

Chapter 01

ENVIRONMENTAL QUALITY COMMISSION

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I. COMMISSION GENERALLY

24.0101 Establishment-Composition.

(a) The environmental quality commission was established by the Legislature in 24.0 105 (a) ASCA, which reads as follows:

"There is created an environmental quality commission referred to in this chapter as the commission. The commission consists of 5 members to be appointed by the Governor to serve for an indefinite period of time."

(b) In accordance with 24.0105 (a) ASCA, the Governor has designated the Lieutenant Governor as chairman of the commission and the government ecologist as the executive secretary. Other members are the director of public works, the director of economic development and planning, and the director of health, or their representatives.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.01.

24.0102 Meetings-Quorum.

(a) Section 24.0 105 ASCA requires the commission to meet at least 4 times per year at regularly scheduled times and the commission hereby schedules meetings for 2 p.m. on the first Monday of January, March, June, and September unless otherwise announced. More frequent meetings may be called at the discretion of the chairman. A quorum of 3 members is necessary to conduct any business before the commission. A majority vote of those present is necessary to decide all issues before the commission. A record of each meeting shall be taken and the record shall be available for public inspection.

(b) Meetings will be held in the chairman's office unless otherwise provided in public notice of meetings.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.02.

24.0103 Rulemaking authority.

Section 24.0 106 (1) ASCA vests the commission with authority to promulgate rules.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.03.

24.0104 Records-Public access.

All rules, written statements, policies, and interpretations formulated and adopted for use by the commission in the discharge of its functions and final orders, decisions, and opinions will be maintained in the Governor's office at Utulei and shall be available for public inspection. All requests for inspection shall be made to the chairman.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.04.

The Environmental Quality Commission Regulations included two sections numbered 1.04.

24.0105 Policy.

The policy of the commission is stated in "24.0102 ASCA:"

(a) It is the public policy of this territory and the purpose of this chapter (Chapter 24.0 1 ASCA) to achieve and maintain such levels of air and water quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this territory and facilitate the enjoyment of the natural attractions of this territory.

"(b) To these ends it is the purpose of this chapter (Chapter 24.0 1 ASCA) to provide for a coordinated territory-wide program of air and water pollution prevention, abatement, and control; and to provide a framework within which all values may be balanced in the public interest."

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.04.

The Environmental Quality Commission Regulations included two sections numbered 1.04.

24.0106 Powers.

Pursuant to 24.0106 ASCA, the commission may:

(1) hold hearings as necessary relating to any aspect of or matter in the administration of Chapter 24.01 ASCA, and compel the attendance of witnesses and the production of evidence;

(2) issue such orders as may be necessary to effectuate the purposes of Chapter 24.01 ASCA and enforce the same by all appropriate administrative and judicial proceedings;

(3) require access to records relating to emissions which cause or contribute to air contamination and access to records relating to discharges which cause or contribute to water pollution. (Note: The commission interprets this as authority to copy the inspected records.)

(4) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(5) prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air and water pollution in this territory;

(6) encourage voluntary cooperation by persons and affected groups to achieve the purposes of Chapter 24.01 ASCA;

(7) encourage and conduct studies, investigations, and research relating to air contamination, air pollution, and water pollution and their causes, effects, prevention, abatement, and control;

(8) determine by means of field studies and sampling the degree of air contamination, air pollution, and water pollution in the territory;

(9) establish air and water quality standards for the territory;

(10) collect and disseminate information and conduct educational and training programs relating to air contamination, air pollution, and water pollution;

(11) advise, consult, contract, and cooperate with other agencies of the territory, industries, and the federal government, and with interested persons or groups;

(12) consult, upon request, with any person proposing to construct, install, or otherwise acquire an air or water contaminant source or device or system, or air or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with Chapter 24.01 ASCA rules in force pursuant thereto, or any other provision of law;

(13) accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions of Chapter 24.01 ASCA.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 1.05.

