

## BURNT Challenges Metro Air Permit Power

In June 2008, BURNT entered the initial challenge to Metro's right to issue and regulate air pollution permits. This important power ["Certificate of Exemption"] allows Metro (and Memphis, Chattanooga, and Knoxville) to exercise air permitting and regulating powers as passed through the Federal and State Government. The *Federal Clean Air Act* requires Metropolitan Government to comply with many procedural and due process provisions such as Public Hearings, due process, and decision making which the Metro Health Board (and Metro Department of Law) flaunted. Metropolitan government must enforce the regulations it has, even if more stringent than State or Federal law. *Tennessee .Code Annotated . 68-211-115(b)(3)* requires the State to determine if Metro has or will enforce it's regulations. Unique to many citizen complaints, standing is not an issue—the State must make this determination every two years. The only issue is if Metro has enforced the regulations it has.

In our June 2008 letter to The State Air Pollution control Board, BURNT alleged Metropolitan Nashville and Davidson County Government

—violated Conflict of Interest laws as defined by the *Federal Clean Air Act, Section 7429* by regulating and permitting the downtown incinerator Metro owned, designed, and operated by Metropolitan government.

—The incinerator burned down in a fire following years of non-compliance

— The Board flagrantly ignored *Metro Code 10.56.050(B)* requiring the board to regulate 24 hour diesel truck traffic Sylvan Heights Neighborhood—the egregious noise and diesel truck operations of North American Galvanizing were ignored by the Board and Metro Department of Law to create a 'business friendly' atmosphere in our city

—violated requirements for Public Hearings and appeals in multiple hearings

—horrendous Conflict of Interest by the Department of Law selling out to lawyers for the Metro owned incinerator

—very inappropriate representation of the Board and the Director by one attorney representing Metropolitan Government in a contested case hearing of a decision by the Director to the Board.

“Conduct of Boards are universal problems in Tennessee and Nashville. Boards never have independent staff or lawyers. The result is mostly mediocre work by inattentive Boards now aware of their responsibilities to citizens, the law, or the environment” said BURNT’s Bruce Wood.”

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The next Step is to petition the State Air Pollution Control Board for a "Declaratory Order' under provision the Administrative Code--*Tennessee Code Annotated 4-5-223*. If a contested case is denied by the State Board, or the decision is adverse following a contested case, then the case may go to Chancery Court under the criteria of a Writ of Certiorari--was the action of the State Air Board in not granting a hearing or an adverse hearing illegal, arbitrary, or capricious.

The Link to Tennessee Code Annotated is

<http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode>

The link to the Metropolitan Air Code Chapter 10.56 is (**search for "Chapter 10.56"**)

<http://www.municode.com/resources/gateway.asp?pid=14214&sid=42>

**SEE attached files–**

June 2008 Letter to State Air Board and May 2008 letter to State Board

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