

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF LANCASTER COUNTY, NEBRASKA

IN THE MATTER OF AMENDING ARTICLE 1,)
SECTION 6, OF THE LINCOLN-LANCASTER)
COUNTY AIR POLLUTION CONTROL) RESOLUTION NO. R-20-0054
PROGRAM REGULATIONS AND)
STANDARDS, AS PROVIDED IN)
ATTACHMENT "A")

WHEREAS, pursuant to Neb. Rev. Stat. §13-801, et seq., Lancaster County and the City of Lincoln entered into an Interlocal agreement for the purpose of providing for the establishment of the 1993 Lincoln-Lancaster County Air Pollution Program;

WHEREAS, the Lancaster County Board of Commissioners readopted the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards on December 10, 2013 under County Resolution No. R-13-0072;

WHEREAS, the Lancaster County Board of Commissioners updated the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards Article 1, Section 6 on November 1, 2016 under County Resolution No. R-16-0072, and on September 18, 2018 under County Resolution No. R-18-0058;

WHEREAS, the Lincoln-Lancaster County Health Department has recommended amendments to the Lincoln-Lancaster County Air Pollution Control Program Regulations and Standards Article 1, Section 6, to increase various fees as provided in Attachment "A," attached hereto and incorporated by this reference;

WHEREAS, the Health Director has re-evaluated the estimated costs and available resources to administer, operate and enforce the Lincoln-Lancaster County Air Pollution Control Regulations and Standards and has determined that certain revisions are appropriate; and

WHEREAS, the Lincoln-Lancaster County Air Pollution Control Advisory Board has reviewed the proposed fees and recommends their adoption; and

WHEREAS, on ^{September 8, MM 9/15/2020} ~~August 25~~, 2020 the Board of Commissioner of Lancaster County, Nebraska, conducted a public hearing regarding the adoption of the amendments to the Lincoln-Lancaster County Air Pollution Program Regulations and Standards, Article 1, Section 6, as provided in Attachment "A";

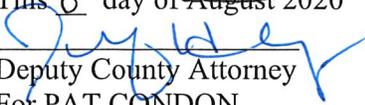
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lancaster County, Nebraska that amendments to County Resolution R-18-0058, Lincoln-Lancaster County Air Pollution Program Regulations and Standards, Article 1, Section 6, as provided in Attachment "A," are hereby adopted, and shall become effective on September ⁸ ~~1~~, 2020. These amendments shall supersede all previous amendments not in conformance herewith;

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BE IT FURTHER RESOLVED, that a copy of the Resolution be placed on file in the office of the County Clerk.

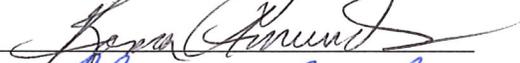
DATED this 8th day of ~~August~~^{September} 2020, in the County-City Building, Lincoln, Lancaster County, Nebraska.

APPROVED AS TO FORM
This 8th day of ~~August~~^{September} 2020


Deputy County Attorney
For PAT CONDON
Lancaster County Attorney

BY THE BOARD OF COUNTY
COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA







ATTACHMENT A
LINCOLN-LANCASTER COUNTY AIR POLLUTION CONTROL REGULATIONS AND STANDARDS

ARTICLE 1
SECTION 6. FEES.

(A) Annual Emission Fees

- (1) Applicability – The provisions of this section shall apply to any person who owns or operates a source as defined in Article 2, Section 1 and is required to obtain any one of the following:
 - (a) A Class I or a Class II operating permit in accordance with Article 2, Section 5;
 - (b) A construction permit in accordance with Article 2, Section 17; or
 - (c) Any source subject to an applicable requirement (other than permitting) of these regulations, the nature of which necessitates that the source submit an annual emissions report and/or be the subject of an annual or biannual inspection.

- (2) Calculation of Fee – Owners or operators of sources identified in paragraph (A)(1) above shall pay an annual fee for emissions of regulated air pollutants for fee purposes. With the exception of coal-fired power plants with a combined generating capacity of 200 megawatts or greater, the fee shall be based on the actual emission tonnage as established in the emission inventory for the previous calendar year as required by Article 2, Section 6. For purposes of this section a pollutant which may be regulated under more than one provision of the LLCAPCPRS need only be counted once. Any temporary source issued an operating permit under Article 2, Section 10 shall pay an annual fee based on emissions which occurred during the time period the source was located and operated in Lincoln or Lancaster County. The annual emission fees shall be assessed in accordance with the following:
 - (a) Fee Schedule:
 - (1) Coal-fired power plants with a combined generating capacity of 200 megawatts or greater shall pay an annual emission fee of:
 - (a) \$400,000.00 for calendar year 2020, and
 - (b) \$400,000.00 for calendar year 2021.
 - (2) All other major sources shall pay an annual emission fee as required by paragraph (A)(2)(b) and (A)(2)(c) of this section with the minimum annual emission fee to be no less than:

