

City of Cincinnati
An Ordinance No. 210

PBM/C
JPC/RA
- 2009

AMENDING the provisions of Title X, Environmental Code, of the Cincinnati Municipal Code, by enacting Chapter 1041, Environmental Justice.

WHEREAS, the City of Cincinnati is a municipal corporation authorized by Article XVIII, Section 3, of the Ohio Constitution to exercise home rule police power to protect the health, safety, and welfare of its citizenry; and

WHEREAS, protecting the citizenry from material, cumulative adverse impacts on health or the environment is a necessary exercise of the City's police power; and

WHEREAS, robust economic growth is fostered by protection of our natural resources, the health of citizens, and the basic right of citizens to equal protection; and

WHEREAS, it is the role of Council to achieve an appropriate balance between environmental protection and economic development, and the risk levels established by this ordinance are selected to strike that balance; and

WHEREAS, certain types of industrial activities, including those releasing pollutants affecting air, water, or land, create a significant potential that residents of the City of Cincinnati will be subject to material, cumulative adverse impacts on health or the environment of the communities in which they live; and

WHEREAS, regulation of such activities is an effective means to protect Cincinnati residents from material, cumulative adverse impacts on health or the environment, and serves to place appropriate limits on the amount of additional pollution that any new or expanding development can add to the current level of pollution in the region; and

WHEREAS, significant contributors to the City's reduced air quality include: on-road mobile sources, including cars and trucks; off road mobile sources, such as construction equipment, boats and trains; stationary sources, including power plants and other large industrial facilities; and area sources, which are small but numerous facilities such as gas stations and dry cleaners; and

WHEREAS, while Council is aware of studies documenting the significant impacts of mobile sources in general, and diesel trucks in particular, this ordinance focuses on stationary sources as a significant component of the region's air pollution problem; and

WHEREAS, the 2009 American Lung Association's "State of the Air" Report concluded that the Cincinnati metropolitan area has the 8th worst particulate pollution in the nation and the 15th worst ozone pollution in the nation; and

WHEREAS, the 2009 "State of the Air" Report further noted that, due to the impact of warmer summers and continuing pollution challenges, sixteen of the cities in the 2009 list of "25 most polluted cities" experienced a worsening problem with ozone levels since the previous year's report, including Cincinnati, Ohio; and

WHEREAS, the 2009 "State of the Air" Report noted that coal-fired power plants are among the largest contributors to particulate and ozone pollution, which pollution factor exists in the Cincinnati metropolitan area; and

WHEREAS, actual measured air quality data collected by the Hamilton County Department of Environmental Services (HCDOES) in 2007 and reported in the 2007 Air Toxics Report, Hamilton County, Ohio ("2007 ATR") indicates that citizens in three monitored locations in Cincinnati, Lower Price Hill, Spring Grove Village, and Carthage, as well as nearby locations in Addyston and Reading, face estimated excess cancer risks greater than ten in one million due to the cumulative level of chemicals in the air, and

WHEREAS, at the Carthage monitoring location, the 2007 ATR indicates that the levels of three chemicals (benzene, 1,3-butadiene, and chloroform) have estimated individual cancer risks greater than ten in one million, and that the estimated excess cancer risk due to all monitored chemicals is 60 per one million; and

WHEREAS, at the Lower Price Hill monitoring location, the 2007 ATR indicates that the estimated excess cancer risk due to all monitored chemicals is 40 per one million; and at the Spring Grove Village monitoring location during the same period, the 2007 ATR indicates that the estimated excess cancer risk is 30 per one million; and

WHEREAS, based on all monitored chemicals in the 2007 ATR, the estimated excess cancer risk at Hamilton County monitoring points ranges from 30 per one million to 440 per one million; and

WHEREAS, actual measured air quality data collected by the HCDOES and reported in the 2007 ATR indicates that the most heavily impacted locations in Hamilton County face estimated cancer risks due to chemicals in the air that are more than 14 times higher than the least impacted areas of Hamilton County; and

