

### **Sec. 873.1211. Bathing facilities; separability.**

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 6-22-1989, eff. 6-22-1989)

## **ARTICLE XIII. AIR QUALITY**

### **Sec. 873.1301. Air quality; definitions.**

Whenever used in this article, unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated:

1. *Aerosol.* The term "aerosol" means a gaseous system containing disperse particulates.
2. *Air contaminant.* The term "air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof.
3. *Air contamination.* The term "air contamination" means the presence in the outdoor atmosphere of one (1) or more air contaminants which contribute or which are likely to contribute to a condition of air pollution.
4. *Air contamination source.* The term "air contamination source" means any apparatus, equipment, contrivance or machine capable of causing emission of any contaminant to the outdoor atmosphere either directly or indirectly or through an exhaust system, control equipment or stack; provided, however, that when more than one (1) apparatus, piece of equipment, contrivance or machine is connected to a single exhaust system, control equipment, stack or emission point, each such apparatus, piece of equipment, contrivance or machine shall be considered to be a separate air contamination source.
5. *Air pollution.* The term "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are or may be injurious to human, plant or animal life or to property or which unreasonable interferes with the comfortable enjoyment of life and property throughout the county or throughout such areas of the county as shall be affected thereby.
6. *Air pollution episode.* The term "air pollution episode" means an accident, occurrence, condition, weather conditions and/or concentration of an air contaminant or contaminants so that the immediate action is necessary to prevent further increases in air contamination or damage to life, property or environmental quality.
7. *Air quality area classifications.* The term "air quality area classifications" means air quality area classifications as set forth in Part 256 of Subchapter A of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).
8. *Ambient air quality standards.* The term "ambient air quality standards" means the ambient air quality standards required to be met under and pursuant to the

provisions of Part 257, Subchapter A of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

9. *Combustion installation.* The term "combustion installation" means a plant, equipment or device in which fuel is burned for the primary purpose of generating heat, steam or hot water.
10. *Combustion products.* The term "combustion products" means particulate and gaseous contaminants created by the burning of any kind of fuel.
11. *Control equipment.* The term "control equipment" means a device which is used to reduce the quantity or change the physical or chemical characteristics of the emission of air contaminants from any air sources.
12. *Designated zone.* The term "designated zone" means a zone after the furnace outlet of an incinerator in which the emissions from the furnace outlet are subjected to a temperature of not less than one thousand four hundred (1,400) F. for a period of time designated by the commissioner.
13. *Dry-cleaning facility.* The term "dry-cleaning facility" means any facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one (1) or more washes in a solvent, extraction of excess solvent by spinning and drying by tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps and attendant piping and valves.
14. *Emission point.* The term "emission point" means any point at which air contaminants enter the outer atmosphere from an air contamination source.
15. *Exhaust and ventilation system.* The term "exhaust and ventilation system" means any process which removes and transports any air contaminant products from their point of generation to the outer atmosphere.
16. *Fly ash.* The term "fly ash" means visible solid particulate matter emitted from an air contamination source to the outer atmosphere.
17. *Fuel.* The term "fuel" means solid, liquid or gaseous combustible materials.
18. *Fuel-burning equipment.* The term "fuel-burning equipment" means any furnace, steam, hot-air or hot-water generating equipment or any other device, exclusive of process equipment in which the fuel is burned.
19. *Fuel oil.* The term "fuel oil" means any virgin distillate oil, virgin residual oil, re-refined oil or any blend of the aforementioned meeting the latest specifications of the American Society of Testing Materials (ASTM) D396.
20. *Furnace outlet.* The term "furnace outlet" means the end point at which the air contaminants exit from the primary chamber in a single chamber incinerator and the secondary chamber in a multiple-chamber incinerator.
21. *Garbage.* The term "garbage" means animal and vegetable waste resulting from the handling, preparation, cooking and serving food.
22. *Incinerator.* The term "incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted materials, classified only as Type 0, 1, 2, 3 or 4 refuse,

is used as a fuel alone or in conjunction with other fuel.

23. *Opacity.* The term "opacity" means the degree to which emissions other than condensed water reduce the transmission of light and obscure the view of an object in the background.
24. *Open fire.* The term "open fire" means any outdoor fire or outdoor smoke producing process from which air contaminants are emitted directly into the outer atmosphere.
25. *Outer atmosphere.* The term "outer atmosphere" means all space outside of buildings, structures, stacks or exterior ducts.
26. *Particulates.* The term "particulates" means any air-or gas-borne material, except water, which exists as a liquid or solid. The determination of the quantity of particulates present in a stack shall be determined in accordance with emission testing methods acceptable to the commissioner.
27. *Person.* Except for any federal or state agencies, the term "person" means any individual, firm, public or private corporation, association, partnership, institution, political subdivision, government agency, public body, joint-stock association, trust, estate or other group of individuals or combination of the foregoing or any other legal entity whatsoever, and includes the plural as well as the singular.
28. *Process.* The term "process" means any industrial, commercial, agricultural or other activity, operation, manufacturer or treatment (except incineration of Type 0, 1, 2, 3 and 4 waste, open burning and operation of combustion installations) in which chemical, biological and/or physical properties of the material or materials are changed and which emits air contaminants to the outer atmosphere.
29. *Process weight.* The term "process weight" means the total weight of all materials introduced into any specific process which may cause any discharge into the outer atmosphere and shall include solid fuels used in the process, but shall not include liquid and gaseous fuels, uncombined water and combustion air.
30. *Process weight per hour.* The term "process weight per hour" means the total process weight divided by the number of hours in one complete operation of the process from the beginning of a cycle to the completion thereof and, for any continuing processes, shall be determined on a daily basis.
31. *Re-refined oil.* The term "re-refined oil" means any waste oil from which physical and chemical contaminants have been removed so that it is equivalent to virgin distillate or virgin residual oil.
32. *Refuse.* The term "refuse" means all waste material, including but not be limited to offensive material, garbage, rubbish, incinerator residue, street cleaning, dead animals, offal and Types 0, 1, 2, 3, 4, 5 and 6 wastes.
33. *Refuse disposal area.* The term "refuse disposal area" means land used for depositing of refuse except that it shall not include land used from depositing of refuse from a single family, a member of which is the owner, occupant or lessee of said land, or any part of a farm on which only animal wastes resulting from the operation of such farm are deposited, and includes, but is not limited to, those areas commonly referred to as landfills, sanitary landfills and dumps.
34. *Residence time.* The term "residence time" means the length of time in which the

