a Saturday, Sunday or national holiday, the payment is due on the next business day.

By May 1 of each year, the City shall bill each **permit holder** the amount due for its annual fee. Failure to pay the annual fee shall be deemed a violation of this Ordinance and a violation of the permit. The City Council may adjust the annual fees on the annual basis according to the United States consumer Price Index established by the Federal Department of Labor Bureau of Labor Statistics. Failure to pay any annual fee as provided in this Ordinance is sufficient grounds for revocation of a permit. There are no additional fees assessed for renewals or amendments.

c. **Expenditures**

The City Council may authorize expenditures from the Environmental Reserve Fund. Such expenditures shall be all expenditures for the implementation, administration and enforcement of this Ordinance. Such allowable expenditures may include, but not be limited to, personnel or payroll expenses and benefits, including but not limited to, ECO clerks and other staff, expenses relating to the Biddeford Environmental Board including payroll expenses relating to any pre-permit activities such as application reviews, public hearings, and appeals, the actual permit processing activities and associated post-permit compliance activities required to assure continued permit compliance, expenses relating to telephone, training, travel, supplies, monitoring, sampling and computer supplies and services, expenses related to enforcement activities as a result of permit noncompliance,

expenses related to retention of lawyers or legal services, the retention or contracts with consultants including engineers, scientists, and inspectors, reasonable capital expenditures for specific equipment to carry out the objectives of this Ordinance, or any other expenditure for costs which are related to carrying out the objectives of this Ordinance.

d. Application Fee and Filing Fee

The following fees shall be assessed against all applicants, with the exception of the City of Biddeford.

1. Filing Fee. A filing fee of One Thousand Dollars (\$1,000.00). The filing fee shall be paid at the time a permit application is filed. Failure to pay the fee at the time of filing will result in the application being returned to the applicant.
2. Application Fees. The applicant will be assessed reasonable and appropriate fees for the direct costs incurred in connection with the review of a permit application and any amendment or modification thereto including, but not limited to, legal, engineering and other professional fees and other costs specifically accountable to a permit, together with all costs relating to the preparation of information and materials for the Board associated with the permit application.

e. Fee Processing.

The Board shall bill the applicant monthly for any application fee. The applicant shall pay the bills to the designated recipient within 30 days. If any applicant withdraws its application, the applicant remains liable for all direct costs incurred to the date of withdrawal. Upon failure to pay the application fee when due, the Board and the Environmental Code Officer may cease its activity regarding the application, may take enforcement action pursuant to Chapter 2 to recover the application fee and any other appropriate enforcement action. Final payment of the application fee shall occur before issuance of the permit.

f. Fee Administration.

The Environmental Code Officer shall be responsible for fee administration and shall review bills submitted by vendors prior to directing bills to an applicant. Any applicant may request the Environmental Code Officer establish an estimated non-binding budget for any permit application. If the Environmental Code Officer establishes such a budget, and if it appears that the budget will be exceeded, the Environmental Code Officer shall notify the applicant with that information and shall provide any opportunity to discuss a revised budget.

§3-115 FORMS

All applications, motions, proposed findings, documents, petitions, briefs, complaints, responses to complaints and, to the extent practicable, written testimony filed with the Board, (all hereinafter referred to as "form"), except for documents not susceptible of reproduction in the manner provided or for other good cause shown, shall be typewritten or printed on white paper 8 ½ by 11 inches in size and bound; type matter shall be double spaced. The first page of each such form shall be headed by the title:

State of Maine

City of Biddeford Environmental Board

and shall have a caption with (1) the title of the matter, giving the name of the applicant, the activity in issue and the location (e.g., In the Matter of ABC, Inc., Biddeford, Maine); (2) the

Board's application number (e.g., Biddeford Air Toxics Emissions Permit Application #86); and (3) the title of the form (e.g., Petition to Intervene).

The final page of the form shall be dated and signed by the applicant, permit holder, respondent or his attorney or representative. Such signature shall constitute a certification by such person that he or she has personally examined and is familiar with the form, that based on his inquiry of those persons immediately responsible for obtaining information on the form, and to the best of his knowledge and information he believes the information is true, accurate and complete, and that it is not interposed for delay. If a form is not signed or is signed with intent to defeat this section, it may be stricken as false and the action may proceed as though the form had not been served and filed.

§3-116 SERVICE AND FILING OF DOCUMENTS

- a. **Service.** A copy of every application, motion, petition, brief, or paper relating to discovery and other document permitted or required to be filed with the Board pursuant to this Ordinance shall be mailed to all parties in the proceeding or their representatives by ordinary mail unless otherwise provided in this Ordinance.

Any notice required to be given or document filed or served under this Ordinance shall be deemed delivered when deposited in the United States mail, postage prepaid except as otherwise specified.

- b. **Filing.** An original and twelve (12) copies of all applications, and an original and two copies of all motions, petitions, briefs, complaints, responses to complaints, reports and other required submissions shall be filed with the Board by delivery to the City of Biddeford, P.O. Box 586 or 205 Main Street Suite 101, Biddeford, Maine 04005 by 4:00 p.m. local time on or before the day the submission is due unless otherwise specified in a Board order.
- c. **Representatives.** The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made and to whom all correspondence from the Board and staff may be sent.
- d. **Service of Papers by the Board.** For purposes of this Ordinance, the Board shall assure that all orders, decisions, notices and other papers issued by the Board are mailed within two (2) days of issuance upon all parties and further assure that a Board decision on an application pursuant to Section 3-105 (D) and on a petition for reconsideration pursuant to Section 3-113 (A) shall be served upon the applicant and interveners by certified mail, return receipt requested, by hand delivery or by private express courier.
- e. **Facsimile and Electronic Mail.** The Board shall accept facsimile or electronic mail as a substitute for initial filing of an original document, provided that the original document is filed with the Board no later than three (3) business days following the initial filing.

§3-117 COMPUTATION AND ENLARGEMENT OF TIME

In computing any period of time provided by this Ordinance, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

When, by this Ordinance or by order of the Board, an act is required to be done at or within a specified time, the Board may within its discretion at any time order the period enlarged for a reasonable period for good cause shown.

§3-118 ORDERS AND DECISIONS EFFECTIVE

Orders, decisions, notices and other papers issued by the Board shall be effective upon the presiding officer, or other duly authorized Board member, signing the written order, decision, notice or paper issued by the Board.