(a) September 1, 2020 to August 31, 2021	\$2,925.00	<u>\$3,010.00</u>
(b) September 1, 2021 or until such time as updated by resolution	\$3,010.00	<u>\$3,100.00</u>
 - (3) Synthetic Minor sources shall pay an annual emission fee as required by paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than:

(a) September 1, 2020 to August 31, 2021	\$1,470.00	<u>\$1,510.00</u>
(b) September 1, 2021 or until such time as updated by resolution	\$1,510.00	<u>\$1,555.00</u>
 - (4) Minor sources shall pay an annual emission fee as required paragraph (A)(2)(b) of this section with the minimum annual emission fee to be no less than:

(a) September 1, 2020 to August 31, 2021	\$300.00	<u>\$310.00</u>
(b) September 1, 2021 or until such time as updated by resolution	\$310.00	<u>\$320.00</u>
 - (5) Sources that have obtained a construction permit for a non-emergency generator(s) in accordance with the provisions set forth in Article 2, Section 17, paragraph (P) shall pay annual emission fees as follows:
 - (a) If the generator was operated only for emergency use and testing purposes during the previous calendar year, the source will not be required to pay any emission fees.
 - (b) If the generator was operated for non-emergency purposes during the previous calendar year, the source shall pay an annual emission fee as required by paragraph (a)(2)(b) of this section with the minimum annual emission fee to be no less than:

(1) September 1, 2020 to August 31, 2021	\$300.00	<u>\$310.00</u>
(2) September 1, 2021 or until such time as updated by resolution	\$310.00	<u>\$320.00</u>

- (b) The fee for emissions occurring in the previous calendar year is due and payable on July 1 of the current calendar year. With the exception of coal-fired power plants with a combined generating capacity of 200 megawatts or greater, if the actual emission tonnage multiplied by the emission fees specified below in (A)(2)(b)(1) or (A)(2)(b)(2) exceeds the minimum fees in (A)(2)(a), then emission fees shall be assessed as follows:
- (1) For calendar year 2020:
 - (a) For any minor source required to obtain a construction permit in accordance with Article 2, Section 17, or any minor source required to obtain a Class II operating permit in accordance with Article 2, Section 5 (except Synthetic Minor sources), the emission fee shall be ~~\$70.00~~ \$72.00 per ton;
 - (b) For any Class I source or any Synthetic Minor source as defined in Article 2, Section 1, the emission fee shall be ~~\$84.00~~ \$86.00 per ton.
 - (2) For calendar year 2021:
 - (a) For any minor source required to obtain a construction permit in accordance with Article 2, Section 17, or any minor source required to obtain a Class II operating permit in accordance with Article 2, Section 5 (except Synthetic Minor sources), the emission fee shall be ~~\$72.00~~ \$74.00 per ton.
 - (b) For any Class I source or any Synthetic Minor source as defined in Article 2, Section 1 the emission fee shall be ~~\$86.00~~ \$88.00 per ton.
- (c) The emission fee is due and payable on actual emissions up to and including four thousand (4,000) tons per year for each pollutant.
- (3) For purposes of this section, the following definitions shall apply:
- (a) Major source shall mean any source that meets the criteria set forth in Article 2, Section 2.
 - (b) Synthetic Minor source shall mean any source that meets the definition of a Synthetic Minor source set forth in Article 2, Section 5, paragraph (A)(3).
 - (c) Minor source shall mean any source that does not meet the definition of a major source as defined in Article 2, Section 2, but has the potential to emit at levels that meet or exceed the Class II minor source permitting thresholds set forth in Article 2, Section 5, paragraph (A)(2), or the construction permitting thresholds set forth in Article 2, Section 17, paragraph (A)(1).
- (4) Any person subject to the requirement of paragraph (A) of this section who fails to submit and annual emission inventory report when required by Article 2, Section 6 shall pay an annual emission fee in accordance with the following:
- (a) Sources that submit the annual emission inventory report on or after April 10 will be subject to an emission fee based on one hundred twenty percent (120%) of the actual reported emissions;
 - (b) Sources that submit the annual emission inventory report on or after May 1 will be subject to an emission fee based on one hundred thirty percent (130%) of the actual reported emissions;
 - (c) Sources that submit the annual emission inventory report on or after June 1 will be subject to an emission fee based on the source's potential to emit allowed under any operating and/or construction permit(s) held by the owner/operator.
- (5) Payment of Fees – Any person required to submit fees pursuant to paragraph (A) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 1999. All fees paid in accordance with the section shall be non-refundable.
- (6) Failure to submit the fees required by paragraph (A) of this section by July 1st, in addition to other relief allowed by law, shall be cause for:
- (a) Revocation of the source's operating and/or construction permit; and/or
 - (b) Assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (A)(4) above.
- (7) If the Director determines that the annual emission inventory report form is incomplete or inaccurate for the purposes of calculation of fees under this section, the Director may require the source to submit additional data or other information, as well as an explanation of the source's calculation. If any annual emission inventory report form which is modified pursuant to this section results in the assessment of additional fees, such additional fees shall be payable within thirty (30) days of notice of the assessment in accordance with paragraph (A)(4) above.

