

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2196

Session of
1991

INTRODUCED BY HAYDEN, DeWEESE, BOWLEY, EVANS, DONATUCCI, VEON,
LEVDANSKY AND MICHLOVIC, NOVEMBER 19, 1991

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 16, 1992

AN ACT

1 ~~Amending the act of January 8, 1960 (1959 P.L.2119, No.787),~~ <—
2 ~~entitled, as amended, "An act to provide for the better~~
3 ~~protection of the health, general welfare and property of the~~
4 ~~people of the Commonwealth by the control, abatement,~~
5 ~~reduction and prevention of the pollution of the air by~~
6 ~~smokes, dusts, fumes, gases, odors, mists, vapors, pollens~~
7 ~~and similar matter, or any combination thereof; imposing~~
8 ~~certain powers and duties on the Department of Environmental~~
9 ~~Resources, the Environmental Quality Board and the~~
10 ~~Environmental Hearing Board; establishing procedures for the~~
11 ~~protection of health and public safety during emergency~~
12 ~~conditions; creating a stationary air contamination source~~
13 ~~permit system; providing additional remedies for abating air~~
14 ~~pollution; reserving powers to local political subdivisions,~~
15 ~~and defining the relationship between this act and the~~
16 ~~ordinances, resolutions and regulations of counties, cities,~~
17 ~~boroughs, towns and townships; imposing penalties for~~
18 ~~violation of this act; and providing for the power to enjoin~~
19 ~~violations of this act; and conferring upon persons aggrieved~~
20 ~~certain rights and remedies," adding and amending certain~~
21 ~~definitions; further providing for the powers and duties of~~
22 ~~the Department of Environmental Resources, the Environmental~~
23 ~~Quality Board and the Environmental Hearing Board; further~~
24 ~~providing for plans and permits; providing for certain fees~~
25 ~~and civil penalties, for acid control and for hazardous air~~
26 ~~pollutants; further providing for certain procedures;~~
27 ~~providing for compliance; establishing the Compliance~~
28 ~~Advisory Panel and providing for its powers and duties;~~
29 ~~further providing for enforcement, for criminal and civil~~
30 ~~penalties and for the abatement and restraint of violations;~~
31 ~~and making editorial changes.~~

32 AMENDING THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787), <—

1 ENTITLED, AS AMENDED, "AN ACT TO PROVIDE FOR THE BETTER
2 PROTECTION OF THE HEALTH, GENERAL WELFARE AND PROPERTY OF THE
3 PEOPLE OF THE COMMONWEALTH BY THE CONTROL, ABATEMENT,
4 REDUCTION AND PREVENTION OF THE POLLUTION OF THE AIR BY
5 SMOKES, DUSTS, FUMES, GASES, ODORS, MISTS, VAPORS, POLLENS
6 AND SIMILAR MATTER, OR ANY COMBINATION THEREOF; IMPOSING
7 CERTAIN POWERS AND DUTIES ON THE DEPARTMENT OF ENVIRONMENTAL
8 RESOURCES, THE ENVIRONMENTAL QUALITY BOARD AND THE
9 ENVIRONMENTAL HEARING BOARD; ESTABLISHING PROCEDURES FOR THE
10 PROTECTION OF HEALTH AND PUBLIC SAFETY DURING EMERGENCY
11 CONDITIONS; CREATING A STATIONARY AIR CONTAMINATION SOURCE
12 PERMIT SYSTEM; PROVIDING ADDITIONAL REMEDIES FOR ABATING AIR
13 POLLUTION; RESERVING POWERS TO LOCAL POLITICAL SUBDIVISIONS,
14 AND DEFINING THE RELATIONSHIP BETWEEN THIS ACT AND THE
15 ORDINANCES, RESOLUTIONS AND REGULATIONS OF COUNTIES, CITIES,
16 BOROUGHs, TOWNS AND TOWNSHIPS; IMPOSING PENALTIES FOR
17 VIOLATION OF THIS ACT; AND PROVIDING FOR THE POWER TO ENJOIN
18 VIOLATIONS OF THIS ACT; AND CONFERRING UPON PERSONS AGGRIEVED
19 CERTAIN RIGHTS AND REMEDIES," ADDING AND AMENDING CERTAIN
20 DEFINITIONS; FURTHER PROVIDING FOR THE POWERS AND DUTIES OF
21 THE DEPARTMENT OF ENVIRONMENTAL RESOURCES, THE ENVIRONMENTAL
22 QUALITY BOARD AND THE ENVIRONMENTAL HEARING BOARD; FURTHER
23 PROVIDING FOR PLANS AND PERMITS; PROVIDING FOR CERTAIN FEES
24 AND CIVIL PENALTIES, FOR ACID CONTROL, FOR HAZARDOUS AIR
25 POLLUTANTS AND FOR CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM
26 GASOLINE DISPENSING FACILITIES; FURTHER PROVIDING FOR CERTAIN
27 PROCEDURES; PROVIDING FOR COMPLIANCE; ESTABLISHING THE
28 COMPLIANCE ADVISORY PANEL AND PROVIDING FOR ITS POWERS AND
29 DUTIES; FURTHER PROVIDING FOR ENFORCEMENT, FOR CRIMINAL AND
30 CIVIL PENALTIES AND FOR THE ABATEMENT AND RESTRAINT OF
31 VIOLATIONS; AND MAKING EDITORIAL CHANGES.

32 The General Assembly of the Commonwealth of Pennsylvania
33 hereby enacts as follows:

34 ~~Section 1. Section 2 of the act of January 8, 1960 (1959~~ <—
35 ~~P.L.2119, No.787), known as the Air Pollution Control Act,~~
36 ~~amended June 12, 1968 (P.L.163, No.92), is amended to read:~~

37 ~~Section 2. Declaration of Policy. It is hereby declared to~~
38 ~~be the policy of the Commonwealth of Pennsylvania to protect the~~
39 ~~air resources of the Commonwealth to the degree necessary for~~
40 ~~the (i) protection of public health, safety and well being of~~
41 ~~its citizens; (ii) prevention of injury to plant and animal life~~
42 ~~and to property; (iii) protection of the comfort and convenience~~
43 ~~of the public and the protection of the recreational resources~~
44 ~~of the Commonwealth; [and] (iv) development, attraction and~~
45 ~~expansion of industry, commerce and agriculture[.]; and (v)~~

1 ~~implementation of the provisions of the Clean Air Act in the~~
2 ~~Commonwealth.~~

3 ~~Section 2. Section 3 of the act, amended October 26, 1972~~
4 ~~(P.L.989, No.245), is amended to read:~~

5 ~~Section 3. Definitions. The following words and phrases,~~
6 ~~when used in this act, unless the context clearly indicates~~
7 ~~otherwise, shall have the meaning ascribed to them in this~~
8 ~~section:~~

9 ~~{(1) "Department." Department of Environmental Resources of~~
10 ~~the Commonwealth of Pennsylvania.~~

11 ~~(2) "Board." The Environmental Quality Board established in~~
12 ~~the department by the act of December 3, 1970 (P.L.834).~~

13 ~~(2.1) "Hearing board." The Environmental Hearing Board~~
14 ~~established in the department by the act of December 3, 1970~~
15 ~~(P.L.834).~~

16 ~~(3) "Person." Any individual, public or private corporation~~
17 ~~for profit or not for profit, association, partnership, firm,~~
18 ~~trust, estate, department, board, bureau or agency of the~~
19 ~~Commonwealth, political subdivision, municipality, district,~~
20 ~~authority or any other legal entity whatsoever which is~~
21 ~~recognized by law as the subject of rights and duties.~~

22 ~~(4) "Air contaminant." Smoke, dust, fume, gas, odor, mist,~~
23 ~~vapor, pollen, or any combination thereof.~~

24 ~~(5) "Air pollution." The presence in the outdoor atmosphere~~
25 ~~of any form of contaminant including but not limited to the~~
26 ~~discharging from stacks, chimneys, openings, buildings,~~
27 ~~structures, open fires, vehicles, processes, or any other source~~
28 ~~of any smoke, soot, fly ash, dust, cinders, dirt, noxious or~~
29 ~~obnoxious acids, fumes, oxides, gases, vapors, odors, toxic or~~
30 ~~radioactive substances, waste, or any other matter in such~~

~~place, manner, or concentration inimical or which may be
inimical to the public health, safety, or welfare or which is,
or may be injurious to human, plant or animal life, or to
property, or which unreasonably interferes with the comfortable
enjoyment of life or property.~~

~~(6) "Air contamination." The presence in the outdoor
atmosphere of an air contaminant which contributes to any
condition of air pollution.~~

~~(7) "Air contamination source." Any place, facility or
equipment, stationary or mobile, at, from or by reason of which
there is emitted into the outdoor atmosphere any air
contaminant.~~

~~(8) "Stationary air contamination source." Any air
contamination source other than that which, when operated, moves
in a given direction under its own power.~~

