

# Air Quality

## What is the local government responsibility?



### *Introduction*

Local governments can have responsibility for controlling air pollution. Although federal air pollution laws, including the Clean Air Act Amendments of 1990, call for the federal government to set standards for ambient levels of air pollution and oversee implementation of air pollution controls, typically state and local

governments enforce these regulations. State and local governments may also pass regulations to reduce air pollution that are stricter than federal regulations. This fact sheet provides an overview of the local government responsibility for air quality.



### *Overview of air pollution regulations*

The goal of many air pollution regulations is to meet science-based standards on what level of a particular air pollutant is healthy for people to breathe. Regulators speak of the “attainment” or “non-attainment” of a given geographic area for one of the “criteria pollutants.” The criteria pollutants were established in 1970 and include particulate matter (PM), carbon monoxide (CO), sulfur oxides (SO<sub>x</sub>), nitrogen dioxide (NO<sub>2</sub>), lead (Pb), and ground-level ozone (O<sub>3</sub>).

intended to prevent damage to property and the environment. The NAAQS are reexamined periodically on the basis of medical and scientific data and can be updated. For example, in 1997 EPA proposed changes to the NAAQS for ground-level ozone and PM.

A given geographic area can be in attainment for some pollutants and in non-attainment for others. For example, many areas in the eastern United States attain the standards for CO, PM, and SO<sub>x</sub> but exceed the standard for ground-level ozone.

For each of these pollutants, the U.S. Environmental Protection Agency (EPA) developed national ambient air quality standards (NAAQS). A “primary” standard protects human health; a “secondary” standard is

The federal Clean Air Act also regulates hazardous air pollutants (HAPs), which are chemicals that can cause serious problems to human health and the environment. EPA



currently regulates 188 chemicals as HAPs. Common HAPs include solvents and some metal dusts. In addition, other chemicals are regulated under the Clean Air Act's Section 112(r) rules on accidental releases.

The 1970 federal Clean Air Act assumed that state and local governments would implement and enforce measures necessary to achieve the NAAQS, and the state or local rules that do this are called state implementation plans (SIPs); they must be submitted to EPA for approval. States can delegate this authority to local governments. All states and some local governments operate air-monitoring networks and have air quality planning functions to determine what controls are available and necessary to meet the NAAQS. The 1990 amendments to the Clean Air Act give the federal government more power if state and local governments do not meet deadlines imposed by the legislation. For example, when state agencies do not meet deadlines for issuing permits to sources of air pollution, a federally operated permit program may step in. (Two types of permits are required for a "major" source of air pollution: construction permits and operating permits.)

Many parts of the 1990 amendments are commonly referred to by their "Title" number, which designates the subpart (of the federal law) pertaining to the subject area. The titles of the federal Clean Air Act are as follows:

Title I	Non-Attainment
Title II	Mobile Sources
Title III	Air Toxics
Title IV	Acid Rain
Title V	Permits
Title VI	Ozone
Title VII	Enforcement

## *Specific local government obligations*

It is difficult to make generalizations about local government obligations because the types and powers of local governments vary widely. In most areas, state governments have responsibility for air quality planning, regulation, permitting, and enforcement,



but in some areas—for example, Allegheny County, near Pittsburgh, Pennsylvania—local governments have primary responsibility for air pollution control. In the San Francisco Bay Area, a multi-county regional Bay Area Air Quality Management District has air pollution regulatory authority and, in some circumstances, the power to override decisions of the municipal, county, and state governments. Some local governments may also have authority to enforce state or regional

regulations, such as rules prohibiting odors, open burning, or excessively smoking cars.

However, even local governments that are not responsible for administering the air pollution regulatory system are required to follow the law for any sources of air pollution they own or operate, just as private companies operating similar facilities must follow rules on emission limits and work practices and must meet permit requirements. Some common local government sources of air pollution are discussed in the paragraphs that follow.

### **Waste-to-Energy Plants**

Municipal power plants and trash-burning energy recovery plants are subject to the same rules as private facilities. Power plants may be regulated by New Source Performance Standards (NSPS) for boilers or turbines, which impose notice, record-keeping, and reporting standards; emission limits; and operation standards. Large boilers are regulated under the Title IV acid rain program or, in the eastern United States, under the NO<sub>x</sub> SIP Call/Section 126 proceeding. Resource recovery facilities are regulated by maximum available control technology (MACT) rules under Title III to reduce toxic emissions.

### **Landfills**

Landfill emissions are regulated under a MACT standard. Landfill gas collection systems may be required.

### **Painting (Surface Coating)**

In areas with ground-level ozone non-attainment, most SIPs contain regulations requiring the use of low-solvent, low volatile organic compound (VOC) paints to reduce emissions and ground-level ozone. EPA requires these "compliance coatings" as part of

reasonably available control technology (RACT) in ozone non-attainment areas. In some cases low-emission methods of painting, such as high-volume low-pressure (HVLP) spray guns, are required.

### Vehicle Fleets

In urban areas with severe ozone problems, motor vehicle fleets are subject to special measures, such as ultra-low emission vehicle (ULEV) emission standards for vehicle fleets or the use of other transportation control resources, such as car pools.

