

DIVISION II ENFORCEMENT

SECTION 16-56 VIOLATIONS OF CHAPTER-NOTICE; CITATION; INJUNCTIVE RELIEF

- (a) Whenever evidence has been obtained or received establishing that a violation of this code has been committed, the health officer shall issue a notice to correct the violation or a citation to cease the violation. Such notice or citation shall briefly set forth the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. If the violation is not corrected within the time so specified, or the violation stopped, or reasonable steps taken to rectify the violation, the health officer shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility causing the violation until the violation has been corrected, or initiate proceedings to prosecute the violator of this code.
- (b) In the event any person fails to comply with a cease or suspend operation order, that is not subject to a stay pending administrative or judicial review, the health officer shall institute proceedings in a court of competent jurisdiction for injunctive relief to enforce the regulations or orders pursuant hereto.

(Ord. No. 1265, § 1, 4-25-72) Code 1967, § 3-2

**THIS IS THE FEDERALLY APPROVED REGULATION AS OF JUNE 15, 1989
LAST UPDATE: JULY 19, 1989**

	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg	APR 27, 1972	MAY 31, 1972	37 FR 10842
1st Revision	JUL 07, 1986	JUN 15, 1989	54 FR 25456

SECTION 16-57 PENALTIES, MISDEMEANOR, CIVIL, NONCOMPLIANCE

- (A) Violation of any provision of this Chapter is hereby declared to be a misdemeanor, and each day of violation shall constitute a separate offense. Conviction of a misdemeanor is punishable "as provided in Section 1-8 of this Code."
- (B) Additionally, the provisions of Tennessee Code Annotated, Section 68-25-116 and 68-25-117 are hereby adopted, and the Memphis and Shelby County Health Department in conjunction with the local Air Pollution Control Board shall have authority, at their option, to institute and litigate proceedings for violations as set out therein.

(Ord. No. 1265, § 1, 4-25-72, Code 1967, § 3-3, Ord. No. 3230, § 1(2), 8-3-82)

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SECTION 16-58 VARIANCES

- (a) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who owns or controls like processes or like equipment may apply to the air pollution control hearing board, hereinafter referred to as "the Board", for a variance from rules or regulations governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the board may require. The hearing held hereunder shall be conducted in accordance with the rules of evidence as set forth in Section 16-71 of this Chapter as now or hereafter amended. The board may grant such variance, but only after public hearing on due notice, if it finds that:
- (1) The emissions occurring, or proposed to occur do not endanger or tend to endanger human health, safety, or welfare, or do not cause or tend to cause property damage.
 - (2) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.
- (b) No variance shall be granted or denied pursuant to this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges and the general public.
- (c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) for time periods and under conditions consistent with the reasons therefor, and with the following limitations:
- (1) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, the variance shall be permitted only until the necessary means for prevention, abatement, or control become known and available, and the variance shall be subject to the taking of any substitute or alternate measures that the board may prescribe.
 - (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in view of the board, is requisite for the taking of necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.
 - (3) Any variance or renewal granted shall be for a time period not to exceed one (1) year.
- (d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of the variance. If complaint is made to the board on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the

expiration of the variance. Immediately upon a receipt of an application for renewal, the board shall give public notice of such application in accordance with rules and regulations of the board.

- (e) A variance of renewal shall not be a right of the applicant or holder thereof, but shall be in the discretion of the board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the board may obtain judicial review thereof only in a court of competent jurisdiction.
- (f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 3-4 of this Chapter to any person or his property.

(Ord. No. 1265, § 1, 4-25-72) Code 1967, § 3-10

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SECTION 16-59 EMERGENCY POWERS OF HEALTH OFFICER

- (a) Any other provision of the law notwithstanding, if the health officer finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the health officer shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the health officer shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the air pollution control hearing board. Such hearing shall be held in conformity with the provisions of section 16-71, insofar as applicable. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the Air Pollution Control Hearing Board shall affirm, modify or set aside the order of the health officer.
- (b) In the absence of a generalized condition of air pollution of the type referred to in subsection (a) of this section, but if the health officer finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to reduce or discontinue operations immediately, without regard to the provisions of this chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsection (a) of this section shall apply.

(Ord. No. 1265, § 1, 4-25-72); Code 1967, § 3-4

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SECTIONS 16-60 TO 16-70 RESERVED