product of combustion reaches the desired temperature and is maintained at that temperature.

35. *Rubbish.* The term "rubbish" means solid or liquid waste material, including but not limited to paper and paper products, rags, trees, or leaves, needles and branches therefrom, vines, lawn and garden debris, furniture, cans, crockery, plastics, cartons, chemicals, paint, greases, sludges, oils and other petroleum product, wood, sawdust, demolition materials, tires, and automobiles and other vehicles and parts, for junk, salvage or disposal.
36. *Smoke.* The term "smoke" means an air contaminant consisting of small gas-borne particles emitted by source of air contamination.
37. *Source sample.* The term "source sample" means a sample of the emission from an air contamination source, collected for analysis from within a stack.
38. *Stack.* The term "stack" means any conduit, chimney, duct, vent, flue or opening of any kind arranged to conduct any air contaminant to the outer atmosphere.
39. *Type 0 waste.* The term "Type 0 waste" means rubbish consisting of highly combustible materials such as paper, wood and cardboard, including up to ten percent treated papers, rags, plastic or rubber from commercial and industrial sources of the following characteristics approximately one hundred (100) percent rubbish by weight; ten (10) percent moisture by weight; five (5) percent incombustible solids by weight and a heat value of eight thousand five hundred (8,500) BTU per pound of refuse.
40. *Type 1 waste.* The term "Type 1 waste" means some garbage but primarily rubbish consisting of combustible material such as paper, cardboard, wood, combustible floor sweepings from residential, commercial and industrial sources of the following characteristics: approximately eighty (80) percent rubbish, twenty (20) percent garbage; twenty-five (25) percent moisture by weight; ten (10) percent incombustible solids by weight; six thousand five hundred (6,500) BTU per pound of refuse.
41. *Type 2 waste.* The term "Type 2 waste" means rubbish and garbage from residential sources of the following characteristics: approximately fifty (50) percent rubbish, fifty (50) percent garbage; fifty (50) percent moisture by weight; seven (7) percent incombustible solids by weight and four thousand three hundred (4,300) BTU per pound of refuse.
42. *Type 3 waste.* The term "Type 3 waste" means some rubbish, but primarily garbage consisting of animal and vegetable matter from restaurants, hotels, markets, institutional and commercial sources of the following characteristics: approximately sixty-five (65) percent garbage, thirty-five (35) percent rubbish; seventy (70) percent moisture by weight; five (5) percent incombustible solids by weight and two thousand five hundred (2,500) BTU per pound of refuse.
43. *Type 4 waste.* The term "Type 4 waste" means human and animal solid refuse consisting of carcasses and organs from hospitals, laboratories, abattoirs, animal pounds and similar sources of the following characteristics: approximately one hundred (100) percent animal and human tissue by weight; eighty-five (85) percent moisture by weight; five (5) percent incombustible solids by weight and one thousand (1,000) BTU per pound of refuse.

44. *Type 5 waste.* The term "Type 5 waste" means gaseous, liquid or semiliquid refuse from processes such as tar, paint, solvents and chemical sludge of the following characteristics: approximately variable by weight; dependent on predominant components moisture by weight; variable incombustible solids by weight and variable BTU per pound of refuse.
45. *Type 6 waste.* The term "Type 6 waste" means solid or semi-refuse from processes such as rubber, plastics, wood and sewage sludge of the following characteristics: approximately variable by weight; dependent on predominant components by weight; variable moisture by weight; variable incombustible solids by weight; and variable BTU per pound of refuse.
46. *Trained observer.* The term "trained observer" means any person who holds certification in training to observe opacity from the Department of Environmental Conservation of the State of New York or any similar course acceptable to the commissioner.
47. *USEPA Method Nine.* The term "USEPA Method Nine" means the method for visual determination of the opacity of emissions as approved and promulgated by the United States Environmental Protection Agency as published in the Federal Register, Volume 39, Number 219, November 12, 1974, and any revisions thereto.
48. *Waste oil.* The term "waste oil" means any oil or mixture of oil that does not constitute fuel oil as defined in this section.

(Added 5-28-1987, eff. 5-28-1987;\* amended 3-18-1993, eff. 3-18-1993)

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**\*Editor's note:** This resolution also repealed former Article XIII, Air Pollution Control, adopted 9-1-1971 as Art. 16.

