

COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON THE ENVIRONMENT

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Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, April 30, 2009
1:40 p.m.

- - -

PRESENT:

COUNCILMAN JAMES F. KENNEY, CHAIR
COUNCILMAN FRANK DiCICCO
COUNCILMAN CURTIS JONES, JR.
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN FRANK RIZZO

BILL 090258 - An ordinance amending Sections
3-306 and 3-401 of Title 3 ("Air Management
Code") of The Philadelphia Code, to eliminate
dual licensing and permitting requirements on
air contaminant emitting facilities...

- - -

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2 COUNCILMAN KENNEY: Good
3 afternoon. The Committee on the
4 Environment is now in session to hear
5 testimony on Bill No. 090258.

6 We have a quorum.

7 Bill No. 090258 is an ordinance
8 amending Section 3-306 and 3-401 of Title
9 3 ("Air Management Code") of The
10 Philadelphia Code to eliminate dual
11 licensing and permitting requirements on
12 air contaminant emitting facilities, and
13 to clarify air pollution control
14 standards, all under certain terms and
15 conditions.

16 Whoever is here from the
17 Administration to testify, please
18 approach the witness stand.

19 (Witnesses approached witness
20 table.)

21 COUNCILMAN KENNEY: Please
22 identify yourself for the record. Please
23 pull the microphone close to you so we
24 can hear, and proceed with your
25 testimony.

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2 MR. HUYNH: Good afternoon. My
3 name is Thomas Huynh.

4 Chairman Kenney and members of
5 the Committee of the Environment, my name
6 is Thomas Huynh. I'm an Air Management
7 Service Director of the Department of
8 Public Health. Thank you for inviting me
9 to testify on Bill --

10 COUNCILMAN KENNEY: Excuse me,
11 sir. Is your testimony with us?

12 MR. HUYNH: Yes.

13 COUNCILMAN KENNEY: Okay.
14 Thank you. Please proceed.

15 MR. HUYNH: Thank you for
16 inviting me to testify on Bill No.
17 090258, which is an ordinance that will
18 amend Section 3-306 and 3-401 of Title 3
19 of the City Code, the Air Management
20 Code.

21 Air Management Services is the
22 agency of the City with the regulatory
23 responsibility to enforce federal, state
24 and local air quality standards in
25 entities that emit air pollutants in

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2 Philadelphia. The ordinance before you
3 today will amend two areas of the Code
4 that relate to the licensing and
5 permitting requirements of air
6 contaminant emitting facilities and to
7 the language of the air pollution control
8 standards.

9 The Department seeks to amend
10 Section 3-306, which will allow
11 compliance with license and permit
12 provisions of Section 3-400 to satisfy
13 compliance requirements of another
14 section of the Code, Section 3-306.
15 Philadelphia's original air program
16 requirements were established and adopted
17 in 1969 in Sections 3-100 through 3-300.
18 In 1995, Section 3-400 was adopted, which
19 recognized and authorized adoption of the
20 Commonwealth of Pennsylvania operating
21 air permit program, often referred to as
22 the Title V program. The Title V program
23 is effectively required by the federal
24 Clean Air Act. Before 1995, AMS issued
25 air pollution permit and licenses for

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2 each individual piece of equipment at
3 regulated facilities. As a result of the
4 federal Clean Air Act amendments of 1990,
5 the Commonwealth of Pennsylvania
6 substantially amended its own Air
7 Pollution Control Act to meet the federal
8 requirements. Section 3-400 of the City
9 Code substantially standardizes our
10 permit program to match the state's Plan
11 Approval and Operating Permit
12 requirements.

13 The Plan Approval and Operating
14 Permit provisions apply to larger sources
15 of air pollution and may allow applicants
16 to combine several pieces of equipment
17 into one Plan Approval and one Operating
18 Permit instead of requiring several
19 installation permits and operating
20 licenses for each piece of equipment. It
21 also includes a higher permit fee
22 structure that is applicable throughout
23 the state. As the City Code is currently
24 written, larger sources covered under the
25 latter more comprehensive Section 3-400

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2 are still also required to go through a
3 separate permit and/or licensing process
4 under the earlier Section 3-306,
5 notwithstanding that compliance under
6 Section 3-400 brings about the same
7 protections sought under Section 3-306.