§3-119 REVOCATION, MODIFICATION OR SUSPENSION OF PERMITS

Any person aggrieved, including the Code enforcement Officer, may petition the Board to revoke, modify or suspend a permit. The petition must be addressed to the Board and must state which of the criteria listed below is being invoked. It must specifically describe the factual basis for the petition and generally describe and summarize what evidence will be offered to support the petition. The petition, once filed, may be supplemented only as permitted by the Board. The petitioner must serve a copy of the petition on the permit holder at the time the petition is filed with the Board.

No later than 30 days following the filing of a petition to revoke, modify or suspend, and after providing the petitioner and the permit holder opportunity to comment, the Board shall issue an order specifying the schedule and procedure for Board consideration of the petition. The Board shall utilize the administrative procedures set forth in this Chapter as appropriate. If the Board determines that a petition on its face does not warrant further consideration, the Board may dismiss it. After a hearing, the Board may deny the petition or modify in whole or in part any permit, issue an order prescribing necessary corrective action, or revoke or suspend a permit when the Board finds that:

- A. The permit holder has violated any condition of the permit, Board order or this Ordinance;
- B. The permit holder has obtained a permit by misrepresenting or failing to disclose fully all relevant facts;
- C. The permit holder has experienced permit deviations which threaten an actual or potential substantial and immediate threat to public health or the environment;
- D. The permit fails to include any standard or limitation legally required on the date of issuance;
- E. Modification or amendment of a permit is necessary to ensure compliance with applicable standards, limits or requirements; or
- F. There has been a material change in any condition or circumstance that requires modification of the terms of the permit.

§3-120 PETITION TO ADD, DELETE OR MODIFY A POLLUTANT

- a. Any interested person may petition the Biddeford Environmental Board to add, delete, or modify a regulated air toxic pollutant or to modify a parameter for any substance or compound named on the list described in Table I. Within thirty (30) days of reviewing the petition, the Board shall determine whether to grant or deny the petition. If the Board denies the petition, the Board shall notify the petitioner of its decision in writing and shall state its reasons for denial. If the Board grants the petition, it shall notify petitioner, publish notice of its decision as provided in §3-102, and shall direct ECO to incorporate the change into Table I.

- b. The Board may elect to hold a public hearing on any petition submitted pursuant to §3-121(a) and such public hearings shall be noticed and conducted as provided in Chapter 3 of this Ordinance.
- c. The standard for granting or denying a petition under this Section shall be as set forth in §4-705.

§3-121 CRITERIA FOR PERMIT APPROVAL

- a. The Board shall grant an application for a permit if the following criteria have been met:
 - 1. The Board has received a complete application pursuant to this chapter.
 - 2. The regulated source or process has completed any applicable air toxics compliance determination required under the Ordinance.
 - 3. The emission of all regulated toxic air pollutants will not violate the City of Biddeford ambient air limits for air toxics or can be controlled or reduced so as not to violate the same.
- b. The Board shall grant an application for a temporary permit if the following criteria have been met:
 - 1. The Board has received a complete application pursuant to this chapter.
 - 2. The emission of all regulated toxic air pollutants will not violate the City of Biddeford ambient air limits for air toxics or can be controlled or reduced so as not to violate the same.

CHAPTER 4

AIR TOXICS CONTROL REGULATION

Part

1. General Provisions
2. Application and Notification Procedures
3. Air Toxics Compliance Determination
4. Classification of Regulated Air Toxic Pollutants
5. Designation of Safety Factors
6. Determination of Ambient Air Limits
7. Regulated Air Toxic Pollutant List

PART 1

GENERAL PROVISIONS

Section

§4-101 Applicability

§4-102 Permit Requirements

§4-101 APPLICABILITY

- a. This Ordinance shall apply to the owner of any new, modified, or existing stationary source, area source, or process which emits a regulated toxic air pollutant into the ambient air and for which stationary source or process:
 1. is classified as a minor source under 06 096 CMR 115 and requires a license to operate issued under that chapter;
 2. is classified as a major source under 06 096 CMR 140 and requires a license to operate issued under that chapter and/or under Title V of the Clean Air Act; or
 3. for purposes of establishing an inventory of emissions of regulated air toxics in Biddeford by stationary and area sources, emits any regulated air toxic into the ambient air in excess of the facility threshold limits established in Table I of the Ordinance.
- b. Any stationary source, area source, or process which meets the criteria of (a), above, shall be exempt from the permit requirements of this Chapter for a particular regulated toxic air pollutant where the emissions of such pollutant are or result from any of the following sources or activities:
 1. A mobile source;
 2. A normal agricultural operation;
 3. The application of a pesticide regulated pursuant to 7 MRSA § 606, et seq.
 4. The combustion of one or more of the following fuels:
 - A. Coal;
 - B. Natural gas;
 - C. Wood; or
 - D. Virgin petroleum products; or

5. A gasoline dispensing or storage facility or cargo truck as regulated pursuant to 06 096 (Code of Maine Regulations) 118;
6. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy;
7. Activities such as copying and duplication activities performed in an office, and use of typewriters, printers, blueprinting and pens;
8. Interior maintenance activities, such as janitorial cleaning and the use of cleaning products and air freshener, other than cleaning of any process equipment or devices and except as allowed under (18) below.
9. The use of bathroom and locker room ventilation;
10. The activities of maintenance, including welding, gluing, painting of process equipment and soldering, but excluding VOC degreasing operations;
11. First aid or medical care provided at the facility, including related activities such as sterilization and medicine preparation;
12. Laundry operations, other than dry-cleaning, to service uniforms or clothing used at the facility;
13. Architectural maintenance activities conducted to take care of the buildings and structures at the facility, including repainting, resurfacing, roofing and sandblasting;
14. Exterior maintenance and repair activities conducted to take care of the grounds of the facility, including lawn care ;
15. Food preparation, including barbecuing for service facility cafeterias and dining rooms, but excluding such activities which are connected to preparation of packaged food for off-site consumption;
16. The use of portable space heaters which can be carried and relocated by an employee;
17. The venting of particulate emissions from processes equipped with removal equipment and which are vented inside the building;
18. The use of laboratory ventilation hoods and exhaust systems for educational and research and development activities, excluding hoods used for any production processes, unless otherwise regulated under Section 112 of the Clean Air Act;
19. The use of laboratory ventilation hoods and exhaust systems used by hospitals and medical care facilities used for medical purposes;
20. The use of consumer products in a manner consistent with how the general public would use the product;
21. The use of fire control equipment, including maintenance and employee training;

§4-102 PERMIT REQUIREMENTS

- a. All new, existing and modified devices or processes subject to this Chapter shall comply with the requirements of this Chapter.
- b. Any owner of a stationary source or process subject to this chapter shall obtain Biddeford Air Toxics permit. The permit shall cover only the devices, processes, and emissions which are subject to regulation under this Chapter.