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### **Sec. 873.1302. Air quality; general provisions.**

1. No person shall permit or cause any air contamination source to produce air pollution.
2. Any person responsible for a new, existing or modified source of air pollution shall provide pertinent data concerning emissions, equipment and operations.
3. Any person who shall refuse to comply with any provision of this article or who hinders, obstructs, delays, resists, prevents or in any way interferes or attempts to interfere with the commissioner or his representative in the performance of his duties or assists any other person in such conduct or who refuses to permit such personnel, after identification, to perform his duties by refusing him entrance to any premises in which the provisions of the code are being, have been or are suspected of being violated or refuses to permit the inspection or examination of such premises for compliance with and enforcement of the code shall be liable for such penalty as prescribed by law and the provisions of the code.
4. All persons owning, operating, in charge of or in control of any equipment who shall cause, permit or participate in any violation of the code shall be liable for

such penalty as prescribed by law and the provisions of the code.

5. Any person violating any of the provisions of this article or who knowingly makes any false statement or false report in connection therewith shall be liable for such penalty as prescribed by law and the provisions of the code.
6. Any information relating to secret processes, methods of manufacture or production submitted in connection with reports, plans and specifications or testing shall be considered as privileged communications and shall not be released or made public without the express permission of the applicant except as prescribed by law.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1303. Air quality; new sources; plans; approval.**

1. No person shall undertake to construct a new air contamination source, exhaust and ventilation system, stack or control equipment or make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment without first submitting to the commissioner an application, plans and specifications and any other information as may be required by the department and without obtaining prior written approval therefor, except as hereinafter provided.
2. Reports, plans and specifications for construction of an air contamination source, exhaust and ventilation system, stack or control equipment or modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment shall be submitted in accordance with the standards, guides, rules and regulations duly promulgated by the commissioner.
3. The department may require a physical and chemical analysis or test of any emission before any approval, the expense of which analysis or test shall be borne by the applicant.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1304. Air quality; action on applications.**

1. The department shall acknowledge receipt of each application, reports, plans and specifications to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment.
2. An approval of an application to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air contamination source, exhaust and ventilation system, stack or control equipment shall be granted only when in conformance with the requirements of the code, rules, regulations and standards of the commissioner, the department, the Department of Environmental Conservation of the State of New York and the Environmental Protection Agency of the United States.
3. If an application to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to an existing air

contamination source, exhaust and ventilation system, stack or control equipment be denied, the applicant shall be notified in writing to that effect and the reasons therefor.

4. Denial of an application shall be without prejudice to the applicant's filing an amended application or to request a hearing therefor.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1305. Air quality; new sources; modifications; approval to construct; nontransferable.**

Approval to construct an air contamination source, exhaust and ventilation system, stack or control equipment or to make modifications to any existing air contamination source, exhaust and ventilation system, stack or control equipment shall not be transferable from one approved location to another or from one piece of equipment to another or from one person to another.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1306. Air quality; new and existing sources; modifications; certificate to operate; nontransferable; filing.**

1. No person shall operate an air contamination source without first obtaining a valid certificate issued by the department to operate such source.
2. Application.
  - a. Application for a certificate to operate an air contamination source or modification to an existing air contamination source shall be made in writing to the department and shall be accompanied by a written statement from a professional engineer, licensed and registered to practice in the State of New York, certifying that the new air contamination source or modification to an existing air contamination source has been constructed in accordance with the approved permit to construct, plans and specifications.
  - b. Such application shall be made within 30 days of the date of completion of the air contamination source on forms provided by the department and in accordance with the permit to construct.
3. Issuance of certificate; renewal.
  - a. A certificate to operate an air contamination source shall be issued for a period of time in accordance with the Commissioner's Rules and Regulations.\*

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 1-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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- b. Application for a renewal certificate to operate an air contamination source shall be filed with the department within 60 days prior to the

expiration of the existing certificate and shall be made on forms provided by the department.

4. A certificate to operate an air contamination source shall not be transferable from one approved location to another or from one air contamination source to another or from one person to another.
5. A certificate to operate an air contamination source, or a copy thereof, shall be permanently retained on the certified premises.
6. No person shall maintain, cause or allow to be operated a stationary combustion installation with a rated capacity of 1,000,000 Btu's per hour or more, using number two, four and six oil as fuel without a certificate to operate issued by the department.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1307. Air quality; new sources; modifications; safeguarding information.**

1. Information pertaining to manufacture, production or secret processes submitted in connection with an application, report, plans and specifications to construct an air contamination source, control equipment, exhaust and ventilation system or stack, or to make modification to an existing air contamination source, control equipment, exhaust and ventilation system or stack, and designated as secret or proprietary information shall be kept confidential by the department, except that it may be produced at an administrative hearing, a court of competent jurisdiction or pursuant to any applicable provisions of law; provided, however, that the quantity, physical and chemical characteristics of actual and allowable air contaminant emissions shall be considered to be public information.
2. The provisions of this section shall also apply to alteration, reconstruction and extension of systems.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1308. Air quality; exemptions; relocations; minor alterations.**

1. Whenever it is considered by the department that a new installation or modification to an existing installation is not likely to increase the amount or change the effects or characteristics of air contaminants discharged, such installation or modification may be exempted from the provisions of section 873.1303 of this code.
2. Reports, plans and specifications for relocations of a previously approved air contamination source within the same premises or minor alterations of such air contamination source need not be submitted for approval; provided, however, that the department shall be in advance thereof notified in writing by the owner or his duly authorized representative of each relocation or minor alteration.
3. A relocation or minor alteration of an air contamination source shall be one which does not change significantly the amount, character or effect of emissions.
4. Determination as to whether a relocation or minor alteration of an air

contamination source is exempt from the filing of reports, plans and specifications shall be made by the department.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1309. Air quality; testing of installations.**