8 Under the proposed amendment,
9 in cases where both Section 3-306 and
10 3-400 apply, AMS will perform one plan
11 approval or permit review and issue one
12 comprehensive Plan Approval or permit
13 pursuant to Section 3-400. Likewise,
14 under this amendment, the fee under the
15 more comprehensive state compliant
16 Section 3-400 will apply. In short, this
17 amendment will eliminate the redundant
18 requirements of Section 3-306 and 3-400,
19 eliminating unnecessary administrative
20 burdens without impacting environmental
21 objectives. It will also simplify the
22 air quality program from the perspective
23 of the regulated community, helping to
24 simplify the process of doing business in
25 Philadelphia.

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2 The second part of the Air
3 Management Code which the Department
4 seeks to amend is Section 3-401. The
5 original language in Section 3-401 of the
6 Code states its intent in Section
7 3-401(1) to set an air pollution control
8 program that is no less stringent and no
9 more stringent than the requirements of
10 the Commonwealth of Pennsylvania Air
11 Pollution Control Act. This was meant to
12 establish an operating permit program
13 that was consistent with the state
14 program without restricting the City's
15 pre-existing program requirements from
16 implementing provisions under those
17 requirements that were more stringent
18 than the state or federal requirements.
19 This is made clear in Section 3-401(2),
20 which states: Nothing in this section or
21 in the air pollution control program
22 adopted pursuant to this Section shall be
23 construed to repeal any more stringent
24 air pollution control provisions now or
25 hereafter enacted in other Sections of

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2 this Title or in any regulation adopted
3 pursuant to Section 3-302 or other
4 Section of this Title.

5 However, the language, as
6 written, has created some confusion and
7 misunderstanding by those entities
8 regulated by this section. Therefore,
9 the Department wishes to have the
10 language amended to help clarify the
11 requirements of our compliance program.
12 The Law Department has also advised AMS
13 in this regard, recommending the change
14 in order to preclude potential challenges
15 to any regulatory provisions or action of
16 the Department that are or may be
17 perceived to be more stringent than those
18 of the Commonwealth.

19 I wish to thank the members of
20 the Committee for your consideration for
21 this matter. I will be happy to answer
22 any questions that you might have.

23 COUNCILMAN KENNEY: Thank you
24 very much.

25 Sir, do you have anything to

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2 add?

3 MR. O'NEILL: No, sir. I'm
4 just here to help answer questions if you
5 need them. My name is Patrick O'Neill
6 and I'm the Divisional Deputy for
7 Environmental Law for the Law Department.

8 COUNCILMAN KENNEY: Fine.

9 Any questions for these
10 witnesses?

11 (No response.)

12 COUNCILMAN KENNEY: Seeing
13 none, thank you very much for your
14 testimony.

15 MR. HUYNH: Thank you.

16 COUNCILMAN KENNEY: Anyone else
17 to testify on this bill?

18 Please come forward.

19 (Witness approached witness
20 table.)

21 COUNCILMAN KENNEY: Please
22 identify yourself for the record.

23 MR. KEOUGH: Good afternoon,
24 Chairman Kenney. My name is Michael
25 Keough. I am the Treasurer for AFSCME

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2 Local 394. I'm here today with Warner
3 Topping, our Vice-President.

4 COUNCILMAN KENNEY: Please
5 proceed.

6 MR. KEOUGH: AFSCME Local 394
7 is against the separation of Synagro,
8 Philadelphia Biosolids Services,
9 Philadelphia Renewable Biofuels or any
10 other entity that they may be known as
11 from the Water Department's Southwest
12 Water Pollution Control Plant Title V
13 permit. While we understand this is a
14 contractual obligation, we feel this gave
15 Synagro an unfair advantage over the old
16 BRC, which has recently been given to
17 them to operate.

18 Local 394 gave testimony in
19 November 2006 and again in June 2008
20 about the pollution issues regarding this
21 and other similar plants throughout the
22 United States. We feel this contract is
23 a disservice to the community of Eastwick
24 and the taxpayers of Philadelphia.

25 I would like to leave you with

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2 a few questions to ponder.

3 Who is Philadelphia Renewable
4 Biofuels and why are they applying for
5 this permit, not PBS, which is
6 Philadelphia Biosolids Services?

7 The new engineering firm, King
8 Engineering, has built one 30-ton-per-day
9 pelletizer. What facility was used as a
10 baseline for this PBS operations
11 emissions?

12 Why are the emissions from the
13 proposed facilities much less than
14 Synagro's own pollution data used in
15 their proposal to the City?

16 If Synagro is a national leader
17 in the operation of these plants, why
18 didn't they have a handle on these
19 emission numbers?

20 And my last statement, all the
21 plants promoted by Synagro during their
22 lobbying efforts here in Council -
23 Pinellas, Florida; Baltimore, Maryland;
24 Sacramento, California; Honolulu,
25 Hawaii - the total product throughput

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2 from all these plants combined is only 60
3 percent the capacity of the Philadelphia
4 PBS plant. And last, but not least, the
5 State of New York is actively trying to
6 close the only facility on a par with
7 this facility. Why?