WHEREAS, federal agencies including the Food and Drug Administration and the Consumer Product Safety Commission have adopted a "one in one million lifetime risk of death" standard in determining if a product or activity is dangerous enough to regulate in relation to carcinogenic properties; and

WHEREAS, in 1990, Congress adopted a one in one million threshold in Section 112 of the Clean Air Act, which requires the U.S. EPA to issue technology-based emission standards to reduce emissions of hazardous air pollutants, and further requires

the EPA to consider issuing residual risk emission standards if the excess cancer risk to the individual most exposed to such emissions would exceed the one in one million risk level; and

WHEREAS, for chemicals that cause cancer, risk is estimated as the probability that an individual would develop cancer over a lifetime due to exposure to the chemical 24 hours per day, 365 days per year, for 70 years; and

WHEREAS, when more than one of these chemicals is present in the air, the total risk posed by exposure to all such chemicals is calculated by adding up all of the combined individual risk factors; and the U.S. EPA generally considers a cancer risk of ten in one million or less as an acceptable risk on a cumulative basis; and

WHEREAS, the U.S. Environmental Protection Agency's National Air Toxics Assessment Report, based on 1999 data, documents cancer risk levels due to breathing the air in Cincinnati ranging from 30 in one million to 180 in one million, which is largely consistent with the HCDOES data; and

WHEREAS, it is the City's goal to maintain cumulative cancer risks associated with breathing the air in Cincinnati at or below a 10 in one million lifetime risk level; and

WHEREAS, the ten in one million lifetime risk level is consistent with many other regulatory actions, including: EPA's standard for risks associated with incinerator emissions; exposure to carcinogenic metals in the U.S. Resource Conservation and Recovery Act ("RCRA") program; and exposure to Group C carcinogens in the RCRA program, all as reported in March Sadowitz & John D. Graham, A Survey of Residual Cancer Risks Permitted by Health, Safety and Environmental Policy --- Risk, Volume 6, Page 17 (1995); and

WHEREAS, a 2009 environmental study in *Environmental Health Perspectives*, dated May 8, 2009, entitled "Characterization of the Chronic Risk and Hazard of Hazardous Air Pollutants in the U.S. Using Ambient Monitoring Data", concluded that, in southwest Ohio, an estimated excess cancer risk between 1 and 10 in one million exists solely in relation to the chemical benzene, based on data collected in the region between 2003 and 2005; and

WHEREAS, in order to maximize the chance that cumulative cancer risks will meet the ten in one million goal, and recognizing that cumulative cancer risks throughout the City currently exceed that goal, the City finds it necessary to limit each proposed project to air emission sources contributing no more than a one in one million cancer risk; and

WHEREAS, it is the City's goal that no Cincinnati resident should suffer acute symptoms or adverse effects due to the presence of air contaminants; and

WHEREAS, the US EPA has established hazard quotients for a wide range of chemicals that can be used to determine whether or not an exposure to an air contaminant will be expected to produce acute symptoms or adverse effects; and

WHEREAS, a hazard quotient of 1.0 represents the threshold level separating exposures that are expected to have no adverse impact from exposures that are expected to have an adverse impact; and

WHEREAS, it is the City's goal that no Cincinnati resident should have to live with the threat that he or she might be seriously or permanently harmed by an industrial accident in their neighborhood, and,

WHEREAS, EPA has established standards, referred to as Acute Exposure Guideline Levels (AEGLs), which identify the levels and durations of exposure to specific chemicals which will cause specific harms from a one-time exposure; and

WHEREAS, the purpose of the AEGLs is to provide emergency planners and emergency responders with a way to predict the risks associated with one-time industrial accidents; and

WHEREAS, it is not possible to completely evacuate most neighborhoods, including elderly, sick, and mobility impaired individuals, in less than four hours; and

WHEREAS, AEGL Level 2 is the level at which serious or permanent harms would be anticipated in exposed populations; and

WHEREAS, the Environmental Justice permit ("EJ permit") required by this ordinance will substantially promote the protection of Cincinnati residents from material, cumulative adverse impacts on health or the environment by providing relevant analysis to the Office of Environmental Quality; and