~~(9) "Region." Any geographical subdivision of the
Commonwealth whose boundaries shall be determined by the board.~~

~~(10) "Approved air pollution control agency." An air
pollution control agency of any political subdivision of the
Commonwealth which has been granted approval by the board.]~~

~~"Administrator." The Administrator of the United States
Environmental Protection Agency.~~

~~"Air contaminant." Smoke, dust, fume, gas, odor, mist,
radiation, vapor, pollen, or any combination thereof.~~

~~"Air contamination." The presence in the outdoor atmosphere
of an air contaminant which contributes to any condition of air
pollution.~~

~~"Air contamination source." Any place, facility or
equipment, stationary or mobile, at, from or by reason of which
there is emitted into the outdoor atmosphere any air~~

1 ~~contaminant.~~

2 ~~"Air pollution." The presence in the outdoor atmosphere of~~
3 ~~any form of contaminant including but not limited to the~~
4 ~~discharging from stacks, chimneys, openings, buildings,~~
5 ~~structures, open fires, vehicles, processes, or any other source~~
6 ~~of any smoke, soot, fly ash, dust, cinders, dirt, noxious or~~
7 ~~obnoxious acids, fumes, oxides, gases, vapors, odors, toxic,~~
8 ~~hazardous or radioactive substances, waste, or any other matter~~
9 ~~in such place, manner, or concentration inimical or which may be~~
10 ~~inimical to the public health, safety, or welfare or which is,~~
11 ~~or may be injurious to human, plant or animal life, or to~~
12 ~~property, or which unreasonably interferes with the comfortable~~
13 ~~enjoyment of life or property.~~

14 ~~"Approved air pollution control agency." An air pollution~~
15 ~~control agency of any political subdivision of the Commonwealth~~
16 ~~which has been granted approval by the board.~~

17 ~~"Board." The Environmental Quality Board.~~

18 ~~"Clean Air Act." Public Law 95-95, 42 U.S.C. 7401 et seq.~~

19 ~~"Department." The Department of Environmental Resources of~~
20 ~~the Commonwealth.~~

21 ~~"Environmental Protection Agency." The United States~~
22 ~~Environmental Protection Agency or the Administrator of the~~
23 ~~United States Environmental Protection Agency.~~

24 ~~"Hearing board." The Environmental Hearing Board.~~

25 ~~"Person." Any individual, public or private corporation for~~
26 ~~profit or not for profit, association, partnership, firm, trust,~~
27 ~~estate, department, board, bureau or agency of the Commonwealth~~
28 ~~or the Federal government, political subdivision, municipality,~~
29 ~~district, authority or any other legal entity whatsoever which~~
30 ~~is recognized by law as the subject of rights and duties.~~

~~"Plan approval." The written approval from the Department of Environmental Resources which authorizes a person to construct, assemble, install or modify any stationary air contamination source, install thereon any air pollution control equipment or device or reactivate any air contamination source after said source has been out of operation or production for a period of one year or more.~~

~~"Region." Any geographical subdivision of the Commonwealth whose boundaries shall be determined by the board.~~

~~"State Implementation Plan." The plan that a state is authorized and required to submit under section 110 of the Clean Air Act (Public Law 95-95, 42 U.S.C. 7410) to provide for attainment of the national ambient air quality standards.~~

~~"Stationary air contamination source." Any air contamination source other than that which, when operated, moves in a given direction under its own power.~~

~~Section 3. Section 4 of the act, amended October 26, 1972 (P.L.989, No.245) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:~~

~~Section 4. Powers and Duties of the Department of Environmental Resources. The department shall have power and its duty shall be to—~~

~~(1) Implement the provisions of the Clean Air Act in the Commonwealth, including the enforcement of the requirements that the Commonwealth is authorized to implement or enforce under the Clean Air Act.~~

~~[(1)] (2) Enter any building, property, premises or place and inspect any air contamination source for the purpose of investigating an actual or a suspected source of air pollution or for the purpose of ascertaining the compliance or non-~~

1 ~~compliance with [any rule or regulation which may have been~~
2 ~~adopted and promulgated by the board hereunder.] this act, the~~
3 ~~Clean Air Act, any rule or regulation promulgated under either~~
4 ~~this act or the Clean Air Act, any plan approval, permit or~~
5 ~~order of the department.~~ In connection with such inspection or
6 investigation, samples of air, air contaminants, fuel, process
7 material or other matter may be taken for analysis, a duplicate
8 of the analytical report shall be furnished promptly to the
9 person who is suspected of causing such air pollution or air
10 contamination.

11 ~~[(2)] (3)~~ Have access to, and require the production of,
12 books [and], papers and records, including, but not limited to,
13 ~~computerized records~~ pertinent to any matter under
14 investigation.

15 ~~[(2.1)] (4)~~ Require the owner or operator of any air
16 contamination source to establish and maintain such records and
17 make such reports and furnish such information as the department
18 may reasonably prescribe.

19 ~~[(2.2)] (5)~~ Require the owner or operator of any air
20 contamination source to install, use and maintain such air
21 contaminant monitoring equipment or methods as the department
22 may reasonably prescribe.

23 ~~[(2.3)] (6)~~ Require the owner or operator of any air
24 contamination source to sample the emissions thereof in
25 accordance with such methods and procedures and at such
26 locations and intervals of time as the department may reasonably
27 prescribe and to provide the department with the results
28 thereof.

29 ~~[(3)] (7)~~ Enter upon any property on which an air
30 contamination source may be located and make such tests upon the

1 ~~source as are necessary to determine whether the air~~
2 ~~contaminants being emitted from such air contamination source~~
3 ~~are being emitted at a rate in excess of a rate provided for by~~
4 ~~[board rule or regulation] this act, the Clean Air Act, any rule~~
5 ~~or regulations promulgated under either this act or the Clean~~
6 ~~Air Act, any plan approval, permit or order of the department or~~
7 ~~otherwise causing air pollution. Whenever the department~~
8 ~~determines that a source test is necessary, it shall give~~
9 ~~reasonable written or oral notice to the person owning,~~
10 ~~operating, or otherwise in control of such source, that [it] the~~
11 ~~department will conduct a test on such source. Thereafter, the~~
12 ~~person to whom such notice is given shall provide such~~
13 ~~reasonably safe access to the testing area, and such sampling~~
14 ~~[holes] ports, facilities, electrical power and water as the~~
15 ~~department shall specify in its notice.~~

16 ~~[(4)] (8) Receive, initiate and investigate complaints,~~
17 ~~institute and conduct surveys and testing programs, conduct~~
18 ~~general atmospheric sampling programs, make observations of~~
19 ~~conditions which may or do cause air pollution, make tests or~~
20 ~~other determinations at air contamination sources, and assess~~
21 ~~the degree of abatement required.~~

22 ~~[(4.1)] (9) (i) Issue orders to any person owning or~~
23 ~~operating an air contamination source, or owning or possessing~~
24 ~~land on which such source is located, if such source is~~
25 ~~introducing or is likely to introduce air contaminants into the~~
26 ~~outdoor atmosphere in excess of any [board rule or regulation,~~
27 ~~or any permit requirement] rate provided for by this act, the~~
28 ~~Clean Air Act, any rule or regulation promulgated under either~~
29 ~~this act or the Clean Air Act, any plan approval or permit~~
30 ~~applicable to such source, or at such a level so as to cause air~~

1 ~~pollution. Any such order may require the cessation of any~~
2 ~~operation or activity which is introducing air contaminants into~~
3 ~~the outdoor atmosphere so as to cause air pollution, the~~
4 ~~reduction of emissions from such air contamination source,~~
5 ~~modification or repair of such source or air pollution control~~
6 ~~device or equipment or certain operating and maintenance~~
7 ~~procedures with respect to such source or air pollution control~~
8 ~~device or equipment, institution of a process change,~~
9 ~~installation of air pollution control devices or equipment, or~~
10 ~~any or all of said requirements as the department deems~~
11 ~~necessary. Such orders may specify a time for compliance,~~
12 ~~require submission of a proposed plan for compliance, and~~
13 ~~require submission of periodic reports concerning compliance. If~~
14 ~~a time for compliance is given, the department may, in its~~
15 ~~discretion, require the posting of a bond in the amount of twice~~
16 ~~the money to be expended in reaching compliance.~~

17 ~~(ii) All department orders shall be in writing, contain~~
18 ~~therein a statement of the reasons for their issuance, and be~~
19 ~~served either personally or by certified mail. Within thirty~~
20 ~~(30) days after service of any such order the person to whom the~~
21 ~~order is issued or any other person aggrieved by such order may~~
22 ~~file with the hearing board an appeal setting forth with~~
23 ~~particularity the grounds relied upon. An appeal to the hearing~~
24 ~~board of the department's order shall not act as a supersedeas.~~
25 ~~Provided, however, That upon application and for cause shown,~~
26 ~~the hearing board may issue such a supersedeas.~~