- c. Notwithstanding any other provision of Section 4-102, no permit shall be required for a device or process for which the sum of all uncontrolled regulated emissions is less than the facility threshold limits set forth in Table I for the applicable regulated air toxic pollutant(s);
- d. Notwithstanding any other provision of Section 4-102, no permit shall be required for a device or process for which the owner or facility operator is required to report emissions of regulated air toxics for the purpose of establishing an inventory of all stationary and/or area sources of air toxics in Biddeford.

PART 2

APPLICATION AND NOTIFICATION PROCEDURES

Section

§4-201 Application Procedures for New Sources or Processes

§4-202 Application Procedures for Existing Sources or Processes

§4-203 Application Procedure for Modified Sources or Processes

§4-204 Notification Procedure for Minor Modifications

§4-201 APPLICATION PROCEDURES FOR NEW SOURCES AND PROCESSES

- a. A stationary source or process which has not begun construction within the City of Biddeford prior to the effective date of this Ordinance shall be deemed to be a new source or process when submitting an application for a permit under the Ordinance. The owner of a new stationary source or process requiring a permit under this Chapter shall submit an application for a temporary permit in accordance with the application requirements contained in Section 3-101. The application may be submitted prior to completing and submitting an air toxics compliance determination required under this Chapter.
- b. The owner of a new stationary source or process which had not commenced operation prior to the effective date of this Ordinance shall not operate the new stationary source or process until a temporary permit is issued.
- c. The owner of a new stationary source or process shall receive a Biddeford Air Toxics Permit to replace the temporary permit upon completion of air toxics compliance demonstration under this Chapter.

§4-202 APPLICATION PROCEDURES FOR EXISTING SOURCES AND PROCESSES

- a. A stationary source or process which has begun construction within the City of Biddeford, or is operating pursuant to a license, permit or permit application shield, prior to the effective date of this Ordinance shall be deemed to be an existing source or process when submitting an application for a permit under the Ordinance. The owner of an existing source or process requiring a permit under this Chapter shall submit to the City no later than six (6) months following the Board's approval of the permit application forms, an application for a Biddeford Air Toxics Emissions Permit, including notice to the Board to that the facility is prepared to undertake an air toxics compliance evaluation. Upon timely submission of the application, the owner shall operate the existing device or process under the facility's existing licenses and permits issued by the Maine Department of Environmental Protection and U.S. Environmental Protection Agency until such time as the Biddeford Environmental Board has acted upon the application.

- b. Upon issuance by the Board of a permit to an existing source which is unable to demonstrate compliance with all applicable ambient air limits at the time of issuance, the Board shall include a compliance plan and schedule for achieving compliance based upon public health, economic impact and the commercial availability of appropriate controls, not to exceed three years.
- c. Notwithstanding any other provision of this Ordinance, a source operating under the terms of a compliance plan and schedule for compliance shall not be subject to penalties during the period for compliance approved by the Board for emissions exceeding the established ambient air limits in Table I. This provision does not preclude the enforcement, including for penalties, for violations of other terms and conditions of a permit during the period for compliance, and nothing in this provision is intended to prevent state and federal enforcement of any emission standard or limit imposed under applicable state and federal law.

§4-203 APPLICATION PROCEDURES FOR MODIFIED SOURCES AND PROCESSES

- a. The owner of an existing source or process requiring a modification of a permit issued under this Chapter which is not a minor modification, shall submit an application for a permit modification in accordance with Section 3-101.
- b. The owner shall not begin construction of the modification of the stationary source or process until a modified or amended permit is issued.
- c. The owner of a modified stationary source or process shall receive an amendment to a Biddeford Air Toxics Permit upon approval of the modification by the Board.

§4-204 NOTIFICATION PROCEDURES FOR MINOR MODIFICATIONS

The owner of a stationary source or process which operates pursuant to a permit issued under this Ordinance may undertake a minor modification without approval by the Board as follows:

- a. The owner shall submit notification of the minor modification to the ECO no later than five (5) business days following initial operation of the minor modification and furnish supporting information and documentation as may be reasonably requested.
- b. For such minor modifications resulting in the emission of any regulated air toxic pollutant, not previously identified on the facility's permit above the established facility threshold limit, the owner shall perform an air compliance demonstration prior to operating the minor modification. If the modification complies with the ambient air limits established on Table I, the owner may operate the minor modification provided that written notice to the ECO consistent with the requirements of paragraph (a) above. If the modification would result in an exceedance of either of the ambient air limits established in Table I, a permit modification application shall be submitted to the ECO prior to operating the modification.

PART 3

AIR TOXICS COMPLIANCE DETERMINATION

Section

- §4-301 Methods of Determining Emissions
- §4-302 Emissions Testing
- §4-303 Methods for Determining Compliance
- §4-304 Air Dispersion Modeling Analysis

§4-305 De Minimus Emission Level Method
 §4-306 In-Stack Concentration Method
 §4-307 Alternative Methods

§4-301 METHODS FOR DETERMINING EMISSIONS

- a. For the purposes of determining actual emissions for compliance with this Chapter and with the requirements of Chapter 5 and for inventory purposes, a stationary source shall determine its actual emissions using any of the following methods:
 1. The use of published emission factors including EPA's Compilation of Air Pollutant Emission Factors, AP-42, as revised.
 2. The use of mass balance calculations following accepted engineering principles, or
 3. The use of published engineering calculations and accepted mathematical models, or
 4. The use of emission tests following accepted OSHA and NIOSH test methods, or
 5. The use of emission test methods approved by EPA or Maine DEP, or
 6. The use of alternative methods approved by the ECO in conjunction with the operating conditions specified on any permit issued pursuant to this chapter; or
 7. The use of reported test data in conjunction with the operating conditions specified on any permit issued pursuant to this chapter, where such test data was collected through the use of test methods approved by the ECO.
- b. The owner or operator may quantify the actual mass emission rate of any substance: (i) for which an emission factor is available, (ii) which is likely to be emitted from the stationary source or process, (iii) which is identified on an OSHA compliant Material Data Safety (MSDS) Sheet for a particular material or product, or (iv) by other methods approved by the ECO. For purposes of this provision, an owner or operator shall be entitled to rely upon the information contained on an OSHA compliant MSDS sheet.