1. Notification.
  - a. The owner of an installation for which a permit to construct an air contamination source has been issued by the department shall notify the department in writing of its completion, and such notification must occur prior to the expiration of the permit to construct.
  - b. The owner of an installation shall notify the department at least 30 days prior to the test date of the time and place of any tests to be performed on the installation as required by the department and in accordance with the approved report, plans and specifications for the installation, which date shall be scheduled and acceptable to the department.
  - c. If tests, including stack tests, are required in accordance with the permit to construct, the owner shall specify in writing by whom they are to be conducted.
2. Conduct of tests; costs.
  - a. A representative of the department shall be present and witness the test or tests to be conducted on the installation.
  - b. Tests shall be made and conducted in a manner acceptable to the department, and the results of such tests shall be submitted to the department.
  - c. The costs of tests shall be borne by the owner of the installation.
3. Samples.
  - a. When additional tests are found necessary by the department in order for it to make a determination of contaminant emissions, sampling holes and pertinent allied facilities, as needed, shall be requested in writing to the owner by the department and shall then be provided by the owner, at his expense and at such location as the department may require.
  - b. In such instances, the owner shall provide a suitable power source to the point of testing so that sampling instruments can be operated as required.
  - c. Analytical results of samples collected by the department shall be furnished to the owner of the installation.
4. Nothing herein concerning tests conducted by and paid for by the owner shall be deemed as a waiver of the department's right to conduct separate or additional tests of an installation which shall be conducted at a mutually agreeable time and at the expense of the department.
5. Sampling and analytical determinations to ascertain compliance with this section shall be made in accordance with methods and procedures acceptable to the department.

6. A person who owns, operates or controls an air contamination source shall submit a test report to the department within 60 days after completion of the test.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1310. Air quality; control equipment.**

1. Control equipment shall be selected so as to afford the highest efficiency or the lowest discharge rate that is reasonable and practicable.
2. Reasonableness and practicability shall take into account cost, the air contaminant concentration in the emission gas stream, particle characteristics and other properties of the contaminant and of the emission gas stream.
3. All devices used to effect compliance shall be installed, easily accessible, readable and maintained and operated in a satisfactory manner and in accordance with the provisions of this code and existing laws.
4. Collection of air contaminants.
  - a. Collected air contaminants shall be removed and disposed of in conformity with this code and existing laws and at such intervals as may be necessary to maintain the equipment at the required operating efficiency.
  - b. Collection and disposal of air contaminants shall be performed in a manner so as not to reintroduce contaminants to the outer atmosphere or otherwise create a public health hazard or nuisance.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1311. Air quality; emissions from processes and exhaust and ventilation systems.**

1. No person shall cause, permit or allow the emission of air contaminants from an emission source resulting from an operation which exceeds the permissible emission rates or standards certified for that emission source by the Department of Environmental Conservation of the State of New York\* or other applicable provisions of law.

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 3-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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2. No person shall cause or permit the emissions from a process and exhaust and ventilation systems to be equal to or greater than 20 percent opacity as determined by a trained certified observer using USEPA Method Nine.
3. An air contamination source shall not be operated other than in accordance with its design.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1312. Air quality; general prohibitions.**

1. No person shall operate or maintain any air contamination source so as to cause, suffer or allow air contaminants to escape or be discharged into the atmosphere in quantities that may possibly endanger the public health, safety or welfare.
2. No person shall cause or allow any air contamination source to emit any air contaminant having an opacity equal to or greater than 20 percent opacity, except where otherwise provided by the code, at open fires for which a restricted burning permit has been issued by the department.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1313. Air quality; open fires; prohibitions.**

1. Except as permitted by section 873.1314, no person shall burn, cause, suffer, allow or permit the burning of an open fire.
2. No person shall burn, cause, suffer, allow or permit the burning in an open fire of refuse during an air pollution episode in an area for which such air pollution has been designated.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1314. Air quality; open fires; restricted burning.**

1. Except where prohibited by law, burning in an open fire may be permitted as follows:
  - a. Burning of land clearing or demolition material, or both, consisting of wood, trees, tree trimmings with attached leaves or brush, generated by land clearing or demolition for the erection of any structure; for the construction or modification of any highway, railroad, pipeline or power or communication line; or for the development or modification of a recreational area or park, provided that substantial proof is submitted to the department showing that no alternative means of disposal of such materials acceptable to the department is available and that all available means to minimize open burning will be employed and that such burning will be done on-site and in accordance with a permit issued by the department after written application therefor;
  - b. Burning of solid or liquid fuels or structures at any designated fire training site when under the direct control and supervision of qualified instructors for the instruction and training of firemen, provided that such burning is done in accordance with a permit issued by the department after written application therefor;
  - c. Any burning otherwise permitted by law; provided, however, that burning in open fires may not be permitted in any area wherein buildings are so located or arranged that the open fire will constitute a health, fire or safety hazard or public nuisance.
2. Permits.
  - a. An application for a permit required by this section shall include the

reasons why such burning should be permitted and such other information as may be required by the department to ensure that such burning will be unlikely to result in contravention of air quality standards.