(B) Area Sources of Hazardous Air Pollutants Annual Fees.

(1) Applicability – The following provisions of this section shall apply to any person who owns or operates any source subject to requirements of Title 40, Part 63 of the Code of Federal Regulations (40 CFR Part 63), the nature of which necessitates that the source be the subject to inspection.

(2) Determination of Fee – Owners or operators of sources identified in paragraphs (B)(2)(a) through (B)(2)(f) below shall pay an annual fee in accordance with the following fee schedule:

- (a) Area Source Bulk Gasoline Plants subject to 40 CFR Part 63 Subpart BBBB that are stand-alone plants or that are located at facilities that are not required to have a Class II operating permit:
- (1) September 1, 2020 to August 31, 2021 ~~\$340.00~~ \$350.00
 - (2) September 1, 2021 or until such time as updated by resolution ~~\$350.00~~ \$360.00
- (b) Area Source Gasoline Dispensing Facilities subject to 40 CFR Part 63 Subpart CCCCCC subject to the requirements of §63.11118 (average monthly gasoline throughputs equal to or greater than one hundred thousand (100,000) gallons):
- (1) September 1, 2020 to August 31, 2021 ~~\$400.00~~ \$410.00
 - (2) September 1, 2021 or until such time as updated by resolution ~~\$410.00~~ \$420.00
- (c) Area Source Paint Stripping and Miscellaneous Surface Coating Facilities subject to 40 CFR Part 63 Subpart HHHHHH:
- (1) Facilities using one (1) ton or less of methylene chloride annually for paint stripping activities and that are not required to have a Class II operating permit:
 - (a) September 1, 2020 to August 31, 2021 ~~\$175.00~~ \$180.00
 - (b) September 1, 2021 or until such time as updated by resolution.... ~~\$180.00~~ \$185.00
 - (2) Facilities using more than one (1) ton of methylene chloride annually that are not required to have a Class II operating permit:
 - (a) September 1, 2020 to August 31, 2021 ~~\$340.00~~ \$350.00
 - (b) September 1, 2021 or until such time as updated by resolution.... ~~\$350.00~~ \$360.00
 - (3) Miscellaneous surface coating operations (auto body shops and mobile equipment painting¹ and non-auto body shops and non-mobile equipment painting²) that are not required to have a Class II operating permit.
 - (a) Operations with one (1) painter:
 - (1) September 1, 2020 to August 31, 2021 ~~\$175.00~~ \$180.00
 - (2) September 1, 2021 or until such time as updated by resolution.... ~~\$180.00~~ \$185.00
 - (b) Operations with two (2) painters:
 - (1) September 1, 2020 to August 31, 2021 ~~\$340.00~~ \$350.00
 - (2) September 1, 2021 or until such time as updated by resolution.... ~~\$350.00~~ \$360.00
 - (c) Operations with three (3) or more painters:
 - (1) September 1, 2020 to August 31, 2021 ~~\$650.00~~ \$670.00
 - (2) September 1, 2021 or until such time as updated by resolution.... ~~\$670.00~~ \$690.00

¹ The fee shall not apply to a facility that has been granted an exemption by the USEPA, the Nebraska Department of Environmental Quality, or the LLCHD because none of its coatings contain any of the five (5) metal hazardous air pollutants (HAPS).

² The fee shall not apply to a facility that has certified to the LLCHD that none of its coatings contain any of the five (5) metal HAPS addressed by this rule.