27 ~~[(5)] (10) Institute, in a court of competent jurisdiction~~
28 ~~proceedings to compel compliance with [any] this act, the Clean~~
29 ~~Air Act, any rule or regulation promulgated under either this~~
30 ~~act or the Clean Air Act, plan approval, permit or order of the~~

~~department [from which there has been no appeal or which has
been sustained on appeal].~~

~~[(6)] (11) Act as the agent for the board in holding public
hearings when so directed by the board.~~

~~[(7)] (12) Institute prosecutions under this act.~~

~~[(8)] (13) Recommend the minimum job qualifications of
personnel employed by county and municipal air pollution control
agencies hereafter created.~~

~~[(9)] (14) Require the submission of, and consider for
approval, plans and specifications of air pollution control
equipment, devices or process changes, and inspect such
installations or modifications to insure compliance with the
plans which have been approved.~~

~~[(10)] (15) Conduct or cause to be conducted studies and
research with respect to air contaminants, their nature, causes
and effects, and with respect to the control, prevention,
abatement and reduction of air pollution and air contamination.~~

~~[(10.1)] (16) Evaluate motor vehicle emission control
programs, including vehicle emission standards, clean
alternative fuels, oxygenated fuels, reformulated fuels, vehicle
miles of travel, congestion levels, transportation control
measures and other transportation control strategies with
respect to their effect upon air pollution and determine the
need for modifications of such programs.~~

~~[(11)] (17) Determine by means of field studies and sampling
the degree of air pollution existing in any part of the
Commonwealth.~~

~~[(12)] (18) Prepare and develop a general comprehensive plan
for the control and abatement of existing air pollution and air
contamination and for the abatement, control and prevention of~~

1 ~~any new air pollution and air contamination, recognizing varying~~
2 ~~requirements for the different areas of the Commonwealth, and to~~
3 ~~submit a comprehensive plan to the board for its consideration~~
4 ~~and approval.~~

5 ~~[(13)] (19) Encourage the formulation and execution of plans~~
6 ~~in conjunction with air pollution control agencies or civil~~
7 ~~associations of counties, cities, boroughs, towns and townships~~
8 ~~of the Commonwealth wherein any sources of air pollution or air~~
9 ~~contamination may be located, and enlist the cooperation of~~
10 ~~those who may be in control of such sources for the control,~~
11 ~~prevention and abatement of such air pollution and air~~
12 ~~contamination.~~

13 ~~[(14)] (20) Encourage voluntary efforts and cooperation by~~
14 ~~all persons concerned in controlling, preventing, abating and~~
15 ~~reducing air pollution and air contamination.~~

16 ~~[(15)] (21) Conduct and supervise educational programs with~~
17 ~~respect to the control, prevention, abatement and reduction of~~
18 ~~air pollution and air contamination, including the preparation~~
19 ~~and distribution of information relating to the means of~~
20 ~~controlling and preventing such air pollution and air~~
21 ~~contamination.~~

22 ~~[(16)] (22) Develop and conduct in cooperation with local~~
23 ~~communities demonstration programs relating to air contaminants,~~
24 ~~air pollution and air contamination and the control, prevention,~~
25 ~~abatement and reduction of air pollution and air contamination.~~

26 ~~[(17)] (23) Provide advisory technical consultative services~~
27 ~~to local communities for the control, prevention, abatement and~~
28 ~~reduction of air pollution and air contamination.~~

29 ~~[(18)] (24) Cooperate with the appropriate agencies of the~~
30 ~~United States or of other states or any interstate agencies with~~

1 ~~respect to the control, prevention, abatement and reduction of~~
2 ~~air pollution, and where appropriate formulate interstate air~~
3 ~~pollution control compacts or agreements for the submission~~
4 ~~thereof to the General Assembly.~~

5 ~~[(19)] (25) Serve as the agency of the Commonwealth for the~~
6 ~~receipt of moneys from the Federal government or other public or~~
7 ~~private agencies, and expend such moneys for studies and~~
8 ~~research with respect to air contaminants, air pollution and the~~
9 ~~control, prevention, abatement and reduction of air pollution.~~

10 ~~(26) Develop and submit to the Environmental Protection~~
11 ~~Agency a procedure to implement and enforce the regulations~~
12 ~~which the Environmental Protection Agency adopts under section~~
13 ~~183(c) of the Clean Air Act to reduce emissions from consumer~~
14 ~~and commercial products.~~

15 ~~[(20)] (27) Do any and all other acts and things not~~
16 ~~inconsistent with any provision of this act, which it may deem~~
17 ~~necessary or proper for the effective enforcement of this act,~~
18 ~~the Clean Air Act, and the rules or regulations [which have~~
19 ~~been] promulgated [thereunder] under either this act or the~~
20 ~~Clean Air Act.~~

21 ~~Section 4. Section 4.1 of the act, added December 2, 1976~~
22 ~~(P.L.1263, No.279), is amended to read:~~

23 ~~Section 4.1. Agricultural Regulations Prohibited. [The]~~
24 ~~Except as may be required by the Clean Air Act or the~~
25 ~~regulations promulgated under the Clean Air Act, the~~
26 ~~Environmental Quality Board shall not have the power nor the~~
27 ~~authority to adopt rules and regulations relating to air~~
28 ~~contaminants and air pollution arising from the production of~~
29 ~~agricultural commodities in their unmanufactured state but shall~~
30 ~~not include the use of materials produced or manufactured off~~

1 ~~the premises of the farm operation.~~

2 ~~Section 5. The act is amended by adding a section to read:~~

3 ~~Section 4.2. Powers and Duties of Department of Commerce.~~

4 ~~There is hereby established a Small Business Stationary Source~~
5 ~~Technical and Environmental Compliance Assistance Program as~~
6 ~~required by section 507 of the Clean Air Act within the~~
7 ~~Department of Commerce.~~

8 ~~Section 6. Sections 5 and 6 of the act, amended October 26,~~
9 ~~1972 (P.L.989, No.245), are amended to read:~~

10 ~~Section 5. Environmental Quality Board. The board shall~~
11 ~~have the power and its duty shall be to—~~

12 ~~(1) Adopt rules and regulations, for the prevention,~~
13 ~~control, reduction and abatement of air pollution, applicable~~
14 ~~throughout the Commonwealth or to such parts or regions or~~
15 ~~subregions thereof specifically designated in such regulation~~
16 ~~which shall be applicable to all air contamination sources~~
17 ~~regardless of whether such source is required to be under permit~~
18 ~~by this act. Such rules and regulations may establish maximum~~
19 ~~allowable emission rates of air contaminants from such sources,~~
20 ~~prohibit or regulate the combustion of certain fuels, prohibit~~
21 ~~or regulate open burning, prohibit or regulate any process or~~
22 ~~source or class of processes or sources, require the~~
23 ~~installation of specified control devices or equipment, or~~
24 ~~designate the control efficiency of air pollution control~~
25 ~~devices or equipment required in specific processes or sources~~
26 ~~or classes of processes or sources. Such rules and regulations~~
27 ~~shall be adopted pursuant to the provisions of the act of July~~
28 ~~31, 1968 (P.L.769), known as the "Commonwealth Documents Law,"~~
29 ~~upon such notice and after such public hearings as the board~~
30 ~~deems appropriate. In exercising its authority to adopt rules~~

1 ~~and regulations, the board may, and to the extent deemed~~
2 ~~desirable by it shall, consult with a council of technical~~
3 ~~advisers, properly qualified by education or experience in air~~
4 ~~pollution matters, appointed by the board and to serve at the~~
5 ~~pleasure of the board, to consist of such number of advisers as~~
6 ~~the board may appoint, but such technical advisers shall receive~~
7 ~~no compensation, other than their actual and necessary expenses,~~
8 ~~for their services to the board.~~

9 ~~(2) Establish and publish maximum quantities of air~~
10 ~~contaminants that may be permitted under various conditions at~~
11 ~~the point of use from any air contaminant source in various~~
12 ~~areas of the Commonwealth so as to control air pollution.~~

13 ~~(3) By [the] rule or regulation, classify air contaminant~~
14 ~~sources, according to levels and types of emissions and other~~
15 ~~characteristics which relate to air pollution. Classifications~~
16 ~~made pursuant to this subsection shall apply to the entire~~
17 ~~Commonwealth or any part thereof. Any person who owns or~~
18 ~~operates an air contaminant source of any class to which the~~
19 ~~rules and regulations of the board under this subsection apply,~~
20 ~~shall make reports containing information as may be required by~~
21 ~~the board concerning location, size and height of air~~
22 ~~contaminant outlets, processes employed, fuels used and the~~
23 ~~nature and time periods or duration of emissions, and such other~~
24 ~~information as is relevant to air pollution and available or~~
25 ~~reasonably capable of being assembled.~~