§4-302 EMISSIONS TESTING

- a. In accordance with the MDEP air emission compliance test protocol and 40 CFR Part 60 or other method approved or required by the ECO, the facility shall perform emissions testing to demonstrate compliance with the applicable ambient air limits under circumstances representative of the facility's process and operating conditions:
 1. Within sixty (60) calendar days of receipt of a written notification to test from the ECO, if visible emissions, equipment operating parameters, ECO inspection, air monitoring or other cause indicate to the ECO that equipment may be operating out of compliance with ambient air limits or permit conditions; or
 2. Pursuant to any other requirement of a permit issued under this Ordinance to perform emissions testing.
- b. Such testing shall be by qualified persons selected by the regulated source and all costs associated with such testing shall be borne by the regulated source. A notice for a regulated source to undertake an emissions test shall be in writing and shall be accompanied by a plain statement describing the reasons for the proposed test. Nothing in this Section shall prevent the City from undertaking an emissions test performed by the City's consultants and at the City's expense upon prior notice to the regulated facility.

§4-303 METHODS FOR DETERMINING COMPLIANCE

- a. The owner of any stationary source or process for which a permit is required and which emits a regulated toxic air pollutant shall determine compliance with the ambient air limits by using one of the following methods:
 - i. Air dispersion modeling analysis;
 - ii. De minimus emission level demonstration;
 - iii. In stack concentration method, and
 - iv. Alternative method
- b. Upon request by the ECO or the Board, the owner of any stationary source or process which emits a regulated toxic air pollutant shall provide documentation of compliance with the ambient air limits to the Board.

§4-304 AIR DISPERSION MODELING ANALYSIS

If air dispersion modeling analysis is selected, the owner shall conduct air dispersion modeling analysis demonstrating that the concentration of controlled or uncontrolled emissions of each regulated toxic air pollutant is below the corresponding ambient air limit at or beyond the compliance boundary in accordance with Table I. Any models approved for use by the U.S. EPA and Maine DEP, or otherwise approved by the ECO shall be used for demonstrating compliance under this method.

§4-305 DE MINIMUS EMISSION LEVEL METHOD

In determining compliance with any permit issued in connection with this Chapter using the de minimus emissions level method, annual emissions calculations shall be based on the actual uncontrolled annual emissions of each regulated pollutant and shall be compared to the annual de minimus level facility threshold limit appearing on Table I. Hourly emission calculations shall be based on the actual uncontrolled hourly emissions averaged over a 24-hour period and shall be compared to the 24-hour de minimus level.

§4-306 IN-STACK CONCENTRATION METHOD

If the in-stack concentration method is selected, the owner shall perform a calculation demonstrating that the controlled or uncontrolled adjusted in-stack concentration of each regulated toxic air pollutant as determined by the following calculations, is below the corresponding ambient air limit in Table I, where:

- a. "X" means:
 1. For devices or processes emitting from one stack, the emission rate of a regulated toxic air pollutant in pounds per hour; or
 2. For devices or processes emitting from more than one stack, the sum of emission rates of each regulated toxic air pollutant from each stack in pounds per hour;
- b. "Y" means the emission rate of a regulated toxic air pollutant in grams per second as determined by dividing X by 7.94, as in the formula below:

$$Y=X/7.94$$

- c. "Z" means the emission rate of a regulated toxic air pollutant in micrograms per second as determined by multiplying Y by 1,000,000 as in the formula below:

$$Z = Y \times 1,000,000$$

- d. "A" means:

1. For devices or processes emitting from one stack, the stack volume flow in actual cubic feet per minute; or
2. For devices or processes emitting from more than one stack, the sum of stack volume flows from each stack in actual cubic feet per minute;

- e. "B" means the stack volume flow in actual cubic meters per second as determined by dividing A by 2119, as in the formula below:

$$B = A / 2119$$

- f. To calculate the in-stack concentration of a regulated toxic air pollutant in micrograms per cubic meter from a device or process either emitting from a single stack or from more than one stack, Z shall be divided by B, as in the formula below:

$$IC = Z / B$$

- g. To calculate the adjusted in-stack concentration of a regulated toxic air pollutant in micrograms per cubic meter from a device or process either emitting from a single stack or from more than one stack, the in-stack concentration shall be divided by 100, as in the formula below:

$$\text{Adjusted In-stack Concentration} = IC / 100$$

§4-307 ALTERNATIVE METHODS

- a. Any person may submit a request to the Board for approval of the use of a method of determining compliance that is an alternative to the methods specified in this part.
- b. Any person making such a request shall submit the following information to the Board:
 1. A description of the proposed alternate method and each stationary source or process to which the proposed alternate method will be applied;
 2. The identity, location and description of the facility at which the alternate method is proposed to be used;
 3. The name, chemical abstracts service (CAS) registry number, classification and ambient air limits for each regulated toxic air pollutant emitted from each stationary source or process subject to this Chapter; and
 4. Technical data and information demonstrating that the results of the proposed alternate method are no less precise and accurate than those of the methods specified in this part.
- c. Within 60 days of receipt of a request, the Board shall approve the use of the proposed alternate method and notify the person requesting approval of the decision provided that:
 1. The request contained all of the information required in (b), above; and
 2. The results of the proposed alternate method are no less precise than those methods specified in this part.

PART 4**CLASSIFICATION OF REGULATED TOXIC AIR POLLUTANTS**

Section

§4-401 Classification of Regulated Toxic Air Pollutants

§4-402 Criteria for Classification of Class I Regulated Toxic Air Pollutants

§4-403 Criteria for Classification of Class II Regulated Toxic Air Pollutants

§4-404 Criteria for Classification of Class III Regulated Toxic Air Pollutants.

§4-401 CLASSIFICATION OF AIR TOXIC POLLUTANTS

The Board shall classify each regulated toxic air pollutant as a Class I regulated toxic air pollutant, Class II regulated toxic air pollutant, or Class III regulated toxic air pollutant, in accordance with this Ordinance.