II. PERMITS

24.0107 Required when-Issuance legal conformity.

(a) The commission prohibits the construction or modification of any sources, installation, modification, or use of any equipment, device, or other article which may cause or contribute to air or water pollution or which is intended primarily to prevent or control the emission of air pollutants, or discharge of water pollutants unless a permit therefor has been obtained from the commission. The issuance of permits is to be in accordance with Chapter 4.10, ASCA.

(b) No person shall construct or modify any sources, install, modify, or use any equipment or device capable of causing or contributing to air or water pollution, or designed to prevent air or water pollution, without a permit from the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.01.

24.0108 Application-Forms.

Requests for permits shall be submitted to the commission on the forms provided to applicants by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.02.

24.0109 Application-Information accompanying.

The commission requires that applications for such permits be accompanied by plans, specifications, and such other information as it deems necessary.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.03.

24.0110 Application-Posting-Public hearing.

All applications will be publicly posted and public hearings will be held if requested by an interested party within 30 days of posting.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.04.

24.0111 Commission powers-Duration limit.

The commission may issue, suspend, revoke, or renew any permits required pursuant to this article, and in no case will issue permits exceeding 5 years in duration.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.05.

24.0112 Application distribution to other agencies.

Copies of all applications shall be forwarded to the Region IX Regional Administrator of the Environmental Protection Agency, to the local Coast Guard, and to the public health division of the department of Health.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.06.

24.0113 Application notice to ASG agencies -Recommendations.

The commission shall notify all appropriate ASG agencies and afford them opportunity to submit written recommendations.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.07.

24.0114 Objections precluding issuance.

No permit will be issued over the objection of the Regional Administrator of the Environmental Protection Agency, or if the Corps of Engineers or Coast Guard objects on the basis of navigation or anchorage.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.08.

24.0115 Modification- Termination.

Permits issued by the commission may be modified or terminated for cause, including but not limited to misrepresentation, or failure to disclose fully all relevant facts, or violation of the conditions of the permit, or change in any condition requiring either temporary or permanent reduction in permitted discharge.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.09.

24.0116 Issuance deadline-Preventive orders.

Within 90 days of the receipt of any application required pursuant to this article, the commission shall issue such permit unless it is determined that the proposed construction or modification will not be in accordance with Ch. 24.0 1 ASCA or rules promulgated thereunder, in which case an order shall be issued for the prevention of such construction or modification.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.10.

24.0117 Hearings on preventive orders.

In addition to any other remedies available on account of the issuance of any order prohibiting construction, installation, or establishment, and prior to invoking any such remedies, the person or persons aggrieved thereby shall, upon request in accordance with rules of the commission, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified, or withdrawn.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.11.

24.0118 Addition, enlargement, replacement defined.

For the purposes of this article, addition to or enlargement or replacement of an air or water contaminant source, or any major alteration therein, shall be construed as construction, installation, or establishment of a new air or water pollution source.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.12.

24.0119 Maintenance.

Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to this article shall be maintained in good working order.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.13.

24.0120 Brand names.

Nothing in this article shall be construed to authorize the commission to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices, or equipment otherwise available.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.14.

24.0121 Legal requirements unaffected.

The absence or failure to issue a rule, regulation, or order pursuant to this article shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 2.15.

III. TERRITORY-WIDE AIR POLLUTION SYSTEM

24.0125 Established-Pollution-source delay or prevention.

The commission establishes a territory-wide system under which a permit is required for the construction and operation of new sources of air pollution, and construction and operation, or modification to, existing sources. The commission may delay or prevent any construction, modification, or operation of air pollution sources which, in the opinion of the chairman, may cause the ambient air pollution level in the locality of such construction, modification, or operation to exceed limits for ambient concentration established by the American Samoa Territorial Implementation Plan promulgated pursuant to the Clean Air Act as amended, 42 U. S. C. 1875 et seq.; or which construction, modification, or operation would, in the opinion of the chairman, violate any provision of any land use plan established by the American Samoa Territorial Implementation Plan.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 3.01.