26 ~~(4) Recommend to the Secretary of Transportation performance~~
27 ~~or specification standards, or both, for emission control~~
28 ~~systems and devices on motor vehicles.~~

29 ~~(5) Adopt rules and regulations for the protection of public~~
30 ~~health and safety for periods when the accumulation of air~~

1 ~~contaminants in any area is attaining or has attained levels~~
2 ~~which, if sustained or exceeded, could lead to an acute threat~~
3 ~~to the health of the public. Such rules and regulations shall~~
4 ~~contain appropriate procedures to protect public health and~~
5 ~~safety during such periods.~~

6 ~~(6) Adopt rules and regulations for the approval and the~~
7 ~~recision and suspension of approval of local air pollution~~
8 ~~control agencies.~~

9 ~~(7) Adopt rules and regulations designed to reduce emissions~~
10 ~~from motor vehicles, including vehicle emission standards, clean~~
11 ~~alternative fuels, oxygenated fuels, reformulated fuels, vehicle~~
12 ~~miles of travel, transportation control measures and other~~
13 ~~transportation control strategies. Such rules and regulations~~
14 ~~shall be developed in consultation with the Department of~~
15 ~~Transportation.~~

16 ~~(8) Adopt rules and regulations to implement the~~
17 ~~provisions of the Clean Air Act. The rules and regulations~~
18 ~~adopted to implement the provisions of the Clean Air Act~~
19 ~~shall be consistent with the requirements of the Clean Air~~
20 ~~Act and the regulation adopted thereunder.~~

21 ~~(9) Adopt rules and regulations to exempt sources or~~
22 ~~categories of sources of minor significance from the~~
23 ~~provisions of section 6.1.~~

24 ~~Section 6. Environmental Hearing Board. The hearing board~~
25 ~~shall have the power and its duty shall be to hear and determine~~
26 ~~all appeals from [orders issued by] appealable actions of the~~
27 ~~department as defined in the act of July 13, 1988 (P.L.530,~~
28 ~~No.94), known as the "Environmental Hearing Board Act," in~~
29 ~~accordance with the provisions of this act. Any and all action~~
30 ~~taken by the hearing board with reference to any such appeal~~

1 shall be in the form of an adjudication, and all such action
2 shall be subject to the provisions of [the act of June 4, 1945
3 (P.L.1388), known as the "Administrative Agency Law."] 2 Pa.C.S.
4 (relating to administrative law and procedure).

5 Section 7. ~~Section 6.1 of the act, added October 26, 1972~~
6 ~~(P.L.989, No.245) and repealed in part April 28, 1978 (P.L.202,~~
7 ~~No.53), is amended to read:~~

8 Section 6.1. Plan Approvals and Permits. (a) [On or after
9 July 1, 1972, no] ~~No person shall construct, assemble, install~~
10 ~~or modify any stationary air contamination source, or install~~
11 ~~thereon any air pollution control equipment or device or~~
12 ~~reactivate any air contamination source after said source has~~
13 ~~been out of operation or production for a period of one year or~~
14 ~~more unless such person has applied to and received [from the~~
15 ~~department] written plan approval [so to do] from the department~~
16 ~~to do so:~~ Provided, however, That no such written approval shall
17 be necessary with respect to normal routine maintenance
18 operations, nor to any such source, equipment or device used
19 solely for the supplying of heat or hot water to one structure
20 intended as a one family or two family dwelling, [or with
21 respect to any other class of units as the board, by rule or
22 regulation, may exempt from the requirements of this section.]
23 nor where construction, assembly, installation or modification
24 is specifically authorized by the rules or regulations of the
25 department to be conducted without written approval. All
26 applications for approval shall be made in writing and shall be
27 on such forms and contain such information as the department
28 shall prescribe and shall have appended thereto detailed plans
29 and specifications related to the proposed installation.

30 (b) ~~(1)~~ No person shall operate any stationary air

1 ~~contamination source [which is subject to the provisions of~~
2 ~~subsection (a) of this section] unless the department shall have~~
3 ~~issued to such person a permit to operate such source under the~~
4 ~~provisions of this section in response to a written application~~
5 ~~for a permit submitted on forms and containing such information~~
6 ~~as the department may prescribe[.] or where construction,~~
7 ~~assembly, installation modification is specifically authorized~~
8 ~~by the rules or regulations of the department to be conducted~~
9 ~~without written approval. The department shall provide public~~
10 ~~notice and the right to comment on all permits prior to issuance~~
11 ~~or denial and may hold public hearings concerning any permit.~~

12 ~~(2) [No permit shall] A permit may be issued after the~~
13 ~~effective date of this amendment to any applicant [unless it~~
14 ~~appears that, with respect to the source,] for a stationary air~~
15 ~~contamination source requiring construction, assembly,~~
16 ~~installation, modification or reactivation, where the~~
17 ~~requirements of subsection (a) of this section have been met and~~
18 ~~[that] there has been performed upon such source a test~~
19 ~~operation or evaluation which shall satisfy the department that~~
20 ~~the air contamination source will not discharge into the outdoor~~
21 ~~atmosphere any air contaminants at a rate in excess of that~~
22 ~~permitted by applicable regulation of the board, or in violation~~
23 ~~of any performance or emission standard or other requirement~~
24 ~~established by the Environmental Protection Agency or the~~
25 ~~department for such source, and which will not cause air~~
26 ~~pollution.~~

27 ~~(3) A stationary air contamination source operating lawfully~~
28 ~~without a permit for which fees required by section 6.3 of this~~
29 ~~act or the regulations promulgated under this act have been paid~~
30 ~~is authorized to continue to operate without a permit until one~~

~~hundred twenty (120) days after the department provides notice to the source that a permit is required or until November 1, 1995, whichever occurs first. If the applicant submits a complete permit application within the time frames in this subsection, and the department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by section 6.3 of this act or the regulations promulgated under this act have been paid and the source is operated in conformance with this act, the Clean Air Act and the regulations promulgated under both this act and the Clean Air Act. For any performance or emission standard or other requirement established by the Environmental Protection Agency or the department for the source subsequent to the effective date of this act but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act. For purposes of this subsection, a source is operating lawfully without a permit where it is a source for which no permit was previously required and the source is operating in compliance with all applicable regulatory requirements.~~

~~(4) For repermitting of any stationary air contamination source which is operating under a valid permit on the effective date of this act or which has received a permit under the provisions of clauses (2) and (3) of this subsection and which is required to meet performance or emission standards or other requirements established subsequent to the issuance of the existing permit, the new permit may contain a compliance~~

~~schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act.~~

~~(b.1) [Permits] A permit or plan approval issued hereunder may contain such terms and conditions as the department deems necessary to assure the proper operation of the source. [Each permittee, on or before the anniversary date set forth in his permit, shall submit to the department an annual report containing such information as the department shall prescribe relative to the operation and maintenance of the installation under permit.~~

~~(c) Any permit issued hereunder may be revoked or suspended if the permittee operates the source subject to the permit in such a manner as to be in violation of the conditions of any permit or rule or regulation of the board or in such a manner as to cause air pollution, if the permittee fails to properly or adequately maintain or repair any air pollution control device or equipment attached to or otherwise made a part of the source, or if the permittee has failed to submit any annual report as required under this section.~~

~~(d) The department may refuse to grant approval for any stationary air contamination source subject to the provisions of subsection (a) of this section or to issue a permit to operate such source if it appears, from the data available to the department, that the proposed source, or proposed changes in such source, are likely either to cause air pollution or to violate any board rule or regulation applicable to such source, or if, in the design of such source, no provision is made for~~

~~adequate facilities to conduct source testing. The department may also refuse to issue a permit to any person who has constructed, installed or modified any air contamination source, or installed any air pollution control equipment or device on such source contrary to the plans and specifications approved by the department.] Each permittee, on a schedule established by the department, shall submit reports to the department containing such information as the department may prescribe relative to the operation and maintenance of the source.~~

~~(b.2) A permit issued or reissued under subsection (b) of this section shall be for a fixed term not to exceed five (5) years except that a permit for acid deposition control shall be issued for a five (5) year term. A permit may be terminated, modified, suspended or revoked and reissued for cause. The terms and conditions of an expired permit are automatically continued pending the issuance of a new permit where the permittee has submitted a timely and complete application for a new permit and paid the fees required by section 6.3 of this act or the regulations promulgated under this act and the department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit. Failure of the department to issue or deny a new permit prior to the expiration date of the previous permit shall be an appealable action as described in section 10.2 of this act.~~

~~(c) A plan approval or permit issued hereunder may be terminated, modified, suspended or revoked and reissued if the permittee constructs or operates the source subject to the plan approval or permit in such a manner as to be in violation of this act, the Clean Air Act, the regulations promulgated under either this act or the Clean Air Act, a plan approval or permit~~