§4-402 CLASS I REGULATED AIR TOXIC POLLUTANTS

The Board shall classify a regulated toxic air pollutant as a Class I regulated toxic air pollutant if it meets at least one of the following criteria:

- a. It is a class A, class B1, or class B2 carcinogen, as described in 51 Federal Register 34,000 (1986);
- b. It is a category A1 or A2 carcinogen, as described in Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, as published by the American Conference of Governmental Industrial Hygienists (ACGIH)(2001 edition);
- c. It has been demonstrated through at least one study conducted in accordance with generally accepted scientific principles, that it is capable of inducing reproductive or developmental effects in experimental laboratory animals at doses less than or equal to 500 mg/kg; or
- d. It has an acute toxicity where the:
 1. Oral LD-50 is less than or equal to 50 mg/kg;
 2. Inhalation LC50 is less than or equal to 200 ppm; or
 3. Dermal LD50 is less than or equal to 200 mg/kg.

§4-403 CLASS II REGULATED AIR TOXIC POLLUTANTS

The Board shall classify a regulated toxic air pollutant as a Class II regulated toxic air pollutant if it does not qualify as a Class I regulated toxic air pollutant and meets at least one of the following criteria:

- a. It is a class C carcinogen, as described in 51 Federal Register 34,000 (1986);
- b. It is a category A3 carcinogen, as described in Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, as published by the ACGIH (2001Edition);
- c. It has been demonstrated through at least one study conducted in accordance with generally accepted scientific principles, that it is capable of inducing reproductive or developmental effects in experimental laboratory animals at doses greater than 500 mg/kg;
- d. It has an acute toxicity where the:

1. Oral LD50 is greater than 50 mg/kg but less than 500 mg/kg;
 2. Inhalation LC50 is greater than 200 ppm but less than 2000 ppm; or
 3. Dermal LD50 is greater than 200 mg/kg but less than 1000 mg/kg;
- e. It has been demonstrated through at least one study conducted in accordance with generally accepted scientific principles, that it induces mutagenic effects; or
- f. It has been demonstrated through at least one study conducted in accordance with generally accepted scientific principles, that it produces adverse chronic non-carcinogenic systemic effects.

§4-404 CLASS III REGULATED AIR TOXIC POLLUTANTS

The Board shall classify a regulated toxic air pollutant as a Class III regulated toxic air pollutant if it is any regulated toxic air pollutant other than a regulated toxic air pollutant classified as Class I or Class II.

PART 5

DESIGNATION OF SAFETY FACTORS

Section

§4-501 Designation of Safety Factors

§4-502 Designation of Time Adjustment Factors.

§4-503 Criteria for the Designation of Time Adjustment Factors

§4-501 DESIGNATION OF SAFETY FACTORS

For the purpose of providing adequate protection to sensitive populations, the Board shall designate a safety factor to each regulated toxic air pollutant as follows:

- a. For a Class I regulated toxic air pollutant, the safety factor shall be 100;
- b. For a Class II regulated toxic air pollutant, the safety factor shall be 71; and
- c. For a Class III regulated toxic air pollutant, the safety factor shall be 24.

§4-502 DESIGNATION OF TIME ADJUSTMENT FACTORS

For the purpose of considering that certain chemicals have differing effects over time, the Board shall designate a time adjustment factor according to the characteristics of the regulated toxic air pollutant. The time adjustment factor shall be used to determine the ambient air limit according to §4-503.

§4-503 CRITERIA FOR TIME ADJUSTMENT FACTORS

The Board shall designate the time adjustment factors according to the following criteria:

- a. For regulated toxic air pollutants that have an occupational exposure limit which is intended to primarily prevent irritation or discomfort, or for which there are essentially no known cumulative effects resulting from extended exposures to such pollutants at concentration levels at or near the occupational exposure limit, the time adjustment factor shall be 1.0;
- b. For regulated toxic air pollutants that have an occupational exposure limit which is intended to prevent acute exposure effects, the time adjustment factor shall be 2.0;

- c. For regulated toxic air pollutants that have a ceiling limit value set as an occupational exposure limit which was not intended to be exceeded at any time, the time adjustment factor shall be 2.5; and
- d. For regulated toxic air pollutants that have an occupational exposure limit which is set either by technological feasibility or commonly recognized good hygiene practice, or which present cumulative health hazards and have an occupational exposure limit intended to prevent excessive accumulation in the body from extended periods of exposure, or which present both acute and cumulative health hazards, the time adjustment factor shall be 2.8.

PART 6

DETERMINATION OF AMBIENT AIR LIMITS

Section

§4-601 Determination of 24-Hour Ambient Air Limits

§4-602 Calculation of 24-Hour Ambient Air Limits

§4-603 Determination of Annual Ambient Air Limits

§4-604 Calculation of Annual Ambient Air Limits

§4-605 Calculation of 24-Hour De Minimus Emission Level

§4-606 Calculation of Annual De Minimus Emission Level

§4-601 DETERMINATION OF 24-HOUR AMBIENT AIR LIMITS

- a. Where there is a reference concentration limit established by the U.S. Environmental Protection Agency for a regulated toxic air pollutant which causes developmental or reproductive effects, the 24-hour ambient air limit shall be the reference concentration limit.
- b. Where there is no reference concentration limit, the 24-hour ambient air limit shall be a modified occupational health standard as determined by the calculation specified in § 4 -602 below.

§4-602 CALCULATION OF 24-HOUR AMBIENT AIR LIMITS

- a. "OEL" means the occupational exposure limit for the regulated toxic air pollutant.
- b. "SF" means the safety factor as determined by §4 -501.
- c. "TAF" means the time adjustment factor as determined by §4 -503.
- d. To calculate the 24-hour ambient air limit for a regulated toxic air pollutant, occupational exposure limit shall be divided by the product of the safety factor and the time adjustment factor, as in the formula below:

$$\text{AAL (24 hr.)} = \text{OEL}/(\text{SF} \times \text{TAF})$$

§4-603 DETERMINATION OF ANNUAL AMBIENT AIR LIMITS

- a. Where there is a reference concentration limit established by the U.S. Environmental Protection Agency, the annual ambient air limit shall be the reference concentration limit.
- b. Where there is no reference concentration limit, the annual ambient air limit shall be a modified occupational health standard as determined by the calculation specified in §4 -604, below.