WHEREAS, this ordinance is intended to have no impact on the statutory requirements imposed by state law related to the issuance of permits by the Cincinnati Board of Health or the City of Cincinnati's Department of Planning; and

WHEREAS, on February 11, 1994, the President of the United States of America issued Executive Order No. 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" stating that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands; and

WHEREAS, a panel of the National Academy of Public Administration for the United States Environmental Protection Agency published a report in July 2003, entitled,

“Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning.” In that report, the Panel’s recommendations, based on the research detailed in the body of the report, included the following:

- State and local executive and legislative branches of government must demonstrate leadership to address Environmental Justice concerns. They should use their full legal authorities to enact appropriate legislation, issue policies, develop guidance, and develop accountability measures to ensure that, at both levels of government, core government functions are authorized and required to address Environmental Justice. They should also enhance opportunities for meaningful public participation in all government decisions that have environmental and public health impacts.

WHEREAS, the United States Environmental Protection Agency has recognized the importance of local governments exercising local police power to protect local populations from excess levels of pollution, and that the Agency does not have the authority to make local permitting or land use decisions; and

WHEREAS, Council is aware that statistical data gathered by Cincinnati’s Center to Close the Health Gap in 2007 and 2008 indicates a disparity regarding the health gap among residents of Cincinnati, suggesting that in some low-income Cincinnati neighborhoods, more than 30 percent of the population suffers from asthma or other respiratory illnesses; and

WHEREAS, the added measure of protection is enacted by this ordinance on behalf of all Cincinnati residents to protect them from actions that have the potential to further degrade the air, water, or land, or to exacerbate community health impacts; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Title X, Environmental Code, of the Cincinnati Municipal Code, is hereby amended by enacting Chapter 1041, Environmental Justice, to read as follows:

Chapter 1041. ENVIRONMENTAL JUSTICE.

Sec. 1041-1. Environmental Justice Defined.

Environmental Justice (“EJ”) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear disproportionately high and adverse human health or environmental effects.

Sec. 1041-3. Purpose.

The purpose of Chapter 1041, Environmental Justice, of the Cincinnati Municipal Code, shall be to provide Environmental Justice to all citizens of Cincinnati by insuring that Proposed Projects will not have a material cumulative adverse impact on the communities in which they are located.

Sec. 1041-5. Definitions.

For the purpose of this chapter the words and phrases defined shall have the meaning set forth below, unless a different meaning is clearly indicated by the context, and words and phrases left undefined shall have their ordinary meaning.

Sec. 1041-5-A. Community.

For the purpose of this chapter, and specifically the phrase “the community within which the Proposed Project is located”, “Community” shall mean the area surrounding the Proposed Project encompassing a one-mile radius.

Sec. 1041-5-B. Comprehensive Information.

“Comprehensive Information” shall mean relevant information on the Proposed Project and its location, including but not limited to the type of facility to be operated, the regulated activities to be conducted at the Proposed Project, a list of substances expected to be released from or stored at the facility, and a detailed risk analysis to the surrounding community in the event of an accident at the Proposed Project.

Sec. 1041-5-C. Criteria Air Pollutant.

“Criteria Air Pollutant” means an air pollutant listed by the EPA Administrator pursuant to Section 108(a) of the Clean Air Act, 42 USC Section 7408(a).

Sec. 1041-5-D. EJ Examiner.

“EJ Examiner” means a person with a background in an environmentally related field of engineering or science designated by the City Manager to apply the EJ standard to the applications required under this chapter. The EJ Examiner shall be an employee of the Office of Environmental Quality.

Sec. 1041-5-E. Environmental.

“Environmental” and “Environment” mean the physical environment, including the air, land, and water; but not including aesthetics.

Sec. 1041-5-F. Environmental Justice Permit..

“Environmental Justice permit” or “EJ permit” means a permit or conditional permit issued by the City of Cincinnati which allows a Proposed Project to operate in the community within which the Proposed Project is located. Application for or receipt of an EJ permit does not eliminate or replace the requirement for any other federal, state or local permit or approval.