~~or in such a manner as to cause air pollution, if the permittee fails to properly or adequately maintain or repair any air pollution control device or equipment attached to or otherwise made a part of the source, if the permittee has failed to submit any report as required under this section or if the Environmental Protection Agency determines that the permit is not in compliance with the requirements of the Clean Air Act or the regulations promulgated under the Clean Air Act.~~

~~(d) The department may refuse to grant plan approval for any stationary air contamination source subject to the provisions of subsection (a) of this section or to issue a permit to any source that the department determines is likely to cause air pollution or to violate this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act applicable to such source, or if, in the design of such source, no provision is made for adequate facilities to conduct source testing. The department may also refuse to issue a permit or may for cause terminate or revoke and reissue any permit to any person if the Environmental Protection Agency determines that the permit is not in compliance with the requirements of the Clean Air Act or the regulations promulgated under the Clean Air Act or if the applicant has constructed, installed, modified or operated any air contamination source or installed any air pollution control equipment or device on such source contrary to the plans and specifications approved by the department.~~

~~(e) Whenever the department shall refuse to grant an approval or to issue or reissue a permit hereunder or terminate, modify, suspend or revoke a plan approval or permit already issued, such action shall be in the form of a written notice to the person affected thereby informing him of the action taken by~~

~~the department and setting forth, in such notice, a full and complete statement of the reasons for such action. Such notice shall be served upon the person affected, either personally or by certified mail, and the action set forth in the notice shall be final and not subject to review unless, within thirty (30) days of the service of such notice, any person affected thereby shall appeal to the hearing board, setting forth with particularity the grounds relied upon. The hearing board shall hear the appeal pursuant to the provisions of the rules and regulations relating to practice and procedure before the hearing board, and thereafter, shall issue an adjudication affirming, modifying or overruling the action of the department.~~

~~[(f) The board may, by rule, require the payment of a reasonable fee, not to exceed two hundred dollars (\$200.00), for the processing of any application for plan approval or for an operating permit under the provisions of this section.]~~

~~(g) The department may, by regulation, establish a general plan approval and a general permit program. After the program is established, the department may grant general plan approval or a general permit for any category of stationary air contamination source if the department determines that the sources in such category are similar in nature, and can be adequately regulated using standardized specifications and conditions. Any applicant proposing to use a general plan approval or general permit shall notify the department and receive written approval prior to the proposed use.~~

~~(h) The department may, by regulation, establish a plan approval and permit program for stationary sources operated at multiple temporary locations. After the program is established, the department may grant a plan approval or issue a single~~

~~permit to any stationary air contamination source that may be operated at multiple temporary locations. Such approval or permit shall require the owner or operator to notify the department and municipality where the operation shall take place in advance of each change in location and may require a separate application and permit or approval fee for operations at each location. Any applicant proposing to use the plan approval or permit authorized by this subsection shall notify the department and receive written approval prior to the proposed use.~~

~~(i) The department shall establish comprehensive plan approval and operating permit programs which, at a minimum, meet the requirements of the Clean Air Act.~~

~~Section 8. Section 6.2 of the act, added October 26, 1972 (P.L.989, No.245), is amended to read:~~

~~Section 6.2. Emergency Procedure. (a) Any other provision of law to the contrary notwithstanding, if the department finds, in accordance with the rules and regulations of the board adopted under the provisions of clause (5) of section 5 of this act, that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department, with the concurrence of the Governor, shall order or direct persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.~~

~~* * *~~

~~Section 9. The act is amended by adding sections to read:~~

~~Section 6.3. Fees. (a) The department is authorized to establish fees for all air contamination sources in the Commonwealth. Except as provided in subsection (b) of this section, fees established under this section shall at a minimum~~

~~cover the direct and indirect cost of administering the air pollution control plan approval, permit and related monitoring, analysis, modeling, tracking and enforcement program in the Commonwealth, including the permitting program required by Title V of the Clean Air Act. In establishing fees, the department may consider the size of the air contamination source, the resources necessary to process the application for plan approval or a permit, the complexity of the plan approval or permit, the quantity and type of emissions from the source and other relevant factors.~~

~~(b) Until alternative fees are established by the department under subsection (a) of this section, stationary air contamination sources shall pay the following interim fees:~~

~~(1) Two hundred dollars (\$200.00) for the processing of any application for plan approval.~~

~~(2) Two hundred dollars (\$200.00) for the processing of any application for an operating permit.~~

~~(3) (i) For each facility with one hundred (100) or more tons of sulfur dioxide, nitrogen oxides, particulate matter of ten (10) microns or less or volatile organic compounds emitted annually, a fee of seventeen dollars (\$17.00) per ton emitted of each of these pollutants.~~

~~(ii) In determining the amount each facility is to pay, the facility is not required to include any amount of a pollutant listed above emitted by the facility in excess of four thousand (4,000) tons per year of that listed pollutant. This shall not alter the reporting requirements of the facility.~~

~~(iii) The twenty five dollar (\$25.00) per ton fee shall be payable starting with emissions occurring in calendar year 1991. Each facility subject to the fee shall report its emissions and~~

~~pay the fee within one hundred twenty (120) days after receipt of a reporting form from the department or by September 1 of each year for the emissions from the preceding year, whichever occurs first.~~

~~(c) No fee shall be payable by any State entity or political subdivision in relation to any publicly owned or operated facility.~~

~~(d) Any air contamination source that fails to pay the fees within the time frame established by this section shall pay a penalty of fifty per centum of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the date the fee was required to be paid. In addition, such source may have its permit terminated or suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1 of this act.~~

~~(e) Any fees, penalties and interest owed the Commonwealth for delinquent payment collected under this section shall be deposited in a special account in the Clean Air Fund and shall be utilized solely to cover a portion of the direct and indirect costs of the plan approval, permit and related monitoring, analysis, modeling, tracking and enforcement programs established by this act and the regulations promulgated under this act as well as for air pollution prevention. The fee established under subsection (a) of this section to cover the cost of the permitting program under Title V of the Clean Air Act shall generate sufficient funds to cover all direct and indirect costs required to develop and administer the Title V operating permit program and shall only be expended for that~~

1 ~~purpose.~~

2 ~~(f) (1) The fee established under subsection (a) of this~~
3 ~~section to cover the cost of the permitting program under Title~~
4 ~~V of the Clean Air Act shall be not less than twenty five~~
5 ~~dollars (\$25.00) per ton of each regulated pollutant or such~~
6 ~~other amount as the department may determine adequately reflects~~
7 ~~the reasonable costs of the permit program.~~

8 ~~(2) In determining the amount under clause (1) of this~~
9 ~~subsection, the department is not required to include any amount~~
10 ~~of regulated pollutant emitted by any air contamination source~~
11 ~~in excess of four thousand (4,000) tons per year of that~~
12 ~~regulated pollutant. This shall not alter the reporting~~
13 ~~requirements of the source.~~

14 ~~(3) The fee calculated under clause (1) of this subsection~~
15 ~~shall be increased in each year beginning in 1991 by the~~
16 ~~percentage, if any, by which the Consumer Price Index for the~~
17 ~~most recent calendar year exceeds the Consumer Price Index for~~
18 ~~the calendar year 1989. For purposes of this clause:~~

19 ~~(i) the Consumer Price Index for any calendar year is the~~
20 ~~average of the Consumer Price Index for All Urban Consumers,~~
21 ~~published by the United States Department of Labor, as of the~~
22 ~~close of the twelve (12) month period ending on August 31 of~~
23 ~~each calendar year; and~~

24 ~~(ii) the revision of the Consumer Price Index which is most~~
25 ~~consistent with the Consumer Price Index for calendar year 1989~~
26 ~~shall be used.~~

27 ~~(4) As used in this subsection, the term "regulated~~
28 ~~pollutant" shall mean:~~

29 ~~(i) a volatile organic compound;~~

30 ~~(ii) each pollutant regulated under sections 111 and 112 of~~

~~the Clean Air Act; and~~

~~(iii) each pollutant for which a national primary ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.~~

~~Section 6.4. Fee for Certain Ozone Areas. (a) If an area identified in a State Implementation Plan or any revision as a severe or extreme ozone nonattainment area has failed to meet the national primary ambient air quality standard for ozone by the applicable attainment date, each major source of volatile organic compounds (VOCs), as defined in the Clean Air Act and the regulations promulgated under the Clean Air Act, located in the area shall, except with respect to emissions during any year treated as an extension year under section 181(a)(5) of the Clean Air Act, pay a fee to the department as a penalty for such failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. This fee shall be assessed and collected following the process for collection and assessment of a civil penalty contained in section 9.1 of this act.~~

~~(b) (1) The fee shall equal five thousand dollars (\$5,000.00), adjusted in accordance with clause (3) of this subsection, per ton of VOC emitted by the source during the calendar year in excess of eighty per centum of the baseline amount, computed under clause (2) of this subsection. The fee shall be in addition to all other fees required to be paid by the source.~~