§4-604 CALCULATION OF ANNUAL AMBIENT AIR LIMITS

- a. "OEL" means the occupational exposure limit for the regulated toxic air pollutant.
- b. "SF" means the safety factor as determined by §4 -501.
- c. To calculate the annual ambient air limit for a regulated toxic air pollutant, the occupational exposure limit shall be divided by the product of 4.2 and the safety factor, as in the formula below:

$$\text{AAL (annual)} = \text{OEL} / (\text{SF} \times 4.2)$$

§4-605 CALCULATION OF 24-HOUR DE MINIMUS EMISSIONS

To calculate the 24-hour de minimus emission level for a regulated toxic air pollutant in pounds per hour, the 24-hour ambient air limit shall be divided by 10680.8

§4-606 CALCULATION OF ANNUAL DE MINIMUS EMISSIONS

To calculate the annual de minimus emission level for a regulated toxic air pollutant in pounds per year, the annual ambient air limit shall be multiplied by 3.281.

PART 7**THE LIST NAMING ALL REGULATED TOXIC AIR POLLUTANTS AND OTHER INFORMATION**

Section

§4-701 Establishment of Lists Naming all Regulated Toxics Air Pollutants and Other Information

§4-702 Adoption of Lists Naming all Regulated Toxic Air Pollutants

§4-703 Publication of the Notice of Lists Naming all Regulated Toxics Air Pollutants and Other Information

§4-704 Additions or Deletions of a Substance or Compound, or Modification to a Specific Parameter on the Lists of Regulated Toxic Air Pollutants and Other Information

§4-705 Petition to Add or to Delete a Substance or Compound, or to Modify a Parameter or Deny the Petition

§4-701 LIST ESTABLISHING REGULATED AIR TOXICS

The Board shall establish one (1) list containing the following information:

1. The chemical name of each regulated toxic air pollutant;
2. The chemical abstracts service number of each regulated toxic air pollutant;
3. The classification for each regulated toxic air pollutant;
4. The 24-hour ambient air limit for each regulated toxic air pollutant;
5. The annual ambient air limit for each regulated toxic air pollutant;
6. The time adjustment factor for each regulated toxic air pollutant;
7. The occupational exposure limit for each regulated toxic air pollutant where there is one established;

8. The facility threshold limit for each regulated toxic air pollutant in accordance with the limit established by Maine Department of Environmental Protection pursuant to 06 096 CMR 115 (Appendix B).
9. The 24-hour de minimus emission level for each regulated toxic air pollutant; and
10. The annual de minimus emission level for each regulated toxic air pollutant.
 - A. The list known as Table I shall consist of all of the compounds for which the Maine Department of Environmental Protection has established a facility threshold limit for hazardous air pollutants pursuant to 38 M.R.S.A. § 590 and 06 096 CMR 115 (Appendix B), as amended, or their equivalents as listed by ACGIH and any other substances and compounds which have been added pursuant to the applicable provisions of this Ordinance. The list shall be appended hereto upon adoption by the Biddeford Environmental Board in accordance

§4-702 ADOPTION OF LISTS ESTABLISHING REGULATED AIR TOXIC POLLUTANTS

The lists naming all regulated toxic air pollutants and other information as described in Table I shall be adopted by the Board at the first meeting at which a quorum is present.

§4-703 PUBLICATION OF REGULATED AIR TOXICS LIST

The list of regulated pollutants, and any additions, deletions, or modifications to the list and to any AAL established therein shall be published by the City annually in the form of a fact sheet and shall be distributed by the Board to the owner of any stationary source or process permitted under this Ordinance. The List shall also be available to any person in database form.

§4-704 ADDITIONS AND DELETIONS TO REGULATED COMPOUNDS

All additions, deletions and modifications to any part of the list shall be made through the petition procedure specified in Section 3-121 of this Ordinance.

§4-705 PETITION TO ADD OR DELETE A REGULATED COMPOUND

- a. If a person wishes to make an addition, deletion or modification to either list, the person shall petition the Board pursuant to §3-121 at any time to add or delete a substance or compound or to modify a parameter for any substance or compound named on the list described in Table I.
- b. Where data limitations exist which prevent the derivation of an ambient air limit, a person intending to use a substance or compound named on the list shall petition the Board in accordance with (c), below.
- c. Petitions shall be submitted in writing to the Board in accordance with §3-121 and shall contain the following information:
 1. The specification of one or more of the following proposed actions:
 - A. Add a substance or compound to the list;
 - B. Delete a substance or compound from the list;
 - C. Modify the classification of a regulated toxic air pollutant named on the list;

- D. Modify or add an ambient air limit of a regulated toxic air pollutant named on the list;
 - E. Modify a time adjustment factor of a regulated toxic air pollutant named on the list;
 - F. Modify an occupational exposure limit of a regulated toxic air pollutant named on the list; or
 - G. Modify a de minimus emission level of a regulated toxic air pollutant named on the list; and
2. A statement of the reason(s) with data and documentation which support the proposed revision to the list based on generally accepted scientific principles which demonstrate:
- A. For each proposed addition to the list, that the substance or compound is known to cause or can reasonably be anticipated to cause in humans as a result of exposure to such substance or compound, any of the health effects as listed below:
 - i. Acute;
 - ii. Chronic;
 - iii. Mutagenic;
 - iv. Reproductive; or
 - v. Developmental;
 - B. For each proposed deletion from the list, that the substance or compound cannot reasonably be anticipated to cause in humans as a result of exposure to such substance or compound, any of the health effects as listed in a., above; or
 - C. For each modification to the list, that the parameter in question causes the substance or compound to be:
 - i. In the case of a petition for stricter regulatory control of the substance or compound, known to cause or can reasonably be anticipated to cause any of the health effects as listed in a., above in humans, as a result of exposure to the regulated toxic air pollutant at such parameter; or
 - ii. In the case of a petition for more lenient regulatory control of a substance or compound, not reasonably anticipated to cause any of the health effects as listed in a., above in humans, as a result of exposure to the regulated toxic air pollutant at such parameter.

§4-706 DECISION ON WHETHER TO GRANT OR DENY PETITION

The Environmental Board shall grant or deny the petition in accordance with §3-121 based on whether the proposed revision ensures the promotion of public health.