Sec. 1041-5-G. Excess Cancer Risk.

“Excess Cancer Risk” means a cancer risk in excess of one in one million as determined by air quality modeling, data in EPA’s IRIS (Integrated Risk Information System) database, found on line at <http://cfpub.epa.gov/ncea/iris/index.cfm> and risk assessment procedures performed in accordance with US EPA’s guidance document, Guidelines for Carcinogen Risk Assessment, March 2005, EPA/630/P-03/001F, or the most current update of that guidance.

Sec. 1041-5-H. Excess Risk of Acute Health Effects.

“Excess Risk of Acute Health Effects” means a hazard quotient exceeding 1.0 as determined by air quality modeling, and data in EPA’s IRIS (Integrated Risk Information System) database, found on line at <http://cfpub.epa.gov/ncea/iris/index.cfm>.

Sec. 1041-5-H.a. Excess Risk in the Event of an Accident.

“Excess Risk in the Event of an Accident” means an unreasonable risk that an accident will cause exposure to chemical concentrations beyond the facility’s property line exceeding a Final, Interim, or Proposed Acute Exposure Guideline Level (AEGGL), Level 2, 4 hour, as established by the US Environmental Protection Agency and listed at <http://www.epa.gov/oppt/aegl/index.htm>, as determined by the Areal Locations of Hazardous Atmospheres at <http://epa.gov/emergencies/content/cameo/aloha.htm>.

Sec. 1041-5-I. Hazardous Air Pollutant.

“Hazardous Air Pollutant” means air pollutants listed in Section 112(b) of the Federal Clean Air Act, 42 USC 7412(b) and amended by 40 CFR 63, Subpart C.

Sec. 1041-5-J. Interested Party.

Any person or legal guardian of a person who owns property, lives, works, or attends a school, house of worship, daycare, elder care or special needs facility or regularly recreates in a public park or playground in the community within which the Proposed Project is located is an "Interested Party" for purposes of this chapter.

Sec. 1041-5-K. Office of Environmental Quality.

"Office of Environmental Quality" shall refer to the City of Cincinnati's Office of Environmental Quality, a division of the City of Cincinnati City Manager's Office.

Sec. 1041-5-L. Proposed Project.

The term "Proposed Project shall include only those activities that either seek to be or are currently located in whole or in part within the City of Cincinnati and are required by the United States Environmental Protection Agency or Ohio Environmental Protection Agency to:

- (a) Obtain a Title V Permit as defined in OAC Section 3745-77-01(KK); or
- (b) Obtain a permit as a Major Source as defined in OAC 3745-77-01(W), unless such permit is solely obtained in relation to the construction or demolition phase of a Proposed Project and if such permit is in effect for no more than 180 days; or
- (c) Obtain a permit as a Synthetic Minor Source as defined in OAC 3745-77-01(I I); or
- (d) Provide notification that they store one or more Extremely Hazardous Substances other than sulfuric acid or nitric acid in quantities that exceed the Threshold Planning Quantity as those terms are defined in Section 302(a) of the Emergency Planning and Community Right to Know Act, 42 USC Section 11002(a); or
- (e) File a Toxic Release Inventory Report Pursuant to Section 313 of the Emergency Planning and Community Right to Know Act, 42 USC Section 11023; or
- (f) Obtain a Permit for the treatment, storage, or disposal of hazardous waste as required by Section 3005 of the Resource Conservation and Recovery Act, 42 USC Section 6925; or

(g) Provide a Notification of Hazardous Waste Activity indicating Large Quantity Generator status pursuant to Section 3010 of the Resource Conservation and Recovery Act, 42 USC Section 6930, unless such Notification is made solely in relation to the clean up of historic soil contamination during the construction or demolition phase of a Proposed Project and shipments of contaminated soil are limited to a period of no more than 180 days; or

(h) Obtain a license or permit to operate a solid waste landfill or transfer station pursuant to Ohio's Solid Waste Management Statutes or Regulations, OAC Sections 3745-27 through 3745-37.