- b. Any permit which may be issued shall be for a specified period of time and shall contain such conditions as are deemed necessary to minimize air pollution and prevent contravention of air quality standards.
- c. Any permit issued for restricted burning may be revoked by the department if there is a failure to comply with its conditions, a violation of law in connection with the burning or the occurrence or likely occurrence of either air pollution or contravention of air quality standards as a result of the burning.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1315. Air quality; combustion installations; fuel-burning equipment; smoke; limitations.**

No person shall operate a combustion installation or fuel-burning equipment so as to produce, emit or permit the escape of smoke, regardless of how produced or discharged, having an opacity equal to or greater than 20 percent, for any time period, as determined by a trained certified observer using USEPA Method Nine, except:

1. That the production, emission or permitting the escape of smoke during startup or emergencies in excess of those permitted by this section shall not be considered as noncompliance with this section if the source owner can demonstrate to the satisfaction of the department that such excessive emissions were not preventable; or
2. As otherwise provided for by the provisions of the Public Health Law, the Environmental Conservation Law, or rules and regulations promulgated pursuant thereto, or any other applicable provision of the code.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1316. Air quality; combustion installations; fuel-burning equipment; smoke; emission abatement.**

1. Any fuel-burning equipment with an input heat capacity equal to or greater than 1,000,000 Btu's per hour which has repeatedly on more than one occasion emitted smoke exceeding permissible smoke opacity limits, as determined by the department, shall be equipped with an acceptable opacity monitor which will automatically cause an audible alarm device and a visible flashing red light to be activated when smoke of an opacity equal to or greater than 20 percent is produced by the combustion installation or fuel-burning equipment; provided, however, that the opacity monitor shall have the following characteristics:
  - a. The alarm device shall be sufficiently loud so as to be heard by a person of normal hearing at a distance of 20 feet from the signal;
  - b. The alarm device and the flashing red light shall continue to operate until manually reset;

- c. The alarm device and flashing red light shall be located at the principal work location of the person responsible for the operation of the equipment;
  - d. If an opacity monitor fails to operate properly, the monitor shall automatically cause an alarm device sufficiently loud to be heard by a person of normal hearing 20 feet from the alarm and a readily visible flashing red light to be activated which shall continue until manually reset; and
  - e. The opacity monitor and alarm device shall be maintained in good operating order, regularly inspected, cleaned and shall be promptly repaired, altered or replaced when necessary.
  - f. A record shall be kept in which the date and time the alarm device activated, and the department shall be notified within 24 hours of such activation.
2. The department may require:
  - a. The installation of control equipment, devices to control or devices to record emissions from any combustion installation or fuel-burning equipment with a rated input heat capacity equal to or greater than 1,000,000 Btu's per hour which causes or is maintained or operated so as to cause noncompliance with the code;
  - b. A change in the manner of operation of any combustion installation or fuel-burning equipment or control equipment which is operated so as to result in noncompliance with the code;
  - c. The cleaning, repair, replacement or alteration of any combustion installation, fuel-burning equipment or control equipment which causes or is maintained or is operated as to result in noncompliance with the code.
3. Sealing.
  - a. The commissioner may order the discontinuance of use and may seal any combustion installation or fuel-burning equipment which does not comply with the provisions of the code.
  - b. The seal may be removed from the equipment only upon written notice from the commissioner or his representative stating that the equipment has been corrected to the satisfaction of the commissioner and that it may be restored to use or operation.
4. No person shall use or permit the use of any combustion installation or fuel-burning equipment with a rated heat input capacity equal to or greater than 1,000,000 Btu's per hour for a purpose or in a manner which causes it to function improperly or other than in accordance with its design.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1317. Air quality; emissions from diesel engines; limitations.**

1. No person shall operate, allow or permit the operation of a diesel engine or vehicle propelled by a diesel engine in such a manner as to emit exhaust

emissions equal to or greater than 20 percent opacity for a continuous period of more than five seconds as determined by a trained certified observer.

2. No person shall allow or permit a bus or truck, the motive power for which is provided by a diesel engine, to idle for more than five consecutive minutes when the bus or truck is not in motion, except that this provision shall not apply when:
  - a. A bus or truck, the motive power for which is provided by a diesel engine, is forced to remain motionless because of traffic conditions over which the operator thereof has no control;
  - b. Regulations adopted by a federal, state or local agency having jurisdiction require the maintenance of a specific temperature for passenger comfort, in which case the idling time may be increased to the extent necessary to comply with such regulations;
  - c. A diesel engine is being used to provide power for an essential auxiliary purpose, such as loading, discharging, mixing or processing cargo; controlling cargo temperature; construction; lumbering; oil or gas well servicing; farming operations; or when operation of the engine is required for the purpose of maintenance;
  - d. Trucks and heavy-duty construction equipment propelled by diesel engines, owned and operated by persons engaged in mining and quarrying, are used within the confines of such person's property; and
  - e. A bus or truck propelled by a diesel engine is to remain motionless for a period exceeding two hours, and during which period the ambient temperature is continuously below 25 degrees Fahrenheit).
3. This section shall apply to any person who owns, operates, leases, supervises or who otherwise has charge, supervision or control of such vehicle and to any person who owns, leases or occupies land and has actual or apparent domain or control over such vehicle or engine which is present on such land.
4. This section shall not apply to fire trucks and other emergency vehicles and equipment while performing essential services.