~~(2) (i) For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the administrator may provide, as the lower of the amount of actual VOC emissions (referred to as actuals) or VOC emissions allowed~~

~~under the permit applicable to the source or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (referred to as allowables) during the attainment year.~~

~~(ii) Notwithstanding subclause (i) of this clause, the administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. This guidance may provide that the average calculation for a specific source may be used if that source's emissions are irregular, cyclical or otherwise vary significantly from year to year.~~

~~(3) The fee amount under clause (1) of this subsection shall be adjusted annually, beginning 1991 in accordance with section 6.3(c) and (e)(3).~~

~~Section 6.5. Acid Deposition Control. (a) The department is authorized to develop a permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act and to submit it to the administrator for approval.~~

~~(b) For purposes of the permit program authorized under subsection (a) of this section, the definitions in sections 402 and 501 of the Clean Air Act are incorporated herein by reference.~~

~~(c) The owner or operator or the designated representative of each source affected under section 405 of the Clean Air Act shall submit a permit application and compliance plan for the affected source to the department no later than January 1, 1996. In the case of affected sources for which application and plans are timely received, the permit application and the compliance plan, including amendments thereto, shall be binding on the~~

~~owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this section until a permit is issued by the department. Any permit issued by the department shall require the source to achieve compliance as soon as possible but no later than the date required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act for the source.~~

~~(d) At any time after the submission of a permit application and compliance plan, the applicant may submit a revised application and compliance plan. In considering any permit application and compliance plan under this section, the department shall coordinate with the Pennsylvania Public Utility Commission consistent with requirements that may be established by the administrator.~~

~~(e) In addition to other provisions, permits issued by the department shall prohibit all of the following:~~

~~(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator or designated representative hold for the unit.~~

~~(2) Exceedances of applicable emissions rates or standards, including ambient air quality standards.~~

~~(3) The use of any allowance prior to the year for which it is allocated.~~

~~(4) Contravention of any other provision of the permit.~~

~~Section 6.6. Hazardous Air Pollutants. (a) The regulations establishing performance or emission standards promulgated under section 112 of the Clean Air Act are incorporated by reference into the department's permitting program. After the effective date of the performance or emission standard, new,~~

~~reconstructed, modified and existing sources shall comply with the performance or emission standards pursuant to the compliance schedule established under section 112 of the Clean Air Act and the regulations promulgated under the Clean Air Act.~~

~~(b) In the event the administrator has not promulgated a standard to control the emissions of hazardous air pollutants for a category or subcategory of major sources under section 112 of the Clean Air Act, the department shall have the authority to establish a performance or emission standard on a case by case basis for individual sources or a category of sources. Any person challenging the performance or emission standards established by the department shall have the burden to demonstrate by clear and convincing evidence that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act. The department shall incorporate the standard to control the emissions of hazardous air pollutants into the plan approval or operating permit of any source within the category or subcategory. At a minimum, the performance or emission standard established on a case by case basis by the department shall be equivalent to the limitation that would apply to the source if a performance or emission standard had been promulgated by the administrator under section 112 of the Clean Air Act.~~

~~(c) Nothing in this section shall alter or otherwise affect the department's existing authority to prevent air pollution from hazardous air pollutants by regulation or on a case by case basis during the department's review of a plan approval or operating permit application.~~

~~Section 7.1 Compliance Review. (a) The department shall not issue, reissue or modify any plan approval or permit~~

~~pursuant to this act or amend any plan approval or permit issued under this act and may suspend, terminate or revoke any permit or plan approval previously issued under this act if it finds that the applicant or permittee or a partner, parent or subsidiary corporation of the applicant or permittee is in violation of this act, or the rules and regulations promulgated under this act, any plan approval, permit or order of the department, as indicated by the department's compliance docket, unless the violation is being corrected to the satisfaction of the department.~~

~~(b) The department may refuse to issue any plan approval or permit pursuant to this act if it finds that the applicant or permittee or a partner, parent or subsidiary corporation of the applicant or permittee has shown a lack of intention or ability to comply with this act or the regulations promulgated under this act or any plan approval, permit or order of the department, as indicated by past or present violations, unless the lack of intention or ability to comply is being or has been corrected to the satisfaction of the department.~~

~~Section 7.2. Permit Compliance Schedules. In addition to the other enforcement provisions of this act, the department may issue a permit under section 6.1(b)(3) and (4) of this act to a source that is out of compliance with this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act. Any such permit must contain an enforceable schedule requiring the source to attain compliance. The compliance schedule may contain interim milestone dates for completing any phase of the required work, as well as a final compliance date, and shall contain stipulated penalties for failure to meet the compliance schedule. If the permittee fails~~

~~to achieve compliance by the final compliance date, the permit shall terminate. The permit shall be part of an overall resolution of the outstanding noncompliance and shall include the payment of an appropriate civil penalty for past violations and shall contain such other terms and conditions as the department deems appropriate. A permit may incorporate by reference a compliance schedule contained within a consent order and agreement, including all provisions related to implementation or enforcement of the compliance schedule or consent order and agreement.~~

~~Section 7.3. Responsibilities of Owners and Operators. (a) Whenever the department finds that air pollution or danger of air pollution is or may be resulting from an air contamination source in the Commonwealth, the department may order the owner, operator, landowner or occupier to take corrective action in a manner satisfactory to the department, or it may order the owner, operator, landowner or occupier to allow access to the land by the department or a third party to take such action.~~

~~(b) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, the department may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in section 9.1 of this act.~~

~~Section 7.4. Compliance Advisory Committee. (a) There is hereby established the Compliance Advisory Committee pursuant to section 507 of the Clean Air Act.~~

~~(b) The Compliance Advisory Committee shall perform all of the following:~~

~~(1) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered and degree and severity of enforcement.~~

~~(2) Make periodic reports to the administrator concerning the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.~~

~~(3) Review information for small business stationary sources to assure such information is understandable by the layperson.~~

~~(4) Have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.~~

~~(c) The committee shall consist of 11 members as follows:~~

~~(1) Four members appointed by the Governor, three of whom shall not be owners, or representatives of owners of small business stationary sources.~~

~~(2) Four members, each of whom shall be an owner or the representative of an owner of a small business stationary source. Of these four members, one shall be appointed by each of the following:~~

~~(i) The Majority Leader of the Senate.~~

~~(ii) The Minority Leader of the Senate.~~

~~(iii) The Majority Leader of the House of Representatives.~~

~~(iv) The Minority Leader of the House of Representatives.~~

~~(3) The Secretary of Commerce or his designee.~~

~~(4) The Secretary of Environmental Resources or his designee.~~

~~(5) The Small Business Advocate or his designee.~~

~~(d) The terms of appointed members shall be for four years.~~

~~Vacancies shall be filled by the original appointing for the remainder of the unexpired term. Initial terms of appointed members shall be as follows:~~

~~(1) Of the members appointed by the Governor under subsection (c)(1), two members shall be appointed for two years and two members shall be appointed for four years.~~

~~(2) Of the members appointed under subsection (c)(2), the Majority Leader of the Senate shall appoint one member for four years, the Minority Leader of the Senate shall appoint one member for two years, the Majority Leader of the House of Representatives shall appoint one member for three years and the Minority Leader of the House of Representatives shall appoint one member for one year.~~

~~Section 10. Sections 8, 9, 9.1 and 9.2 of the act, amended or added October 26, 1972 (P.L.989, No.245), are amended to read:~~

~~Section 8. Unlawful Conduct. It shall be unlawful to fail to comply with [any rule or regulation of the board], or to cause or assist in the violation of, any of the provisions of this act, the Clean Air Act or the rules and regulations adopted under either this act or the Clean Air Act; or to fail to comply with any order, plan approval, permit or other requirement of the department[, to violate or to assist in the violation of any of the provisions of this act or rules and regulations adopted hereunder, to cause air pollution, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the department or its personnel in the performance of any duty hereunder.] or to cause a public~~

~~1 nuisance; or to cause air pollution, soil or water pollution
2 resulting from an air pollution incident; or to hinder,
3 obstruct, prevent or interfere with the department or its
4 personnel in their performance of any duty hereunder, including
5 denying the department access to the source or facility; or to
6 violate the provisions of 18 Pa.C.S. § 4903 (relating to false
7 swearing) or 4904 (relating to unsworn falsification to
8 authorities) in regard to papers required to be submitted under
9 this act. The owner or operator of an air contamination source
10 and the landowner or occupier on whose land an air contamination
11 source is or was located shall not allow pollution of the air,
12 water or other natural resources of the Commonwealth resulting
13 from the source.~~