Sec. 1041-5-M. Proposed Projects - Expanded Activities.

(a) An expansion or alteration of a pre-existing activity is a Proposed Project if that expansion or alteration requires a major modification to a permit issued under the Clean Air Act, requires new filings or disclosures under EPCRA, requires a major modification to a RCRA TSD permit, requires an amended RCRA notification due to storage of large quantities of new hazardous wastes, or requires a major modification to a solid waste management permit. An expansion or alteration of a pre-existing activity of a type that would normally require a major modification shall constitute a "Proposed Project" within the meaning of this chapter, even if that change is incorporated into the permit at the time of a permit renewal.

(b) Existing activities that fall within the meaning of Section 1041-5-L due to a change in federal or state law are not exempted from this chapter and such activities shall constitute a "Proposed Project" as defined by this chapter.

Sec. 1041-5-N. Limitation of Scope of Proposed Project Designation.

Notwithstanding any other provision in this chapter, a designation of Proposed Project under Section 1041-L or Section 1041-M of this chapter shall not apply if any of the following terms are applicable to a proposed development:

- (a) The proposed development does not meet the criteria contained in Section 1041-L or Section 1041-M of this chapter.
- (b) The permit or license obtained or the report or notification filed in relation to Section 1041-L is solely related to the required periodic renewal of an existing permit or license or a required periodic re-submission of previously submitted report or notification in relation to Section 1041-L.
- (c) The existing facility or proposed development received all permits or licenses and filed all reports or notifications referenced in Section 1041-L prior to January 1, 2010.

Section 1041-5-O. Air Quality Modeling

The term “Air Quality Modeling” means CTSCREEN and AERMOD as described in Appendix W to 40 C.F.R. 51—“Guideline on Air Quality Models.” The EJ Examiner may use air quality modeling to develop look up tables to determine if full air quality modeling is necessary for the purposes of this ordinance.

Sec. 1041-7. EJ Standard.

The EJ Examiner shall determine whether a Proposed Project will have a “material, cumulative adverse impact” on the health or the environment of the community within which the Proposed Project is located. The EJ Examiner shall issue an EJ permit to any Proposed Project that will not have a material cumulative adverse impact. The operation of a Proposed Project without an EJ permit is hereby prohibited.

A Proposed Project will have a “material, cumulative adverse impact” on the health or the environment of the community within which the Proposed Project is located when operation of a Proposed Project would cause a public nuisance, significantly interfering with a public health or environmental right common to the general public.

Including, but not limited to the following circumstances, a Proposed Project shall be considered a public nuisance if the EJ Examiner finds there is a reasonable basis to conclude that the proposed project will: 1) cause an excess cancer risk; 2) cause an excess risk of acute health effects; 3) cause an excess risk in the event of an accident; or 4) constitute an Air Pollution Nuisance as defined in OAC 3745-15-07.

Sec. 1041-9. EJ Factors.

A Proposed Project shall be considered a public nuisance if the EJ Examiner finds there is a reasonable basis to conclude that the Proposed Project will present an excess cancer risk, excess risk of acute health effects, or excess risk in the event of an accident. In applying the EJ Standard to a Proposed Project, the EJ Examiner shall consider the following factors:

- (a) Reasonably available demographic information on the community within which the Proposed Project is located, including demographic maps and environmental maps from:
 - (1) the Department of City Planning and/or the Department of Community Development of the City of Cincinnati.
 - (2) the U.S. EPA.

(b) Reasonably available information on the pollution burden borne by the community within which the Proposed Project is located from nearby sources, including:

- (1) Number of pollution sources that potentially impact the community within which the Proposed Project is located,
- (2) Proximity of the sources to the community within which the Proposed Project is located,
- (3) Emission information, including total toxic emissions and total criteria air pollutant emissions,
- (4) Major roads and traffic routes,
- (5) Parks and greenbelts,
- (6) Areas of lead contamination,
- (7) Number of currently licensed, registered, closed, or deregulated solid waste management and/or transfer facilities; superfund sites; hazardous waste sites.
- (8) Actual measured air quality data collected by the Hamilton County Department of Environmental Services.