24.0126 Transportation-mode inspection and testing.

The commission may carry out a program of inspection testing of all modes of transportation to enforce the plans applicable to emission standards when necessary and practicable, and to control or limit the operation of motor vehicles and other modes of transportation when, in the opinion of the chairman, such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 3.02.

IV. INSPECTIONS, TESTING, SAMPLING AND MONITORING

24.0130 Right of entry-Inspection.

Any duly authorized officer, employee, or representative of the environmental quality commission may enter and inspect, during reasonable hours, any building or place except a building primarily designed for and used exclusively for a private residence for the purposes of investigating an actual suspected source of air or water pollution and ascertaining compliance or noncompliance with Chapter 24.01 ASCA and the rules issued pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.01.

24.0131 Sampling.

The commission may conduct tests and take samples of air and water contaminants, fuel, process materials, or other materials which affect or may affect emission or discharge of air or water pollution from any source and copy data maintained by the owner or operator of the premises relative to air or water pollution. Upon request of the commission, the person responsible for the source to be tested shall provide necessary holes in stacks, ducts, or pipes and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission or discharge of air or water pollution. If an authorized employee of the commission, during the course of an inspection, obtains a sample of air or water contaminant, fuel, process material, or other material he shall give the owner or operator of, the equipment or fuel facility a receipt for the sample obtained.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.02.

24.0132 Operator testing and monitoring- Power to require.

The commission may require the operator of a pollution source to install monitoring equipment and conduct tests, collect, monitor, maintain records and data, and submit reports on emission and discharge parameters specified by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 4.03.

V. EMISSION AND DISCHARGE STANDARDS

24.0135 Air.

The commission reaffirms the air pollution strategy contained in the air implementation plan for the territory, as that strategy is necessary to maintain high air quality within the territory. All federal rules, regulations, and law will also be strictly adhered to within the territory.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 5.01.

24.0136 Water.

Discharges into the waters of the territory must comply with all rules of the commission and "National Pollutant Discharge Elimination System Rules and Regulations" promulgated by the federal Environmental Protection Agency. All applicable NPDES forms will be used by the commission.

History: Env. Qual. Comm. Regs., eff prior to 1915, § 5.02.

VI. EMERGENCY PROCEDURES

24.0140 Order to abate-Hearing.

When the chairman of the commission finds that a generalized condition of air or water pollution exists or that emissions or discharges of one or more air or water contaminant sources is causing imminent danger to human health and safety and that it creates an emergency requiring immediate action to protect human health or safety, the chairman, with the concurrence of the Governor, shall order persons causing or contributing to the air or water pollution to reduce or discontinue immediately the emission or discharge of air contaminants or water pollutants, and such order shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the commission. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the commission shall affirm, modify, or set aside the order of the chairman.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 7.01.

24.0141 Suit to restrain.

Upon receipt of evidence that a pollution source or combination of sources is presenting imminent and substantial endangerment to the health of persons, the commission may bring a suit to immediately restrain any person causing or contributing to such pollution.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 7.02.

VII. HEARINGS AND JUDICIAL REVIEW

24.0145 Rulemaking hearing requirement.

No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice as provided in the Chapter 4.10 ASCA.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.01.

24.0146 Emergency orders.

Nothing in this article shall be construed to require a hearing prior to the issuance of an emergency order pursuant to 24.0 106 ASCA.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.02.

24.0147 Judicial review.

Any person aggrieved by an order of the commission may have judicial review thereof by filing a petition with the High Court of American Samoa no later than 20 days after being notified that the order has been entered. The petition shall seek an order by the High Court which directs the commission to modify or withdraw its order affecting the petitioner. It shall be granted only when the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.03.

24.0148 Injunction granting standard.

In the event the commission petitions the High Court for an injunction pursuant to 24.0152 ASCA, the High Court shall grant such injunction unless the High Court finds from a review of all the evidence which was before the commission that the commission acted arbitrarily or capriciously.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 8.04.