~~14 [Section 9. Penalties.—(a) Summary offense. Any person as
15 herein defined, except a department, board, bureau or agency of
16 the Commonwealth, engaging in unlawful conduct as set forth in
17 section 8 of this act, shall, for each offense, upon conviction
18 thereof in a summary proceeding before a district justice,
19 magistrate, alderman or justice of the peace, be sentenced to
20 pay the costs of prosecution and a fine of not less than one
21 hundred dollars (\$100.00) nor more than one thousand dollars
22 (\$1,000.00), and, in default thereof, to undergo imprisonment of
23 not less than ten (10) days nor more than thirty (30) days.~~

~~24 (b) Misdemeanors. Any person as herein defined, except a
25 department, board, bureau or agency of the Commonwealth, who,
26 within two years after being convicted of a summary offense
27 pursuant to subsection (a) of this section, engages in similar
28 unlawful conduct, shall be guilty of a misdemeanor and, upon
29 conviction thereof, shall, for each separate offense, be subject
30 to a fine of not less than five hundred dollars (\$500.00) nor~~

~~more than five thousand dollars (\$5,000.00), or to imprisonment for a period of not more than one year for each separate offense hereunder, or both. For the purposes of this subsection, similar unlawful conduct shall mean a violation of the same order of the department, or a violation of the same provision of any rule or regulation of the department by the same organizational unit of the defendant.~~

~~(c) For the purpose of this section, violations on separate days shall be considered separate offenses. Where a person engages in continuing unlawful conduct, such person shall be guilty of separate offenses for each day such conduct continues up until the time of hearing or trial.~~

~~(d) Upon conviction of an association, partnership or corporation of an offense under subsection (a) or (b) of this section, the responsible members, officers, employees or agents may be imprisoned for the term provided therein which shall run concurrently with any term of imprisonment imposed upon such persons individually upon conviction for the same offense.~~

~~Section 9.1. Civil Penalties. In addition to proceeding under any other remedy available at law, or in equity, for a violation of a provision of this act, or a rule or regulation of the board, or an order of the department, the hearing board, after hearing, may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed ten thousand dollars (\$10,000.00), plus up to two thousand five hundred dollars (\$2,500.00) for each day of continued violation. In determining the amount of the civil penalty, the hearing board shall consider the wilfulness of the violation, damage or injury to the outdoor atmosphere of the~~

1 ~~Commonwealth or its uses, and other relevant factors. It shall~~
2 ~~be payable to the Commonwealth of Pennsylvania and shall be~~
3 ~~collectible in any manner provided at law for the collection of~~
4 ~~debt. If any person liable to pay any such penalty neglects or~~
5 ~~refuses to pay the same after demand, the amount, together with~~
6 ~~interest and any costs that may accrue, shall be a lien in favor~~
7 ~~of the Commonwealth upon the property, both real and personal,~~
8 ~~of such person, but only after same has been entered and~~
9 ~~docketed of record by the prothonotary of the county where such~~
10 ~~is situated. The hearing board may, at any time, transmit to the~~
11 ~~prothonotaries of the respective counties certified copies of~~
12 ~~all such liens, and it shall be the duty of each prothonotary to~~
13 ~~enter and docket the same of record in his office, and to index~~
14 ~~the same as judgments are indexed, without requiring the payment~~
15 ~~of costs as a condition precedent to the entry thereof.}~~

16 ~~Section 9. Penalties. (a) Any person who violates any~~
17 ~~provision of this act, the Clean Air Act, any rule or regulation~~
18 ~~adopted under either this act or the Clean Air Act, any order of~~
19 ~~the department or any condition or term of any plan approval or~~
20 ~~permit issued pursuant to this act commits a summary offense and~~
21 ~~shall, upon conviction, be sentenced to pay a fine of not less~~
22 ~~than five hundred dollars (\$500.00) nor more than five thousand~~
23 ~~dollars (\$5,000.00) for each separate offense, and, in default~~
24 ~~of the payment of such fine, may be sentenced to imprisonment~~
25 ~~for ninety (90) days for each separate offense. Employees of the~~
26 ~~department authorized to conduct inspections or investigations~~
27 ~~are hereby declared to be law enforcement officers authorized to~~
28 ~~issue or file citations for summary violations under this act,~~
29 ~~and the General Counsel is hereby authorized to prosecute these~~
30 ~~offenses. For purposes of this subsection, a summary offense may~~

~~be prosecuted before any district justice in the county where the offense occurred. There is no accelerated rehabilitative disposition authorized for a summary offense.~~

~~(b) (1) Any person who wilfully or negligently violates any provision of this act, the Clean Air Act, any rule or regulation adopted under either this act or the Clean Air Act, any order of the department or any condition or term of any plan approval or permit issued pursuant to this act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than ten thousand dollars (\$10,000.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.~~

~~(2) Any person who knowingly makes any false statement or representation in any application, record, report, certification or other document required to be either filed or maintained by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than ten thousand dollars (\$10,000.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.~~

~~(3) Any person who negligently releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613) that is not listed in section 112 of the Clean Air Act and who at the time negligently places another person in imminent danger~~

~~of death or serious bodily injury commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than ten thousand dollars (\$10,000.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than one (1) year for each separate offense, or both.~~

~~(c) (1) Any person who knowingly releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 that is not listed in section 112 of the Clean Air Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury commits a felony of the first degree and shall, upon conviction, be sentenced to pay a fine of not less than twenty five thousand dollars (\$25,000.00) nor more than one hundred thousand dollars (\$100,000.00) per day for each violation or to imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or both. Any person which is an organization committing such violation shall, upon conviction under this clause, be subject to a fine of not more than one million dollars (\$1,000,000.00) per day for each violation. If a conviction of any person under this clause is for a violation committed after a first conviction of such person under this clause, the maximum punishment shall be doubled with respect to both the fine and imprisonment.~~

~~(2) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury:~~

~~(i) the defendant is responsible only for actual awareness~~

~~or actual belief possessed; and~~

~~(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant; except that, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.~~

~~(3) It is an affirmative defense to a prosecution under this subsection that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:~~

~~(i) An occupation, a business or a profession, and the person had been made aware of the risks involved prior to giving consent.~~

~~(ii) Medical treatment or medical or scientific experimentation conducted by professionally approved methods, and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subclause by a preponderance of the evidence.~~

~~(4) For purposes of this subsection, the term "organization" means a legal entity, other than a government, established or organized for any purpose, and the term includes a corporation, a company, an association, a firm, a partnership, a joint stock company, a foundation, an institution, a trust, a society, a union or any other association of persons.~~

~~(d) For purposes of subsections (b) and (c), the term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or~~

~~impairment of the function of a bodily member, organ or mental faculty.~~

~~(c) Upon conviction of an association, partnership or corporation of an offense under subsection (a), (b) or (c) of this section, the responsible members, officers, employees or agents may be imprisoned for the term provided therein which shall run concurrently with any term of imprisonment imposed upon such persons individually upon conviction for the same offense.~~

~~Section 9.1. Civil Penalties. (a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act, the Clean Air Act or any rule or regulation promulgated under either this act or the Clean Air Act or any order, plan approval or permit issued pursuant to this act, the department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed twenty five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the department shall consider the wilfulness of the violation; damage to air, soil, water or other natural resources of the Commonwealth or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the department; and other relevant factors.~~

~~(b) When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the~~

1 ~~person shall forward the proposed amount of the penalty to the~~
2 ~~hearing board within the thirty (30) day period for placement in~~
3 ~~an escrow account with the State treasurer or any Commonwealth~~
4 ~~bank or post an appeal bond to the hearing board within thirty~~
5 ~~(30) days in the amount of the proposes penalty, provided that~~
6 ~~such bond is executed by a surety licensed to do business in the~~
7 ~~Commonwealth and is satisfactory to the department. If, through~~
8 ~~administrative or final judicial review of the proposed penalty,~~
9 ~~it is determined that no violation occurred or that the amount~~
10 ~~of the penalty shall be reduced, the hearing board shall, within~~
11 ~~thirty (30) days, remit the appropriate amount to the person~~
12 ~~with any interest accumulated by the escrow deposit. Failure to~~
13 ~~forward the money or the appeal bond at the time of the appeal~~
14 ~~shall result in a waiver of all legal rights to contest the~~
15 ~~violation or the amount of the civil penalty. The amount~~
16 ~~assessed after administrative hearing or after waiver of~~
17 ~~administrative hearing shall be payable to the Commonwealth and~~
18 ~~shall be collectible in any manner provided by law for the~~
19 ~~collection of debts, including the collection of interest at the~~
20 ~~rate established in section 6.3(c), which shall run from the~~
21 ~~date of assessment of the penalty. If any person liable to pay~~
22 ~~any such penalty neglects or refuses to pay the same after~~
23 ~~demand, the amount, together with interest and any costs that~~
24 ~~may accrue, shall constitute a debt of such person, as may be~~
25 ~~appropriate, to the Clean Air Fund. The debt shall constitute a~~
26 ~~lien on all property owned by said person when a notice of lien~~
27 ~~incorporating a description of the property of the person~~
28 ~~subject to the action is duly filed with the prothonotary of the~~
29 ~~court of common pleas where the property is located. The~~
30 ~~prothonotary shall promptly enter upon the civil judgment or~~