(c) Reasonably available information on the prevalence of disease in the community within which the Proposed Project is located, including:

- (1) Prevalence of various cancers,
- (2) Prevalence of asthma,
- (3) Prevalence of heart disease.

(d) Reasonably available information on the presence of sensitive receptors within one mile of the Proposed Project, including:

- (1) Residences,
- (2) Schools,
- (3) Hospitals,
- (4) Elder care or special needs facilities,

- (5) Daycare centers.
- (6) Public parks or playgrounds.
- (e) The public health, safety and welfare of the applicable community within which the Proposed Project is located.
- (f) Increases in the emission of criteria and hazardous air pollutants caused by the Proposed Project and the air dispersion characteristics of the proposed projects.
- (g) Whether the Proposed Project itself would cause an excess cancer risk. Information regarding the releases of contaminants that could occur from a reasonably foreseeable accident and the air dispersion characteristics of those releases, including information submitted by the applicant regarding a detailed risk analysis to the surrounding community in the event of an accident at the Proposed Project.
- (h) Other information provided by applicant and/or the public about these factors and the EJ standard.

Sec. 1041-11. Application for Environmental Justice Permit; Application Fee.

Each applicant for an EJ permit shall provide a complete verified application, including Comprehensive Information. The application for an EJ permit shall be submitted to the Office of Environmental Quality no later than 14 days after a Proposed Project's receipt of a license, permit or permit modification or submission of any report or notification which meets the criteria set forth for a Proposed Project in Sections 1041-5-L or 1041-5-M.

Within ten days of receiving the application for the EJ permit, the Office of Environmental Quality will perform a completeness review, and either notify the applicant that the application is complete, or provide to the applicant a detailed list of the missing items. If the application is complete, the Office of Environmental Quality shall forward the materials to the EJ Examiner for consideration.

Application fee for an EJ permit shall be at a cost basis as determined by the Director of the Office of Environmental Quality, in consultation with the EJ Examiner. Such application fee shall not exceed \$1,000 for any Proposed Project.

Application for or receipt of an EJ permit does not eliminate or replace the requirement for any other federal, state or local permit or approval.

Sec. 1041-13. Notice to Public.

The Office of Environmental Quality shall, at the applicant's expense, provide written notice by United States mail to: (1) Any community council, hospital, school, or daycare located within one mile of the Proposed Project; and (2) all readily ascertainable addresses within one quarter of a mile of the Proposed Project. The Office of Environmental Quality shall also give notice through the City's website of all projects that are subject to the provisions of this section. This written notice shall be mailed within ten days following the determination that the application is complete.

Within ten days after the notice is mailed, the City shall make all Comprehensive Information submitted by the applicant available to the public.

Any interested party or member of the public may submit information, relating to either the Proposed Project or the community within which the Proposed Project is located, to the EJ Examiner and the EJ Examiner shall consider all such information in making a determination as to whether or not a Proposed Project should be granted or denied an EJ permit. The interested parties and any member of the public shall have 30 days from the date the notice is mailed to provide additional written information relating to the EJ factors, the EJ standard, and the application. This 30-day period may be extended at the discretion of the EJ Examiner.

Each applicant and any member of the public shall have a reasonable opportunity during normal City business hours to examine any information that has been submitted concerning the Proposed Project. The Office of Environmental Quality shall be responsible for collecting and storing any information relating to the application and for maintaining a copy of the entire file.

Section 1041-15. Administrative Review by EJ Examiner.