(4) Facilities that have petitioned for and have been issued an exemption (auto body shops and mobile equipment painting operations) from the Subpart HHHHHH rule or facilities that have certified to the LLCHD (non-auto body shops and non-mobile equipment painting operations) that they are exempt from the rule because none of their coatings contain any of the five (5) metal HAPS addressed by this rule shall pay a one-time exemption fee of:

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(a) September 1, 2020 to August 31, 2021 \$340.00¹ \$350.00¹
(b) September 1, 2021 or until such time as updated by resolution... \$350.00¹ \$360.00¹

¹ Payment of the one-time fee assumes that a facility will continue to qualify for exempt status throughout the life of that facility. The exemption or certification fees shall not apply to facilities where all coatings are spray applied with a hand-held device whose paint cup capacity is three (3) fluid ounces or less, where coatings are applied by using hand-held non refillable aerosol containers such as spray cans, where coatings are applied using powder coating equipment, where coatings are applied using non spray application methods such as brushing or rolling, or where non atomizing coating application technology (such as flow coating, dip coating and electrodeposition) is utilized.

(d) Area Source Plating and Polishing Operations subject to 40 CFR Part 63 Subpart WWWW that are not required to have a Class II operating permit:

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(1) September 1, 2020 to August 31, 2021 \$650.00 \$670.00
(2) September 1, 2021 or until such time as updated by resolution \$670.00 \$690.00

(e) Area Source Metal Fabrication and Finishing Facilities subject to 40 CFR Part 63 Subpart XXXXXX that are not required to have a Class II operating permit:

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(1) September 1, 2020 to August 31, 2021 \$650.00 \$670.00
(2) September 1, 2021 or until such time as updated by resolution \$670.00 \$690.00

(f) Area Source Perchloroethylene Dry Cleaning Facilities subject to 40 CFR Part 63 Subpart M that are not required to have a Class II operating permit:

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(1) September 1, 2020 to August 31, 2021 \$310.00 \$320.00
(2) September 1, 2021 or until such time as updated by resolution \$320.00 \$330.00

(3) Payment of Fees – Any person required to submit fees pursuant to paragraph (B) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable on July 1st of each year, beginning with the calendar year 2011. All fees paid in accordance with the section shall be non-refundable.

(4) Failure to submit the fees required by paragraph (B) of this section by July 1st, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (B)(3) above.

(C) National Emission Standards for Asbestos – Project Notification Fees.

(1) Applicability – Any person or source who engages in activities subject the requirements of 40 CFR Part 61, Subpart M: National Emission Standard for Asbestos (NESHAP asbestos projects) shall pay a notification fee of:

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(a) September 1, 2020 to August 31, 2021 \$380.00 \$390.00 per project
(b) September 1, 2021 or until such time as updated by resolution \$390.00 \$400.00 per project

(2) Payment of Fees – Any person required to submit fees pursuant to paragraph (C) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days of billing by the Department. All fees paid in accordance with the section shall be non-refundable.

(3) Failure to submit the fees required by paragraph (C)(1) of this section within thirty (30) days after billing by the Department, in addition to other relief allowed by law, shall be cause for assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (C)(2) above.

(D) Construction Permit and Operating Permit Fees.

- (1) Construction Permit Fee Applicability – Any person or source required to obtain a construction permit under Article 2, Section 17 (with the exception of a construction permit obtained in accordance with Article 2, Section 17, paragraph (O)) shall pay a permit fee for activities included under paragraphs (D)(1)(a) through (D)(1)(e) below. Construction permit fees shall be charged according to the fee schedule established in Table 6-D-1 below.

Table 6-D-1

Source Classification	Construction Permit Fee	
	9-1-2020 to 8-31-2021	9-1-2021**
Class I source	\$3,000.00 <u>\$3,100.00</u>	\$3100.00 <u>\$3,200.00</u>
Synthetic Minor source	\$1,500.00 <u>\$1,550.00</u>	\$1550.00 <u>\$1,600.00</u>
Minor source (except Synthetic Minor)	\$500.00 <u>\$515.00</u>	\$515.00 <u>\$530.00</u>

** Or until such time as updated by resolution

- (a) Review of any application for initial issuance of a permit to construct/modify/reconstruct any source or emission unit;
- (b) Review of any application or request to modify an existing permit to construct/modify/reconstruct any source or emission unit, whereas the permit modification(s) constitute a “significant permit modification” as set forth under Article 2, Section 15;
- (c) Development of an initial or modified permit to construct/modify/reconstruct;
- (d) Development of a statement of basis (fact sheet) to issue an initial or modified permit to construct/modify/reconstruct; and
- (e) Development of a document to provide notice for public participation as provided in Article 2, Section 14.

- (2) Operating Permit Fee Applicability – Any person or source required to obtain an operating permit under Article 2, Section 5 shall pay a permit fee for activities included under paragraphs (D)(2)(a) through (D)(2)(e) below. Operating permit fees shall be charged according to the fee schedule established in Table 6-D-2 below, except as provided for in paragraph (D)(2)(f).