(Added 5-28-1987, eff. 5-28-1987)

### **Sec. 873.1318. Air quality; incinerators; prohibitions.**

No person shall cause, allow or permit the installation or construction of an incinerator having a rated capacity of 2,000 pounds per hour or less, except:

1. When regulations adopted by a federal or state agency having jurisdiction require the installation or construction of an incinerator to dispose of contaminated or infectious materials from hospitals, nursing homes, biological laboratories or veterinary hospitals; or
2. When regulations adopted by a federal or state agency having jurisdiction require the installation or construction of an incinerator to dispose of secret documents or United States currency; or
3. When such incinerator is installed or constructed for the express purpose of cremation of human or animal remains; or

4. When the design and construction of the incinerator is shown by actual emission sampling and analysis conducted by and at the expense of the owner or manufacturer under actual on-site operating conditions and with routine maintenance, to produce emissions that do not exceed smoke and particulate emission limits as set forth elsewhere in the code or to produce emissions that do not exceed smoke and particulate emission limits as otherwise set forth in the laws, rules and regulations of the State Department of Environmental Conservation.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1319. Air quality; incinerators; emission limits; operation.**

1. All incinerators having a rated capacity of 2,000 pounds per hour or less shall be operated so that particulate emissions do not exceed the permissible emission limits as provided for or shall be equipped with adequate control devices or redesigned and rebuilt so as to meet the permissible emission limits as set forth in the laws, rules and regulations of the State Department of Environmental Conservation.
2. No incinerator having a rated capacity of 2,000 pounds per hour or less shall be operated so as to emit smoke of an opacity greater than 20 percent as determined by a trained and certified observer using USEPA Method Nine.
3. No person shall use or permit the use of an incinerator with a rated capacity of 2,000 pounds per hour or less for a purpose or in a manner which causes it to function improperly or other than in accordance with its design.
4. No person shall cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less at any time other than between the hours of 7:00 a.m. and 5:00 p.m. of the same day, except by written permission of the department.
5. No person shall cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less so as to emit fly ash to the outer atmosphere.
6. Any person seeking approval to operate, cause or permit the operation of an incinerator with a rated capacity of 2,000 pounds per hour or less at any time other than as herein provided shall submit a written request to the department stating:
  - a. The full name and address of the applicant;
  - b. The location of the incinerator;
  - c. A brief description of the incinerator and its apparatus;
  - d. The reason for requesting such approval;
  - e. The hours during which the applicant seeks to operate the incinerator;  
and
  - f. The length of time for which the approval is requested.
7. If two or more incinerators are connected to a single stack, the total refuse

charged to all incinerators connected to the same stack shall be the refuse charged for the purpose of determining the permissible particulate emission.

8. If a single incinerator is connected to two or more stacks, the refuse charged to a single incinerator shall be the refuse charged for the purpose of determining the permissible particulate emission.
9. In order to control the emission of odors:
  - a. No person shall construct, install, use or cause to be used any continuously fed incinerator unless the gas temperature at the furnace outlet or at a designated zone exists that is designed to be automatically maintained and is automatically maintained at a temperature and residence time, in accordance with the Commissioner's Rules and Regulations.\*

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 2-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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- b. No person shall construct, install, use or cause to be used any batch-fed incinerator unless the gas temperature at the furnace outlet or designated zone is designed to be automatically maintained and is automatically maintained at a temperature and residence time in accordance with the Commissioner's Rules and Regulations.\*

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 2-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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- c. Incinerators with a capacity of 2,000 pounds per hour or less of refuse charged shall be equipped with a sensing device indicating the gas temperature at the furnace outlet or at the designated zone.
10. Incinerators with a capacity of greater than 2,000 pounds per hour of refuse charged shall comply with all applicable codes, rules, regulations and policies of the department,\* the New York State Department of Environmental Conservation and the United States Environmental Protection Agency.

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 3-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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11. All burners shall be located and operated in a manner so that the operation of such burners conforms to all codes and does not serve as a potential hazard.
12. All monitoring and recording equipment must be located in such a manner that information from such equipment can be easily ascertained.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1320. Air quality; incinerators; abatement.**

1. Where the department has reasonable cause to believe that any incinerator with a rated capacity of 2,000 pounds per hour or less is emitting particulate matter in excess of the allowable emission rate as provided by the code, the department may require the owner or lessee of the incinerator to conduct such tests as are necessary to determine whether the equipment or its operation exceeds the allowable emission rate as provided by this code and to submit the test results to the department within 30 days after such tests are completed.
  - a. All such testing shall be performed in accordance with the Commissioner's Rules and Regulations.\*

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**\*Editor's note:** See Rules and Regulations of the Commissioner Policy No. AQ 4-87, effective 5-28-1987, which is on file in the office of the Commissioner of Health.

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- b. The owner or lessee shall notify the department of the time and place of any such testing at least 30 days before the commencement of the test and shall make reasonable facilities available for a representative of the department to be present and witness the tests.
2. If, in the opinion of the department, tests by the department are necessary, in addition to those conducted by the owner or lessee of the incinerator, the department may order the owner or lessee to provide sampling ports in the stack as the department may request, to provide a power source suitable to the points of testing and to provide allied facilities, exclusive of sampling devices.
  - a. The provisions for sampling ports, the power source and allied facilities shall be made at the owner's or lessee's expense.
  - b. The owner or lessee shall be furnished with a copy of the analytical results of the source samples collected.
3. If any of the test results indicate a contravention of particulate emission limits as provided by the code, the department may require the installation of appropriate control equipment to reduce such particulate emissions to a level meeting such emission limits or the department may seal the incinerator if such equipment is not installed within the time prescribed by the department.
4. The department may order the cleaning, repair, replacement or alteration of any equipment or control equipment which causes or is operated so as to result in noncompliance with the applicable provisions of the code.
5. The department may order a change in the manner of operation of any incinerator which is operated so as to result in noncompliance with the applicable provisions of the code.
6. Sealing of nonconforming incinerator.
  - a. The commissioner may order the discontinuance of use and may seal any incinerator with a rated capacity of 2,000 pounds per hour or less which does not conform to the provisions of the code.