The EJ Examiner shall consider all evidence submitted by any interested party and the applicant. Within 30 days following the deadline for submission of information by interested parties or members of the public as provided in Section 1041-13, the EJ examiner shall either grant, conditionally grant, or deny the requested permit, and shall issue written findings and conclusions taking into consideration the relevant EJ factors and determining compliance with the EJ standard. A conditional permit shall only be issued if the EJ Examiner determines that a Proposed Project will pose a material, cumulative, adverse impact on the health or the environment of a community in which a Proposed Project is located, and that the conditions in the permit will prevent such a material, cumulative, adverse impact. Circumstances in which a conditional permit may be issued include, but are not limited to, conditions imposed on the scope of the Proposed Project, the location of materials or equipment within the Proposed Project, the type of pollution controls installed at the Proposed Project, or on the transport of materials to or from the Proposed Project.

If the EJ Examiner issues a conditional EJ permit, imposing such conditions on the applicant that are necessary to mitigate the material cumulative adverse impact of the Proposed Project, these conditions must be expressly set forth in the EJ Examiner's findings and conclusions. Failure to comply with any of the terms of a conditional permit shall constitute a violation of this chapter. The EJ Examiner may require a bond or other acceptable form of surety to insure compliance with the conditions imposed.

Within five days of the issuance of the findings and conclusions by the EJ Examiner, such findings and conclusions will be sent by the Office of Environmental Quality to the applicant and any interested party who submitted comments or who requested a copy of the findings and such findings and conclusions shall be posted on the City's website. The EJ Examiner shall forward a copy of such findings and conclusions to the City of Cincinnati Board of Health for consideration, as well as the Hamilton County Department of Environmental Services, the Ohio EPA, and any relevant federal agencies.

Sec. 1041-17. Appeal Process.

Within 30 days of the mailing of the findings and conclusions made by the EJ Examiner either granting an EJ permit or a conditional permit or denying an EJ permit, the applicant, any community council located within the community within which the Proposed Project is located, or any interested party may file an appeal in writing with the EJ Board of Appeals requesting a hearing.

Sec. 1041-19. EJ Board of Appeals.

The EJ Board of Appeals shall consist of five persons designated by the mayor with the approval of City Council, to serve for terms of three years each. City residents shall be afforded preference for appointment to the Board. The members of the EJ Board of Appeals shall consist of one public environmental health professional, one environmental engineering professional, one representative of the Cincinnati business community and two community representatives who are city residents with background knowledge and experience with EJ issues. The EJ Board of Appeals may adopt rules of practice and procedure as necessary. The Office of Environmental Quality shall provide administrative resources to the EJ Board of Appeals including, but not limited to, handling correspondence, issuing notices, compiling necessary data, and services for hearings.

The EJ Board of Appeals shall conduct an evidentiary hearing on the record and shall, by majority vote, enter a decision affirming, reversing, vacating, or otherwise modifying the findings and conclusions made by the EJ examiner. A tie vote by the EJ Board of Appeals is deemed to affirm the findings and conclusion of the EJ Examiner. A decision by the EJ Board of Appeals is

effective as of the date of the mailing of the decision. If the EJ Board of Appeals does not render a decision within 90 days following the filing of the appeal, the EJ Board of Appeals shall be deemed to have affirmed the decision of the EJ Examiner, unless an extension is granted by the EJ Board of Appeals for good cause.

1041-21. Collection of Pollution Data.

The Office of Environmental Quality shall collect pollution data for the City and may rely upon information from such services or databases as: (1) the Toxic Release Inventory (TRI), which is available on EPA's website and which measures cumulative adverse environmental impact from toxic releases to air, water and land by various facilities; (2) the release of OSHA carcinogens on the TRI database, which is available on EPA's website and which measures on-site releases by various facilities; (3) the number of superfund sites on U.S. EPA's Envirofacts database or other databases; (4) actual measured air quality from monitors operated by a federal, state, or local governmental agency, and (5) the number of facilities reporting releases of criteria pollutants as listed on Ohio EPA's "Emission Inventory Point Source Data" or on U.S. EPA databases. The Office of Environmental Quality shall publish bi-annual reports identifying statistical pollution data for the entire City, including, to the extent available, a breakdown of such data by neighborhood.

1041-23. Exceptions.