8 Thank you for your time and
9 have a good day.

10 COUNCILMAN KENNEY: Thank you
11 very much. I appreciate your testimony,
12 and I am aware of the union's position
13 relative to Synagro. What I'm confused
14 about is how this bill seems, to me
15 anyway from the testimony, to be kind of
16 meshing the state and city requirements
17 together to kind of streamline it in a
18 generic way, not specifically for Synagro
19 or for anyone else you may be opposed to
20 in the future. I assume that they would
21 be separate votes that Council would have
22 to take to do that, but this -- are you
23 opposed to the bill or --

24 MR. KEOUGH: We're opposed to
25 the separation of the two facilities,

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2 which is the bill, correct.

3 COUNCILMAN KENNEY: I

4 understand your opposition to Synagro and
5 I respect your position on it. I'm just
6 wondering how this bill -- this bill
7 seems to be more generically applied to
8 any other organization that wants to come
9 in and/or start a business here, and it
10 streamlines the administrative part of
11 it. How does that help your situation
12 relative to Synagro?

13 MR. KEOUGH: I understand that

14 the bill is to streamline the law to
15 allow this to happen. You are correct,
16 we are looking at this at one tiny
17 faction. If this bill is passed -- how
18 can I put this without -- if this bill is
19 passed, one of the first things that will
20 be done is this facility, and we have a
21 problem with that.

22 COUNCILMAN KENNEY: But we

23 still have to vote on this facility,
24 right?

25 MR. KEOUGH: That is correct.

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2 COUNCILMAN KENNEY: But I
3 wanted to make sure that no one was of
4 the opinion or position that somehow
5 passing this was approving Synagro.

6 MR. KEOUGH: Actually, that is
7 exactly what the thought was.

8 COUNCILMAN KENNEY: Can I get
9 some clarification from the Law
10 Department or the Administration on --
11 could you please come up for the record.

12 (Witnesses approached witness
13 table.)

14 COUNCILMAN KENNEY: You've
15 heard the conversation back and forth.
16 Perhaps you could talk -- again, just
17 state your name one more time for the
18 record.

19 MR. O'NEILL: If I may, Patrick
20 O'Neill. I'm the Divisional Deputy for
21 Environmental Law for the City, and I
22 assisted in actually drafting the
23 original portion at issue, 3-400, of the
24 Code and in this amendment.

25 The simplest answer here

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2 probably is that the way that Synagro
3 would get treated is exactly the same
4 without this bill being passed or with it
5 being passed. The legal implication, the
6 permit conditions, none of that should
7 change at all.

8 COUNCILMAN KENNEY: How many
9 other companies or how many other
10 potential businesses in the City, if this
11 were passed, could go through this
12 streamlined process?

13 MR. O'NEILL: Well, if I can
14 clarify, to be fair, it doesn't really
15 streamline the process. The process is
16 going to remain the same. The only two
17 things that are happening is that we're
18 clarifying -- in one portion we're
19 clarifying the fact that AMS has always
20 had a portion of the Code that is more
21 stringent than what is known as Title V
22 of the Clean Air Act. That's the
23 section -- the second change, 3-401, that
24 says the Code -- where it currently
25 states in the Code "to set an air

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2 pollution control program that is no less
3 stringent and no more stringent than the
4 requirements of the Commonwealth." And
5 the point here is to eliminate the "no
6 more stringent than" language, and the
7 reason for that is that as the Code is
8 already written, that's how it works.

9 There are parts of the Philadelphia Air
10 Management Code that are more stringent
11 than state requirements, and that's the
12 way it's always been, that's the way
13 we've interpreted the statute, and we
14 think that's the way it should be. The
15 problem is that every once in a while
16 when we're in the process of a compliance
17 program or an enforcement program,
18 somebody points out to this and says, Oh,
19 you're not allowed to do anything more
20 stringent than the state, and we say,
21 Well, if you actually look at the rest of
22 that section, it says, in Section 2,
23 "nothing in this section or in the air
24 pollution control program adopted shall
25 be construed to repeal any more stringent

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2 air pollution control provisions now or
3 hereinafter enacted under this Section of
4 the Title." So that remains the same.

5 COUNCILMAN KENNEY: So it
6 permits our stringent code?

7 MR. O'NEILL: Yes.

8 COUNCILMAN KENNEY: So why do
9 we need the bill?

10 MR. O'NEILL: Because we get
11 this confusion all the time where people
12 look at that first sentence in Section 1
13 of 3-401(1).