- b. The seal may be removed from the incinerator only by the department and only upon written authorization from the commissioner following written application to the department by the owner of the incinerator stating that the incinerator has been or will be repaired, modified, upgraded, removed, reconstructed or replaced in a manner and within a time acceptable to the commissioner.
- c. The authorization from the commissioner may set forth any terms and conditions the commissioner deems appropriate concerning the particular incinerator to be repaired, modified, upgraded, removed, reconstructed or replaced.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1321. Air quality; fuel composition and use; prohibitions.**

1. No person shall construct, install or modify or cause to be constructed, installed or modified any combustion installation that is designed for use of a solid fuel containing 0.20 pound of sulfur per million Btu's gross heat content, except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
2. No solid fuel that contains more than 0.20 pound of sulfur per million Btu's gross heat content shall be sold, offered for sale or purchased for use in or used in any stationary combustion installation except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
3. No person shall sell, offer for sale or purchase for use in or use in any stationary air contamination source fuel, other than distillate and residual oil, having a sulfur content greater than 0.37 percent by weight, except as may otherwise be provided for in the Environmental Conservation Law or the rules and regulations promulgated pursuant thereto.
4. No waste fuel shall be offered for sale or purchased for use in any stationary air contamination source except upon prior written approval of the commissioner.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1322. Air quality; fuel composition and use; exceptions.**

1. The commissioner may except, in whole or in part, the fuel sulfur content restrictions imposed under the code where an applicant establishes to his satisfaction that the fuel use thus permitted will not result in the emission of sulfur compounds, expressed as sulfur dioxide, to the outdoor atmosphere at a rate greater than would be obtained through the use of fuels otherwise mandated, the following cases:
  - a. Where a mixture of fuels is burned simultaneously in each furnace of a stationary combustion installation in operation or under construction before January 1, 1968, producing steam or electric power for sale; or
  - b. Where fuel is used as a process constituent; or

- c. Where approved control equipment is installed; or
  - d. Where a substantial portion of the sulfur in the fuel burned is retained in the ash and not emitted to the outdoor atmosphere; or
  - e. Where such fuel is used to demonstrate the performance of an experimental air cleaning installation for removal of sulfur compounds from stack emissions.
2. For those installations where coal or coke has been the regular source of fuel, the commissioner shall permit the sale and continued use of such fuel; provided, however, that the continued sale and use of such fuel complies with provisions of this section relative to the sulfur content thereof.
3. The commissioner may exempt persons from the requirements of this article, upon evidence satisfactory to the commissioner that:
  - a. There is an insufficient supply of fuel meeting the requirements of section 873.1321 of the code; and
  - b. The insufficiency of the supply of fuel is certified by the Chairman of the Public Service Commission of the State of New York.
4. The commissioner may upon prior written application permit the sale, offer for sale, purchase and use of fuels with a sulfur content in excess of that as specified herein, provided that the purchaser maintains a continuous monitoring network for sulfur compounds, expressed as sulfur dioxide, acceptable to the commissioner and employs a system for the prompt switching to fuel with a sulfur content as specified in the code whenever continuous monitoring shows that an ambient air quality standard for sulfur dioxide will tend to be exceeded; provided, however, that the commissioner may require the installation of any available device, method or procedure so that any emission shall not exceed the standards provided for herein.
5. Nothing herein shall be construed to allow the emission of air contaminants in quantities which alone, or in combination with other sources, would contravene the standards established by the United States Environmental Protection Agency and the Department of Environmental Conservation of the State of New York for the ambient air quality region in which the air contamination source is located or to cause air pollution as defined in the code.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1323. Air quality; fuel composition and use; compliance.**

1. The department may require submission of fuel analysis or results of stack sampling, or both, to ensure compliance with the provisions of the code, and no person shall fail to submit such information when so required by the department.
2. Persons selling fuels in the county shall maintain records of sales of all fuel containing sulfur and of all fuel analysis required by the department and shall make such records available for inspection by the department during normal business hours.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1324. Air quality; particulates caused by combustion of solid fuel; control.**

1. Permissible emission rates.
  - a. No person shall cause, suffer, permit or allow to be emitted into the atmosphere, from any stationary combustion installation burning solid fuels for heat or power generation, particulates in excess of the permissible emission rates, determined as maximum weight discharge, as specified in the following table:

**TABLE INSET:**

Total Heat Input* (million Btu's/hr.)	Permissible Emission Rate** (lb./million Btu's)
1 to 10	0.600
20	0.550
30	0.500
40	0.450
50	0.440
60	0.420
70	0.400
80	0.390
90	0.380
100	0.370
200	0.320
300	0.290
400	0.275
500	0.262
600	0.252
700	0.242
800	0.236
900	0.230
1,000	0.225
2,000	0.193
3,000	0.177
4,000	0.166
5,000	0.158
6,000	0.152
7,000	0.147
8,000	0.142
9,000	0.139
10,000	0.136

\* Installations having a total input less than 1,000,000 Btu's per hour are exempted.

\*\* Total input between 1,000,000 and 10,000,000 Btu's per hour: Maximum weight discharge shall be six-tenths pound per million Btu's per hour input.

Total input between 10,000,000 and 10,000,000,000,000 Btu's per

hour: Use  $E = 1.02/p0.219$  to determine the maximum weight discharge where E = maximum weight discharge in pounds per hour and p = total input in million Btu's per hour.

The heat content of coal shall be determined by a method acceptable to the department.