This chapter shall not apply to the Metropolitan Sewer District of Greater Cincinnati ("MSDGC"), or to any successor thereto, in situations where a Proposed Project is required in order to comply with the terms of the Global Consent Decree, entered with the United States District Court, Southern District of Ohio, in case no. C-1-02-107, on June 9, 2004, or any amendments thereto or plans arising therefrom.

In addition, this Chapter shall not apply to the Metropolitan Sewer District of Greater Cincinnati or to the Greater Cincinnati Water Works ("GCWW"), or to any successors thereto, where such entities are acting under the orders of federal or state regulators, or in compliance with federal or state regulations including, but not limited to, current and future Federal or State drinking water regulations, public health and safety requirements, or where either MSDGC or GCWW is implementing requirements of the Office of Homeland Security.

Sec. 1041-25. Administrative Policies and Procedures.

The Office of Environmental Quality shall develop administrative policies and procedures not specifically delegated elsewhere in this chapter and necessary to implement the provisions and purposes of this chapter.

Sec. 1041-27. Enforcement.

(a) Compliance Orders

- (1) Whenever on the basis of any information the Director of the Office of Environmental Quality determines that any person has violated or is in violation of the chapter, the Director may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both.
- (2) Any order issued pursuant to this section may include a revocation of any EJ permit issued under this chapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed \$15,000 per day of noncompliance. In assessing the penalty, the Director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(b) Hearing

Any order issued under this section shall become final upon the date of issuance unless, no later than 30 days after the order is issued, the person or persons named therein submits a written request to the Director that the Director conduct a hearing. No later than sixty days after receipt of such request, the Director shall conduct a hearing. In connection with any proceeding under this section, the Director may seek the issuance of subpoenas by city council for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures. No later than 30 days after the conclusion of the hearing, the Director shall issue a revised order incorporating any relevant information obtained at the hearing, or shall rescind the previously issued order. A revised order shall become final upon the date of issuance.

(c) Violations of Compliance Orders

If a violator fails to take corrective action within the time period specified in the compliance order, the Director may assess a civil penalty of not more than \$15,000 for each day of continued noncompliance with the order and the Director may revoke any EJ permit issued to the violator. In the absence of appropriate corrective action, upon consultation with the Director, the City Solicitor may commence a civil action for appropriate relief, including a temporary or permanent injunction.

(d) Criminal Penalties

Any person who knowingly violates the requirement of this chapter that he first obtain an EJ permit before operating a Proposed Project, or knowingly omits material information or makes any false material representation in an application under this chapter, commits a misdemeanor of the first degree and shall, upon conviction, be subject to a fine of not more than \$1000.00 for each day of violation or imprisonment not to exceed 180 days, or both.

(e) Imminent Danger to the Public.

If, upon consultation with the Director, the City Solicitor finds that imminent danger to the public exists in relation to any apparent violation of this chapter, the City Solicitor may immediately commence a civil action for appropriate relief, including a temporary or permanent injunction.

Section 1041-29. Annual Reporting Requirement.

The city manager or his designee shall file an annual report to Council no later than twelve, twenty-four and thirty-six months after the effective date of this ordinance providing city council with relevant, available information related to the number of EJ applications filed in relation to Proposed Projects within the preceding twelve-month period, the disposition of the EJ examiner and, if applicable, the EJ Board of Appeals, in relation to each such EJ application, any appropriate recommendations related to proposed modifications to the EJ ordinance, and any appropriate recommendations related to enforcement of the EJ ordinance.

Sec. 1041-31. Severability.

If any provision of Title X, Chapter 1041 is held unconstitutional or in violation of federal or state law, this shall not affect the validity, force or effect of any other provision of Title X, Chapter 1041.

Section 2. That this ordinance shall take effect and be in force 180 days from and after passage of this ordinance.

Passed: June 24, 2009



Mayor

Attest: Melissa A. [Signature]
Clerk

I HEREBY CERTIFY THAT ORDINANCE NO. 210-2009
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 7-7-2009
18

Melissa A. [Signature]
CLERK OF COUNCIL