14 I understand, if people read
15 that, they read it by itself and they
16 say, Okay, this program is to be no more
17 stringent than the requirements of the
18 Commonwealth, and they don't get down to
19 the second part, and, frankly -- there
20 are two problems. One is, they raise
21 that all the time and --

22 COUNCILMAN KENNEY: Who are
23 "they"? Give me some examples.

24 MR. O'NEILL: Companies that we
25 regulate and that may be enforced

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2 against. I mean, I don't know if you
3 want me to name the names of --

4 COUNCILMAN KENNEY: Could you
5 give me kind of the types of businesses.

6 MR. O'NEILL: Oh, sure.
7 Refineries, chemical plants, auto body
8 shops.

9 MR. HUYNH: Chemical
10 manufacturing plant, utility.

11 MR. O'NEILL: Pretty much
12 anybody with a significant enough amount
13 of emissions that they might be subject
14 to the Title V program.

15 COUNCILMAN KENNEY: I mean, not
16 that you were giving testimony on behalf
17 of the union, but can you tell me as to
18 why you would think they think that this
19 somehow accelerates Synagro?

20 MR. O'NEILL: I have no idea,
21 other than Synagro has submitted a
22 permit, a Title V permit application,
23 which is currently being considered by
24 Air Management Services.

25 COUNCILMAN KENNEY: And if this

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2 bill were passed, how would that affect
3 that process?

4 MR. O'NEILL: Not at all.

5 COUNCILMAN KENNEY:

6 Councilwoman Brown.

7 COUNCILWOMAN BROWN: Thank you.

8 Thank you, Mr. Chairman.

9 And, therefore, because this
10 bill goes to impact other industries like
11 you stated, refineries, auto body shops
12 and the like, the bill then becomes
13 universal and not just directed at the
14 entity in question, Synagro?

15 MR. O'NEILL: Right. A, it's
16 absolutely universal, and, B, it's really
17 more about straightening out some
18 confusing language in the statute. As a
19 matter of process, AMS already processes
20 permits in this fashion and would
21 continue to do so.

22 COUNCILWOMAN BROWN: And due to
23 go in effect when?

24 MR. O'NEILL: I assume whenever
25 you folks -- whenever the Council passes

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2 it.

3 COUNCILWOMAN BROWN: Thank you
4 for your testimony.

5 COUNCILMAN KENNEY: Thank you
6 very much.

7 Any other questions for this
8 witness?

9 (No response.)

10 COUNCILMAN KENNEY: Any other
11 questions for any witness?

12 (No response.)

13 COUNCILMAN KENNEY: What I
14 think we're going to do is get the bill
15 out of Committee without suspension and
16 have some more discussion. I want to
17 kind of move the process forward.

18 I do believe that we're going
19 to have, I'm sure, a full-blown debate on
20 Synagro at some point in time, and
21 Councilmembers could make their decision
22 on that as they see fit based on input
23 from the union, input from the
24 Administration, but I think that this
25 should maybe move forward one baby step

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2 so that we're helping to do what you want
3 to do on all the other stuff.

4 That concludes our hearing.

5 The Chair recognizes
6 Councilmember Blondell Reynolds Brown for
7 a motion to report the bill out of
8 Committee favorably.

9 COUNCILWOMAN BROWN: Surely,
10 Mr. Chairman. I move that Bill No.
11 090258 be moved out of Committee with a
12 favorable recommendation.

13 (Duly seconded.)

14 COUNCILMAN KENNEY: It's been
15 moved and seconded.

16 All in favor?

17 (Aye.)

18 COUNCILMAN KENNEY: Are there
19 any opposed?

20 (No response.)

21 COUNCILMAN KENNEY: There are
22 none opposed. Bill No. 090258 will be
23 reported out of this Committee favorably.

24 Thank you for your attention
25 and your cooperation in the hearing.

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2 (Councilman Jones indicated to
3 the court reporter that he was voting no
4 on Bill No. 090258.)

5 (Committee on the Environment
6 concluded at 2:00 p.m.)

7 - - -

1
2 CERTIFICATE

3 I HEREBY CERTIFY that the
4 proceedings, evidence and objections are
5 contained fully and accurately in the
6 stenographic notes taken by me upon the
7 foregoing matter on April 30, 2009, and that
8 this is a true and correct transcript of same.

9
10
11
12
13
14 _____
15 MICHELE L. MURPHY
16 RPR-Notary Public
17
18

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20 transcript does not apply to any reproduction
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