Individual combustion units with an input equal to or less than 300,000,000,000 Btu's per hour and in operation prior to June 1, 1972, may exceed the values in this table, provided that they meet the following criteria:

Spreader stokers: Allowable weight discharge shall not exceed sixty-hundredths pound per million Btu's input.

Individual combustion units other than spreader stokers shall not exceed the following:

TABLE INSET:

Input (million Btu's/hr.)	Maximum Weight Discharge (lb./million Btu's <sup>***</sup> )
1 to 100	0.60
200	0.45
300	0.30

\*\*\* The total heat input under normal operating conditions shall be used in determining the permissible emission rate.

- b. If two or more stationary combustion units are connected to a common air cleaning device and/or stack, the total heat input rating of all units connected to the cleaning device and/or stack shall be the heat input rating for the purpose of computing the allowable weight discharge.
2. If two or more stationary combustion units having individual air cleaning devices are connected to a single stack, the total allowable weight discharge shall be the sum of the allowable discharges from each individual unit.
3. No person shall construct, install, modify or cause to be constructed, installed or modified, within the county, any hand-fired stationary combustion installation for heat or power generation designed to burn bituminous coal.
4. The department may modify the limits specified in this section if, in view of the properties of the emissions, isolated conditions, stack height and other factors, it can be clearly demonstrated that discharge of the contaminant or contaminants will not add to an existing or predictable atmospheric burden of such contaminant or contaminants so that adverse effects would reasonably be expected therefrom.
5. Notwithstanding any provision herein, no person shall cause, suffer, permit or allow the emission of air contaminants in quantities which alone, or in combination with other sources, would cause air pollution as defined in the code

or contravene the air quality or emission standards established by the United States Environmental Protection Agency and the Department of Environmental Conservation of the State of New York.

6. In order to determine compliance with this article, any person operating or maintaining emission sources described in this section shall provide pertinent data concerning emissions upon request of the department.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1325. Air quality; fuel-burning equipment and incinerators; operation; supervisions.**

1. No person shall cause or permit the use of any fuel-burning equipment having an input capacity of 1,000,000 Btu's per hour or greater or of any incinerator having a rated capacity of 2,000 pounds per hour or less, except under the operation and supervision of a person who has successfully completed, within one year of the commencement of his employment, a course of instruction in air quality control given by or acceptable to the department.
2. Upon successful completion of the course of instruction required by this section, the operator or supervisor shall receive a certificate containing the name of the course of instruction, the name of the operator or supervisor and the date of successful completion of the course.
3. No person shall employ an operator or supervisor of fuel-burning equipment with an input capacity of 1,000,000 Btu's per hour or greater or of an incinerator with a rated capacity of 2,000 pounds per hour or less who does not have a certificate as required by this section.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1326. Air quality; standards.**

In determining compliance with the provisions of the code, the department may be guided by the provisions of Chapter III of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, or the specific air quality standards assigned to geographical areas of the county and any subsequent amendments thereto or revisions thereof, or the provisions of any other rules or codes which may be enacted by the Department of Environmental Conservation of the State of New York or by the local municipality in which the installation is located, provided that the provisions of such rules or codes do not permit lower or less stringent requirements than required by the code.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1327. Air quality; indoor air quality; dry cleaning facilities.**

1. Every room and passageway in any habitable building, except for an office and/or industrial building, shall be maintained to ensure the public of an indoor atmosphere acceptable to the commissioner.
2. All equipment providing an indoor atmosphere shall be maintained in repair and

not be used for purposes other than in accordance with its design.

3. All dry-cleaning facilities shall maintain the indoor atmosphere in their rooms and every room and passageway in the habitable building in which they are located in accordance with law.
4. No person shall operate a dry-cleaning facility without first obtaining a valid permit issued by the department to operate such facility.

(Added 5-28-1987, eff. 5-28-1987; amended 3-18-1993, eff. 3-18-1993)

**Sec. 873.1328. Air quality; ambient air quality.**

The ambient air quality within the boundaries of the county shall be governed by the federal government and state ambient air quality standards for priority pollutants.

(Added 5-28-1987, eff. 5-28-1987)

**Sec. 873.1329. Air quality; severability.**

If any provision of this article is held invalid, such invalidity shall not affect other provisions which shall be given effect without the invalid provision.

(Added 5-28-1987, eff. 5-28-1987)

**ARTICLE XIV. NUISANCES AND SANITATION**

**Sec. 873.1400. Nuisances; inspections and investigations.**

1. The commissioner or the commissioner's representative shall investigate all complaints of any nuisance which may in his opinion affect health, or which may be a cause of danger or injury to life and health.
2. The commissioner or the commissioner's representative may enter upon, about or within any place, facility, premises or vehicle where a nuisance or condition dangerous to life and health exists, or where in his opinion a place, facility or premises is maintained, operated or being constructed in a manner as to constitute a nuisance, or else where its maintenance, operation or construction may be the cause of the existence of a nuisance or condition dangerous to life or health elsewhere.
3. The owner, agent and occupants of any place, facility, premises or vehicle being maintained, operated or constructed shall permit examinations, inspections, investigations and samples to be made and taken pursuant to the provisions of the Public Health Law, the Environmental Conservation Law, the State Sanitary Code, the code and administrative rules and regulations promulgated pursuant to such laws and codes.

(Added 11-20-1986, eff. 11-20-1986)

**Sec. 873.1401. Nuisances; notice to owners and others.**

1. The commissioner or the commissioner's representative shall furnish the owner,