VIII. CONFIDENTIALITY OF RECORDS

24.0150 Confidentiality standard.

Any records, reports, or information obtained shall be available to the public, except that upon a showing satisfactory to the commission by any person that records, reports, or information, or a particular part thereof (other than emission or discharge data), to which the commission has access, if made public, would divulge production or sales figures or methods, processes, or production unique to such person, or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report, or information or particular portion thereof confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.01.

24.0151 Abstracted publication.

Nothing in this chapter shall be construed to prevent the use of such records or information by the commission in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere; provided, that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.02.

24.0152 Disclosure to enforce law.

Nothing in this chapter shall be construed to prevent disclosure of such reports, records, or information to federal, state, or local representatives as necessary for purposes of administration of any federal, state, or local air or water pollution control laws, or when relevant in any proceeding under Title 24 ASCA.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 9.03.

IX. ENFORCEMENT

For a sample form of an order or summons of the commission, see Appendix A to 24.01.

24.0155 Notice of violation-Order to correct-Hearing.

Whenever the commission has reason to believe that a violation of any provision of any rule pursuant to Chapter 24.01 ASCA has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provisions of Chapter 24.01 ASCA or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than ten days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing. In lieu of an order, the commission may require that the alleged violator or violators appear before the commission for a hearing at a time and place specified in the notice and answer the charges complained of, or the commission may initiate further action pursuant to the ASCA and all adopted rules of the commission.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.01.

24.0156 Action after hearing-Order content generally.

If, after a hearing held pursuant to 24.0115, the commission finds that a violation or violations have occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions or discharges involved or for the taking of such other corrective action as may be appropriate. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the emissions of discharges.

History: Env. Qual. Comm. Regs., eff prior 1975, § 6.02.

24.0157 Injunction enforcing order.

In the event the procedures outlined in 24.0155 and 24.0156 are followed and the offender fails to comply with the order issued by the commission, the commission, in addition to other remedies set out in this chapter, may apply to the High Court of American Samoa for an injunction requiring the offender to cease doing business until such time as the offender furnishes definitive plans and specifications, satisfactory to the commission, to show compliance with Chapter 24.01 ASCA, the rules pursuant thereto, and the orders of the commission. When the offender furnishes the plans called for under this section the commission shall immediately petition the High Court to lift such injunction.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.03.

24.0158 Voluntary compliance efforts.

Nothing shall prevent the commission from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.04.

24.0159 Violation-Penalty.

Penalties for violation of this chapter shall be the same as for the violation of Chapter 24.0 1 ASCA, as amended.

History: Env. Qual. Comm. Regs., eff prior to 1975, § 6.05.

APPENDIX A

SUMMONS SAMPLE FORM

No: _____

SUMMONS

Date _____

The undersigned member of the Environmental Quality Commission has been informed, and upon such information, has reason to believe that you, SAMPLE ONLY, may be found in violation of the Environmental Quality Act, Chapter 24.0 I ASCA. In addition to having the power to adopt, amend, and repeal rules and regulations to assure environmental quality, the Environmental Quality Commission may issue such orders as may be necessary to enforce the rules of the Commission.

The law further states that any person who violates any provision of the Act, or any rule or regulation enforced thereto, shall be subject to a fine not to exceed \$500, with each day of violation constituting a separate offense.

Therefore, under the powers of the American Samoa Code Annotated and the rules adopted by the Environmental Quality Commission, you are hereby ordered to implement the changes described below within 10 days. If corrective action is not take by that time, you shall become subject to further legal action. You may request a hearing before the Environmental Quality Commission by contacting the Office of the Governor within 10 days of the date of this order. If you have further questions concerning this summons notify the Environmental Quality Commission at the Office of the Governor.

Violator

Signature of Issuing Authority

Place of Offense.

Description of Offense.

Corrective Changes Required.