### Vehicle Maintenance Depots— Motor Pool

Operators are subject to rules on solvent cleaning, painting, maintenance of vehicle emissions equipment, auto emissions inspection, and, in some areas, emission controls for fueling stations.

### Construction Operations and Off-Road Engines

Heavy-duty vehicles are significant sources of NO<sub>x</sub> and VOC emissions and are regulated in some areas. Dust emissions from earth moving are significant in some areas, where work practice controls may be imposed.

### Building Heating and Hot Water

Heating with fossil fuels can be a significant source of air pollution. Most SIPs have threshold levels for coal-, oil-, or natural gas-fired heating units. Larger units are required to have permits and meet emission standards.

### Open Burning

The burning of leaves, other yard waste, and garbage is prohibited in many areas. Recent studies of burning trash in backyard drums show that very high levels of HAPs are created in low-temperature burning. A local government may be prohibited from

burning wastes, or may be obligated to enforce a law prohibiting residents from open burning.

Each of the polluting activities described above may be regulated by a federal, state, or perhaps local regulation. The specific requirements and limitations will be found in state or local rules available from the local air pollution control agency or on the Internet. The EPA's Web site also contains fact sheets on the regulation of many sources of air pollution.

## *Transportation conformity*

All local governments are responsible for complying with the planning obligations of federal air and transportation laws. Most areas handle this requirement through metropolitan planning organizations (MPOs). The "transportation conformity" provisions of the Clean Air Act provide that highway and transportation projects must consider air pollution impacts at the local transportation planning level and that these projects must pass federal review by EPA. **Federal funding for highway projects can be frozen if the conformity process is not followed.**

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that federally supported highway and transit project activities are consistent with (conform to) the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Transportation conformity applies for areas that are designated non-attainment for ground-level ozone, CO, PM, and NO<sub>2</sub> criteria pollutants. EPA's transportation conformity rule

establishes the criteria and procedures for determining whether transportation activities conform to the state air quality plan.

A transportation plan is required of MPOs in urban areas with a population of more than 50,000. The plan covers a twenty-year period but must be updated every three years. A transportation improvement plan (TIP) is a list of all transit or highway projects to be initiated within three years. The transportation plan and the TIP must conform with respect to the pollutants for which the area is designated non-attainment.

If an area is not meeting the emission standards, the state must develop and implement a plan to come into compliance. MPOs must then put together transportation improvements programs that are consistent with the state's implementation plan. **If the TIP and SIP do not conform to each other, federal funding for transportation improvement projects can be suspended. Suspension is very significant because federal funding provides a large percentage of all highway funding, and many other types of development follow highway construction.** These issues have been important in large cities, including Atlanta and Houston, as well as in smaller areas. For more information, a search of your state environmental or highway Web site can be conducted for "conformity."

More information on the federal statutes that affect local governments and on the various categories of environmental liability that can be incurred under specific statutes and common law theories, and a brief outline of strategies for minimizing exposure to environmental liability, are available in *The Primer for Local Governments on Environmental Liability* at <http://www.lgean.org/documents/primer.pdf>

## Resources

**Air & Waste Management Association (A&WMA):** <http://www.awma.org>

**A&WMA – Air Pollution Information Booklet:** Available for purchase at [http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode\\_s=IB-IAP](http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode_s=IB-IAP)

**A&WMA – Ozone: Double Trouble Videotape:** Available for purchase at [http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode\\_s=VT-42](http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode_s=VT-42)

**A&WMA – Understanding Air Quality Outreach Kit CD-ROM:** Available for purchase at [http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode\\_s=CD-AQ](http://www.awma.org/pubs/bookstore/ItemInfo.asp?OrderCode_s=CD-AQ)

**Clean Air Act:** [http://www.epa.gov/oar/oaq\\_caa.html](http://www.epa.gov/oar/oaq_caa.html)

**Local Government Environmental Assistance Network (LGEAN):** <http://www.lgean.org>

**U.S. DOT Federal Highway Administration – Transportation Conformity: A Basic Guide for State and Local Officials:** [http://www.fhwa.dot.gov/environment/conformity/basic\\_gd.htm](http://www.fhwa.dot.gov/environment/conformity/basic_gd.htm)

**U.S. DOT Federal Highway Administration – Transportation Conformity Reference Guide:** [http://www.fhwa.dot.gov/environment/conformity/ref\\_guid/index.htm](http://www.fhwa.dot.gov/environment/conformity/ref_guid/index.htm)

**U.S. EPA Office of Air and Radiation:** <http://www.epa.gov/oar>

**U.S. EPA Office of Air Quality Planning and Standards:** <http://www.epa.gov/oar/oaqps>

**U.S. EPA Office of Transportation and Air Quality:** <http://www.epa.gov/otaq>

**U.S. EPA – The Plain English Guide to the Clean Air Act:** [http://www.epa.gov/oar/oaqps/peg\\_caa/pegcaain.html](http://www.epa.gov/oar/oaqps/peg_caa/pegcaain.html)

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## Disclaimer

The information provided by the Local Government Environmental Assistance Network (LGEAN) is for your review and convenience. It is not intended to provide legal advice or compliance instruction with respect to any specific matter or any other federal, state, or local regulation. The user shall be responsible for consulting with legal counsel and the appropriate federal, state, or local regulatory authorities before interpreting any regulations or undertaking any specific course of action.

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