Table 6-D-2

Operating Permit Type	Source Classification	Operating Permit Fee	
		9-1-2020 to 8-31-2021	9-1-2021**
Class I	Class I source	\$ 6,000.00 <u>\$6,200.00</u>	\$6200.00 <u>\$6,400.00</u>
Class II	Synthetic Minor source	\$3,000.00 <u>\$3,100.00</u>	\$3100.00 <u>\$3,200.00</u>
Class II	Minor source (except Synthetic Minor)	\$500.00 <u>\$515.00</u>	\$515.00 <u>\$530.00</u>

**Or until such time as updated by resolution

- (a) Review of any application for initial issuance or renewal of a permit to operate any source or emission unit;
- (b) Review of any application or request to modify an existing permit to operate any source or emission unit, whereas the permit modification(s) constitute a “significant permit modification” as set forth under Article 2, Section 15;
- (c) Development of an initial or modified permit to operate;
- (d) Development of a statement of basis (fact sheet) to issue an initial, renewed, or modified permit to operate; and
- (e) Development of a document to provide notice for public participation as provided in Article 2, Section 14;
- (f) Exceptions. The operating permit fees established in Table 6-D-2 shall not apply to the following:
 - (1) Significant permit modifications performed for the sole purpose of incorporating requirements of a permit to construct/reconstruct/modify an emission unit(s); and

- (2) Significant permit modifications performed to remove requirements from a permit that are applicable to an emission unit(s) that has been removed or decommissioned in place, and for which the source demonstrates an associated reduction in actual or potential emissions.
 - (3) Payment of Fees – Any person required to submit fees pursuant to paragraph (D) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the permit.
 - (4) Failure to submit the fees required by paragraph (D) of this section within thirty (30) days after the issuance of a permit, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source’s operating and/or construction permit; and/or
 - (b) Assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (D)(2) above.

- (E) Emergency Electrical Generator Construction Permit Fees.
 - (1) Applicability – Any person or source requesting to obtain a construction permit for an emergency electrical generator(s) in accordance with Article 2, Section 17, paragraph (O) shall pay a fee for review of the construction permit application and issuance of the emergency generator construction permit. The emergency generator construction permit fee is:
 - (a) September 1, 2020 to August 31, 2021 ~~\$85.00~~ \$90.00 per generator
 - (b) September 1, 2021- or until such time as updated by resolution ~~\$90.00~~ \$95.00 per generator
 - (2) Payment of Fees – Any person required to submit fees pursuant to paragraph (E) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable at the time of submittal of the construction permit. All fees paid in accordance with this section shall be non-refundable.
 - (3) Failure to submit the fees required by paragraph (E)(1) of this section at the time of submittal of the construction permit, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source’s emergency generator construction permit; and/or
 - (b) Assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (E)(2) above.

- (F) Variance Fees.
 - (1) Applicability – Any person or source issued a variance in accordance with the requirements set forth in Article 1, Section 5 shall pay a fee for all activities associated with application for and issuance of the variance. The variance fee shall be charged at the rate of \$100.00 per hour but shall not exceed a maximum of \$10,000.00.
 - (2) Payment of Fees – Any person required to submit fees pursuant to paragraph (F) of this section, shall submit fees payable to the Lincoln-Lancaster County Health Department. The fees shall be due and payable within thirty (30) days after issuance of the variance. All fees paid in accordance with the section shall be non-refundable.
 - (3) Failure to submit the fees required by paragraph (F)(1) of this section within thirty (30) days after the issuance of a variance, in addition to other relief allowed by law, shall be cause for:
 - (a) Revocation of the source’s operating and/or construction permit and/or the variance; and
 - (b) Assessment of a late payment fee of twenty percent (20%) of the payment due, which late payment fee shall be increased by an additional ten percent (10%) of the original payment due for each additional thirty (30) day period that the payment is late. Such late payment fee shall be payable to the Department as provided in paragraph (F)(2) above.

- (G) Fees will be reviewed annually by the Director, and a report submitted to the Board of Health. The Board of Health may recommend any modifications to the Lincoln City Council and the Lancaster County Board of Commissioners. The new rate structure may be adopted by Resolution of the two governing bodies, individually, as a result of a recommendation by the Board of Health, or at the initiation of either of the two governing bodies.

- (H) All fees provided for herein shall be payable to the Lincoln-Lancaster County Health Department. All money collected shall be deposited with the City Treasurer’s Office and credited to Fund 145 Title V Clean Air Fund.