PART 8

VARIANCE PROCEDURE

§4-801 VARIANCE

- a. Any person who owns or is in control of any stationary source or process for which a City of Biddeford Air Toxics Emissions Permit was granted may apply to the Board for a variance from any requirement under the Ordinance or under a permit issued pursuant to the Ordinance, except as otherwise provided for the addition, deletion, and modification of an ambient air limit established under the Ordinance. The petition must be accompanied by such information and data as the Board may reasonably require. The Board may grant the variance, with or without conditions, following a hearing, if it finds that:
 1. Any emission of a regulated air toxic pollutant occurring or proposing to occur under the variance will not threaten or cause imminent or serious harm to public health, welfare or safety.
 2. The enforcement of the requirement(s) for which the variance is sought would produce serious hardships on the petitioner.
 3. The variance will not cause or contribute to a violation of any other applicable provision of state or federal law, or of any other state or federal permit or license issued to the petitioner, and any other Ordinance of the City of Biddeford.
- b. In determining under what conditions and to what extent the variance may be granted, the Board shall give due recognition to the progress which the person requesting the variance shall have made in reducing and eliminating the emission of regulated air toxics, the character and degree of injury to, or interference with, the health and physical property of the people; and the social and economic value of the source of the emissions.
- c. Any variance granted hereunder on the ground that there is no practical means known or available for the adequate prevention, abatement or control of the air pollution involved, is to be in effect only until the necessary means for the prevention, abatement or control become known and commercially available and subject to the taking of such reasonable substitute or alternate measures as the Board may prescribe.
- d. Any variance may be renewed, following a hearing, on terms and conditions and for periods which would be appropriate on initial granting of a variance. No variance shall be construed to relieve the petitioner receiving it from liability imposed by state or federal law or maintenance of a nuisance.

CHAPTER 5 MONITORING, RECORDKEEPING AND REPORTING

Part

1. Short Title, Definitions and Applicability
2. Recordkeeping Requirements
3. Reporting Requirements
4. Recordkeeping and Reporting Requirements for Permit Deviations
5. Continuous Emissions Monitor Recordkeeping and Reporting
6. Record Retention and Availability

PART 1 SHORT TITLE AND DEFINITIONS

§5-101 Short Title
§5-102 Applicability

§5-101 SHORT TITLE

This Chapter shall be known and may be cited as "**Biddeford Air Toxics Emissions Ordinance-Monitoring, Recordkeeping & Reporting.**"

§5-102 APPLICABILITY

The provisions of this Chapter shall be applicable to any stationary source or process subject to the requirement to obtain a Biddeford Air Toxics Permit under Chapter 4 and to any stationary and area source and process which emits a regulated air toxic pollutant for purposes of establishing an inventory of such emissions.

PART 2 RECORDKEEPING REQUIREMENTS

Section
§5-201 General Recordkeeping Requirements
§5-202 Additional Recordkeeping Requirements

§5-201 GENERAL RECORDKEEPING REQUIREMENTS

- a. General Recordkeeping Requirements for Process Operations. The owner or operator of each process operation shall keep monthly records or records for an alternative time period as approved by the Board of raw material utilization in accordance with the following:
 1. Records shall be kept regarding the total quantities of all raw materials utilized in each process which are required to calculate emissions, verify applicability and compliance with all emission limitations, or to verify production capacities and quantities; and
 2. All relevant material safety data sheets and certified product data sheets.
 3. Sources operating one or more processes which emit air pollutants through more than one emission point shall record the hours of operation of each process so that the distribution of the raw materials or emissions among such emission points can be estimated. Where the ECO determines that two or more production lines are

manufacturing similar products using the same equipment, the same venting and exhaust systems and the same raw materials, the production shall be considered a single process.

b. General Recordkeeping Requirements for Combustion Devices.

1. The owner or operator of a combustion device not exempt under §4-101(b) shall maintain monthly records or records for an alternative time period as approved by the Biddeford Environmental Board of representative fuel characteristics and utilization, including primary, secondary, tertiary and auxiliary fuels in accordance with the following:

A. For applicable solid fuels, any fuel mixture, including coal, refuse-derived fuel ("RDF"), solid waste, hazardous waste, and biomedical waste:

- i. Consumption;
- ii. Fuel type;
- iii. Ash content;
- iv. Sulfur content as percent sulfur by weight of fuel; and
- v. BTU content per pound of fuel;
- vi. Ultimate fuel analysis;
- vii. Metal and other toxic species as specified by the Board.

All such solid fuel and waste fuel analysis is to be performed using a sampling and analysis plan approved by the ECO.

c. General Recordkeeping Requirements for Sources with Continuous Emissions Monitoring Systems.

1. The owner or operator of a stationary source, with a certified continuous emissions monitoring system subject to Maine Code of Regulations shall maintain records in accordance with the provisions of 06 096 CMR 117 and all applicable federal regulations.

2. The owner or operator of a stationary source with a non-certified continuous emissions monitoring system that does not meet the requirements of 06 096 Code of Maine Rules 117, shall maintain records in accordance with the following:

- A. Measurements of emissions as output on an instrument recorder if applicable, or as manually recorded on log sheets as part of a data collection procedure;
- B. Number of hours of operation of the process or combustion device on which the continuous emissions monitor is located;
- C. Number of hours of downtime of the continuous emissions monitoring system during the time period when the process or combustion device is in operation; and
- D. Frequency and results of calibrations performed.

§5-202 ADDITIONAL RECORDKEEPING REQUIREMENTS

The owner or operator of any stationary source, area source, or device subject to this Chapter shall maintain additional records, as required by the Board for the purpose of demonstrating compliance with this Ordinance.

PART 3

REPORTING REQUIREMENTS

Section

§5-301 General Reporting Requirements

§5-302 Additional Reporting Requirements

§5-301 GENERAL REPORTING REQUIREMENTS

- a. The owner or operator of any stationary source, area source or device subject to this Chapter shall submit an annual emissions report.
- b. The annual emissions report pursuant to (a) above, shall include the following information:
 1. The actual emissions of the stationary source, area source or device and the methods used in calculating such emissions in accordance with the procedures specified in §4-301;
 2. For process operations, all information in accordance with §5 -201(A);
 3. For combustion devices, all information in accordance with §5 -201(B), and
 4. The actual annual emissions specified by individual regulated toxic air pollutants.
- c. The annual emissions report pursuant to (a) above, shall be submitted to the Board on or before April 1, 2003 and every year thereafter by the same date covering emissions for the prior calendar year.
- d. The owner or operator of any stationary and area source or process which emits any regulated air toxic pollutant above the facility threshold limits established in Table I of this Ordinance shall report such emissions to the Biddeford Environmental Code Officer in such manner and in such form as required by the City consistent with the applicable provisions of this Ordinance.

