

250-RICR-120-05-17

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 120 – AIR RESOURCES

SUBCHAPTER 05 – AIR POLLUTION CONTROL

PART 17 – Odors

17.1 Purpose and Authority

17.1.1 Purpose

A The purpose of this regulation is to prohibit the release of ~~an~~ air contaminants which may create ~~an objectionable~~ odor s that constitute a nuisance beyond ~~the a~~ facility's ~~source's~~ property line.

17.1.2 Authority

A These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(19) and R.I. Gen. Laws Chapter 23-23, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

17.2 ~~Application~~ Incorporated Materials

A These Regulations hereby adopt and incorporate the Standard Industrial Classification (SIC) Manual, 1987, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with this Regulation.

~~The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state laws, goals and policies. Repealed~~

17.3 Severability

~~If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of~~

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~~competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.~~ Repealed

17.424 Definitions

A. Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to Part 0 of this Subchapter (General Definitions).

1. "Administrative controls" means written procedural mechanisms used for odor mitigation.

-2. "Characteristics" means chemical constituents that make an odor perceptible to the sense of smell. -Some common characteristics include, but are not limited to sweet, pungent, acrid, fragrant, sour, burnt, or foul.

3. "Duration" means the time a detected odor persists.

4. "Engineering controls" means physical mechanisms and/or operational adjustments used for odor mitigation, such as the installation of process equipment or the physical modification of a facility's process or process equipment.

5. "Facility" means, for the purposes of this Part only, any building, structure, facility, source, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere that may create an odor and belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification (SIC) Manual, 1987 incorporated in § 17.2 of this Part, as follows:

a. Manufacturing (20-39);

b. Transportation, communications, electric, gas and sanitary service (40-49);

c. Personal services (72);

d. Automotive repair, services and parking (75);

e. Miscellaneous repair services (76); or

f. Health services (80)

g. This does not include private residential properties and exempted facilities.

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"Facility" means, for the purposes of this Part only, any building, structure, facility, source, installation or combination emits or is capable of emitting air contaminants to the atmosphere.

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6. "Frequency" means how often the odor is detected.

7. "Intensity" means the magnitude or overall strength of the detected odor.

8. "Odor" or "odors" means smells or stenchs commonly recognized as offensive, obnoxious or objectionable to a reasonable person.

17.535 Prohibitions

A. No person facility shall cause or permit the emission of any air contaminants or combination of air contaminants which creates or contributes to an odor in the ambient air that constitutes a nuisance beyond a facility's property line.

17.64 Applicability and Exemptions

17.6.1 Applicability

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A. This regulation applies to a facility which emits or is capable of emitting air contaminants to the atmosphere that may create an odor and is classified in the following SIC codes:

1. Manufacturing (20-39);

2. Transportation, communications, electric, gas and sanitary service (40-49);

3. Personal services (72);

4. Automotive repair, services and parking (75);

5. Miscellaneous repair services (76); or

6. Health services (80)

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17.6.2 Exemptions

A. The requirements of this Part shall not apply to:

1. Agricultural operations subject to R.I. Gen. Laws Chapter 2-23 (Rhode Island Right to Farm Act).

2. Odors generated from cooking operations at food service establishments as defined in 216-RICR-50-10-1. Cooking operations include ovens, smokers, fryers, grills, griddles or any other method used for cooking food.

17.75 Odor Nuisance Determinations

A. An odor constitutes a nuisance if one or more representatives of the Department determine that an odor exists with such intensity, characteristics, frequency, and duration that it is, or can reasonably be expected to ~~unreasonably~~ interfere with the enjoyment of life or property. In considering the nuisance, the duration of the odor must be more than ~~one-one~~ (13) minute. The number of complaints received about such odor may also be considered ~~in~~, in addition to the Departments representatives' determination, determining if such odor constitutes a nuisance.

~~No person shall emit or cause to be emitted into the atmosphere any air contaminant or combination of air contaminants which creates an objectionable odor beyond the property line of said person.~~

B. If the Department ~~reasonably suspects~~ determines, based on factors such as characteristics, proximity, and/or prevailing wind direction, that a facility has caused ~~or contributed to~~ an odor beyond the facility's property line on three (3) or more days during any consecutive thirty (30) day period the Department shall require the owner and/or operator of such facility to submit an odor control plan (OCP), within sixty (60) days of notification by the Department, for review and approval as described in § 17.8 of this Part.

17.6 Odor Evaluations

~~— A staff member of the Department shall determine by personal observation if an odor is objectionable, taking into account its nature, concentration, location, duration and source.~~

17.86 Odor Control Plan

A. The odor control plan shall contain requirements sufficient to control nuisance odors and shall include the following:

1. Facility information:

- a. Name of facility;
- b. Name, phone number, and email address (if available) of facility's owner or operator and point of contact;
- c. Facility physical address;

d. Facility mailing address (if different from physical address);

e. Facility hours of operation; and/or

f. Description of the facility's operations.

2. Information about the odors generated by the facility:

a. Floor or site plan, specifying the locations of odor-emitting activities and emissions;

b. Specific odor-emitting activities, and

c. Number of times per day and amount of time of each odor-emitting activity.

3. A description of the proposed odor mitigation procedures and practices, which must either be based on industry-specific best control technologies and best management practices or be otherwise sufficient to effectively prevent odors for all odor sources, and which may include the following:

a. All OCPs shall include administrative controls that include:

~~Administrative controls that shall include:~~

(1) Maintenance, testing, and audit procedures to ensure that control equipment is functioning properly and the OCP is being adhered to;

(2) Staff training;

(3) Recordkeeping procedures and forms; and/or

(4) Any other work practices necessary to prevent odors.

b. If odors persist after administrative controls are implemented, and the odors are verified by the Department as meeting the conditions of § 17.7 of this Part, then a subsequent plan for engineering controls that effectively mitigate odors for all odor sources shall be submitted, to address the following:

(1) System design;

(2) Operational processes; and

(3) Maintenance plans; or

(4) If the owner or operator of a facility's determines that engineering controls are not necessary to effectively mitigate

odors for all or specific odor sources, the owner or operator shall submit that determination to the Department as part of its OCP.

4. A timeline for implementation of odor mitigation procedures and practices that takes into account any permits required by Part 9 of this Subchapter, design, ordering, contracting, installation, and start-up of control equipment or process changes, commencing upon notice from the Department that it has approved the OCP.

B. The Department shall review the OCP and determine whether it meets the requirements of § 17.8(A) of this Part.

1. If the Department determines that the OCP meets the requirements of § 17.8(A) of this Part it shall approve the OCP and notify the facility's owner or operator of the approval. The owner or operator shall implement its OCP per the timeline it has provided under § 17.8(A)(4) of this Part and comply with the OCP, including any approved amendments, until the facility has been decommissioned or otherwise ceases operations.
2. If the Department determines that the OCP does not meet the requirements of § 17.8(A) of this Part, it shall notify the facility's owner or operator that the OCP was not approved and provide a written description of the reason(s) for the disapproval. The owner or operator shall submit modifications to the facility's OCP to address the deficiencies within sixty (60) days of notice.

C.- When a modification is made to a facility or to a process at the facility, that has the potential to affect the nature or degree of odor or the control of odor, the owner or operator of the facility shall submit an update to its OCP to the Department within thirty (30) days of the modification. If the modification is subject to the requirements of Part 9 of this Subchapter, the owner or operator shall submit an updated OCP as part of the facility's permit application pursuant to that section.

17.97 Recordkeeping and Reporting

A. Odor control plans shall be reviewed by the facility annually for adequacy. Records of such review shall be maintained at the facility and provided to the Department upon request.

-B. The owner or operator may ~~petition~~ submit a request to the Department through email at DEM.AirCompliance@dem.ri.gov, to be removed from the odor control plan requirement based on documentation that the odor source or sources have been removed.

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17.108 -Continuing Odors

A If odors from the facility continue and odors are verified by the Department as meeting the conditions of § 17.7 of this Part, the owner or operator of the facility shall be subject to further review and potential enforcement action with monetary penalties as explained under § 17.12. of this Part.;

1. Good faith mitigation efforts by a facility shall be considered during further review of continuing odors by the Department.

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17.11Administrative Appeals

A Any facility adversely affected by a decision of the Director pursuant to these regulations may file and appeal in accordance with R.I. Gen. Laws Chapter 42-17.7 and Part 10-00-1 of this Title, Rules and Regulations for the Administrative Adjudication Division, by presenting a written request for a hearing within twenty (20) days of the facility's receipt of the notice of determination pursuant to these regulations. The written request must be presented to the clerk of the Administrative Adjudication Division, 235 Promenade Street, Third Floor, Providence, RI 02908.

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17.12Penalties

A Penalties will be assessed in accordance with Rhode Island Rules and Regulations for Assessment of Administrative Penalties Part 130-00-1 of this Title, for any violation of these rules.