§5-302 ADDITIONAL REPORTING

The owner or operator of any stationary source or process subject to the permitting requirement under this Ordinance shall submit additional reports, required by the Board, for the purpose of demonstrating compliance with all requirements of this Ordinance.

PART 4

RECORDKEEPING AND REPORTING REQUIREMENTS FOR PERMIT DEVIATIONS

Section

§5-401 Purpose

§5-402 Recordkeeping Requirements

§5-403 Reporting Requirements

§5-401 PURPOSE

The purpose of this part is to establish the recordkeeping and reporting requirements for a facility owner or operator, in the event of a permit deviation.

§5-402 RECORDKEEPING REQUIREMENTS

In the event of a permit deviation, the owner or operator of the affected stationary source, process, or air pollution control equipment shall:

- a. Investigate and take corrective action immediately upon discovery of the permit deviation to restore the affected device, process, or air pollution control equipment to within allowable permit levels; and
- b. Record the following information:
 1. The permit deviation;
 2. The probable cause of the permit deviation;
 3. The date of the occurrence;
 4. The duration;
 5. The specific device that contributed to the permit deviation; and
 6. Any corrective or preventative measures taken.

§5-403 REPORTING REQUIREMENTS

- a. If the permit deviation referenced in §5-402 does not cause excess emissions, but continues for a period greater than 9 consecutive days, the source shall notify the ECO by telephone or fax on the tenth day of the permit deviation, unless it is a Saturday, Sunday, or state or federal legal holiday, in which event, the ECO shall be notified on the next day which is not a Saturday, Sunday, or state or federal legal holiday, of the subsequent corrective actions to be taken.
- b. In the event of a permit deviation that causes excess emissions, the owner or operator of the affected device, process, or air pollution control equipment shall:
 1. Notify the ECO of the permit deviation and excess emissions by telephone or fax, within twenty-four (24) hours of discovery of the permit deviation, unless it is a Saturday, Sunday, or state or federal legal holiday, in which event, the ECO shall be notified on the next day which is not a Saturday, Sunday, or state or federal legal holiday; and
 2. Submit a written report, in accordance with (d) below, to the ECO within ten (10) days of discovery of the permit deviation reported in (1), above.
- c. In the event of a permit deviation caused by a failure to comply with the data availability requirements of continuous emissions monitor the owner or operator of the source shall:
 1. Notify the ECO of the permit deviation by telephone or fax, within 10 days of discovery of the permit deviation; and
 2. Report the permit deviation to the ECO, as part of the excess emissions report submitted in accordance with this section.
- d. The written report, pursuant to (B)(2) above, shall include the following information:

1. Facility name;
2. Facility address;
3. Name of the responsible official employed at the facility;
4. Facility telephone number;
5. Date(s) of the occurrence;
6. Time of the occurrence;
7. Description of the permit deviation;
8. The probable cause of the permit deviation;
9. Corrective action taken to date;
10. Preventative measures taken to prevent future occurrences; and
11. Date and time that the device, process, or air pollution control equipment returned to operation in compliance with an enforceable emission limitation, or operating condition;
12. The specific device, process or air pollution control equipment that contributed to the permit deviation;
13. The type and quantity of excess emissions emitted to the atmosphere due to the permit deviation, if applicable; and
14. The calculation or estimation used to quantify the excess emissions, if applicable.

PART 5

CONTINUOUS EMISSIONS MONITORING REPORTING

Section

§5-501 Recordkeeping

§5-502 Reporting

§5-503 Direct Reporting

§5-501 RECORDKEEPING

Any source subject to the requirements of this Chapter shall maintain records of emission measurements, continuous monitoring system performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performance on each monitoring system and any other records required pursuant to 40 CFR Part 51, Appendix P. Such records shall be maintained on site for at least five (5) years and must be available to the Board upon written or oral request.

§5-502 REPORTING

- a. All sources required by state or federal requirements to operate a CEMS shall provide the Board with emission reports for opacity excess emission and gaseous excess emissions on a quarterly basis within thirty (30) days of the last date of the reporting period. These reports shall be in a format approved by the Board and shall include the following information:
 1. The name of the air contaminant emission standard exceeded:

2. The air contaminant emission standard;
 3. The amount of air contaminant emitted in excess of the applicable emission standard expressed in the units of the standard;
 4. Date and time of commencement and completion of each time period of excess emission;
 5. Specific cause of the excess emission and the corrective action taken;
 6. Date and times of each period where the CEMS was not operational, and the total percentage of the source operating time when the CEMS was not operational;
 7. Specific cause of each period where the CEMS was not operational, and the corrective action taken;
 8. Date and times of each period where the CEMS was out of control and the total percentage of the source's operating time when the CEMS was out of control; and
 9. Specific cause of each out-of-control period and the corrective action taken.
- b. When no excess emissions have occurred and the CEMS have not been inoperative, repaired, or adjusted, such information shall be provided in a quarterly report.

§5-503 DIRECT REPORTING

Any source subject to the requirements of this Chapter shall at its own cost and in consultation with the ECO place a CEM (read out) at a location in the offices of the ECO at the ECO's designation. Emission monitoring data shall be linked to City computers, and continuously transmitted as required under the permit to operate. The source's next annual fee due under Section 3-114 of this Ordinance shall be reduced by an amount equal to the costs of the equipment and of establishing transmission of the data in complying with this Section.

PART 6

RECORD RETENTION AND AVAILABILITY

§5-601 RECORD RETENTION AND AVAILABILITY

- a. Any owner or operator of a source or device subject to this chapter shall keep the required records on file for a minimum of 5 years.
- b. Facilities subject to the requirements of this Ordinance, shall maintain records in accordance with the applicable method used to demonstrate compliance pursuant to Chapter 5.
- c. Subject to §3-104 of the Ordinance, all data submitted to the Board and ECO shall be available to the public.

Table 1 – List of Biddeford Air Toxics