~~order docket, at no cost to the department, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this subsection, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.~~

~~Section 9.2. Disposition of Fees, Fines and Civil Penalties. (a) All fines, civil penalties and fees collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the ["Clean Air Fund,[" hereby established, which, along with interest earned, shall be administered by the department for use in the elimination of air pollution. The department may establish such separate accounts as may be necessary or appropriate to implement the requirements of this act and the Clean Air Act. The board [shall] may adopt rules and regulations for the management and use of the money in the fund.~~

~~(b) The Clean Air Fund may be supplemented by appropriations from the General Assembly, the Federal, State or local government or any private source.~~

~~(c) The Clean Air Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system).~~

~~Section 11. The act is amended by adding a section to read:~~

~~Section 9.3. Continuing violations. Each day of continued~~

~~violation and each violation of any provision of this act, the Clean Air Act, any rule or regulation adopted under either this act or the Clean Air Act, any order of the department or any condition or term of any plan approval or permit issued pursuant to this act shall constitute a separate offense and violation.~~

~~Section 12. Section 10 of the act is repealed.~~

~~Section 13. The act is amended by adding sections to read:~~

~~Section 10.1. Enforcement Orders. (a) The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. These orders shall include, but shall not be limited to, orders modifying, suspending, terminating or revoking any plan approvals or permits, orders requiring persons to cease unlawful activities or cease operation of a facility or air contamination source which, in the course of its operation, is in violation of any provision of this act, the Clean Air Act, any rule or regulation promulgated under either this act or the Clean Air Act, plan approval or permit, order to take corrective action or to abate a public nuisance, or an order requiring the testing, sampling or monitoring of any air contamination source or orders requiring production of information. Such an order may be issued if the department finds that any condition existing in or on the facility or source involved is causing or contributing to or is creating a danger of air pollution or if it finds that the permittee or any person is in violation of any provision of this act or of any rule, regulation or order of the department.~~

~~(b) The department may, in its order, require compliance with such conditions as are necessary to prevent or abate air pollution or effect the purposes of this act.~~

~~(c) An order issued under this section shall take effect~~

~~upon notice, unless the order specifies otherwise. An appeal to the hearing board of the department's order shall not act as a supersedeas. Provided, however, That, upon application and for cause shown, the hearing board may issue such a supersedeas under rules established by the hearing board. The department may petition the Commonwealth Court for enforcement of any order or portion thereof and Commonwealth Court shall grant the petition if it finds, after a hearing, that the order has been issued and has either become final or, if appealed, has not been superseded by the hearing board.~~

~~(d) The authority of the department to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this act. The failure to comply with any such order is hereby declared to be a public nuisance.~~

~~Section 10.2. Appealable actions. Any person aggrieved by an order or other administrative action of the department issued pursuant to this act or any person who participated in the public comment process for a plan approval or permit shall have the right, within thirty (30) days from actual or constructive notice of the action, to appeal the action to the hearing board in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).~~

~~Section 10.3. Limitation on action. The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act may be commenced at any time within a period of ten (10) years from the date the offense is discovered.~~

~~Section 14. Sections 11, 12, 12.1, 13 and 13.1 of the act,~~

1 ~~amended or added October 26, 1972 (P.L.989, No.245), are amended~~
2 ~~to read:~~

3 ~~Section 11. Powers Reserved to the Department Under Existing~~
4 ~~Laws. Nothing in this act shall limit in any way whatever the~~
5 ~~powers conferred upon the department under laws other than this~~
6 ~~act, it being expressly provided that all such powers are~~
7 ~~preserved to the department and may be freely exercised by it.~~
8 ~~{The department shall have the right upon approval of the~~
9 ~~Attorney General, to petition a court of competent jurisdiction~~
10 ~~to order the abatement of any nuisance or condition detrimental~~
11 ~~to health. For that purpose no} No court exercising general~~
12 ~~equitable jurisdiction shall be deprived of such jurisdiction~~
13 ~~even though [such] a nuisance or condition detrimental to health~~
14 ~~is subject to regulation or other action by the board under this~~
15 ~~act.~~

16 ~~Section 12. Powers Reserved to Political Subdivisions. (a)~~
17 ~~Nothing in this act shall prevent counties, cities, towns,~~
18 ~~townships or boroughs from enacting ordinances with respect to~~
19 ~~air pollution which will not be less stringent than the~~
20 ~~provisions of this act, the Clean Air Act or the rules and~~
21 ~~regulations promulgated [pursuant to its provisions.] under~~
22 ~~either this act or the Clean Air Act. This act shall not be~~
23 ~~construed to repeal existing ordinances, resolutions or~~
24 ~~regulations of the aforementioned political subdivisions~~
25 ~~existing at the time of the effective date of this act, except~~
26 ~~as they may be less stringent than the provisions of this~~
27 ~~act[.], the Clean Air Act or the rules or regulations adopted~~
28 ~~under either this act or the Clean Air Act.~~

29 ~~(b) The administrative procedures for the abatement,~~
30 ~~reduction, prevention and control of air pollution set forth in~~

1 ~~this act shall not apply to any [political subdivision of the~~
2 ~~Commonwealth which has an approved air pollution control~~
3 ~~agency.] county of the first or second Class of the Commonwealth~~
4 ~~which has and implements an air pollution control program that,~~
5 ~~at a minimum, meets the requirements of this act, the Clean Air~~
6 ~~Act and the rules and regulations promulgated under both this~~
7 ~~act and the Clean Air Act and has been approved by the~~
8 ~~department.~~

9 ~~(c) (1) Whenever, either upon complaint made to or~~
10 ~~initiated by the department, the department finds that any~~
11 ~~person is in violation of air pollution control standards, or~~
12 ~~rules and regulations promulgated pursuant to the grant of~~
13 ~~authority made in subsection (b), the department shall give~~
14 ~~notification of that fact to that person and to the air~~
15 ~~pollution control agency of the [political subdivision] county~~
16 ~~involved.~~

17 ~~(2) If such violation continues to exist after said~~
18 ~~notification has been given, the department may take any~~
19 ~~abatement action provided for under the terms of this act.~~

20 ~~(d) Whenever the department finds that violations of [the~~
21 ~~air pollution control standards, or rules and regulations~~
22 ~~promulgated pursuant to the grant of authority under subsection~~
23 ~~(b)] this act, the Clean Air Act or the rules and regulations~~
24 ~~promulgated under either this act or the Clean Air Act are so~~
25 ~~widespread that such violations appear to result from a failure~~
26 ~~of the local county control agency involved to enforce those~~
27 ~~[standards, or rules and regulations,] requirements, the~~
28 ~~department may assume the authority to enforce [those standards,~~
29 ~~and rules and regulations.] this act in that county.~~

30 ~~(e) The department shall have the power to refuse approval,~~

1 ~~or to suspend or rescind approval, once given, to any county air~~
2 ~~pollution control agency if the department finds that such~~
3 ~~county agency is unable or unwilling [so] to conduct an air~~
4 ~~pollution control program [as] to abate or reduce air pollution~~
5 ~~problems within its jurisdiction in [an effective manner.]~~
6 ~~accordance with the requirements of this act, the Clean Air Act~~
7 ~~or the rules and regulations promulgated under both this act and~~
8 ~~the Clean Air Act.~~

9 ~~(f) Whenever the department takes action under the~~
10 ~~provisions of subsections (d) or (e) of this section, it shall~~
11 ~~give written notification to the air pollution control agency of~~
12 ~~the [political subdivision] county involved and such~~
13 ~~notification shall be [subject to the appeal provisions of~~
14 ~~clause (4.1) of section 4 of this act.] an appealable action.~~

15 ~~(g) Irrespective of subsection (b) above, and in order that~~
16 ~~the civil and criminal penalties and equitable remedies for air~~
17 ~~pollution violations shall be uniform [except insofar as they~~
18 ~~are inconsistent with the jurisdictional limitations of the~~
19 ~~minor judiciary and the Philadelphia Municipal Court,]~~
20 ~~throughout the Commonwealth, the penalties and remedies set~~
21 ~~forth in this act [in sections 9, 9.1, 10 and 11,] shall be the~~
22 ~~penalties and remedies available for enforcement of any~~
23 ~~municipal air pollution ordinances or regulations, and shall be~~
24 ~~available to any municipality, public official, or other person~~
25 ~~having standing to initiate proceedings for the enforcement of~~
26 ~~such municipal ordinances or regulations, and the amounts of the~~
27 ~~finest or civil penalties set forth herein shall be the amounts~~
28 ~~of the fines or civil penalties assessable and to be levied for~~
29 ~~violations of any municipal ordinances or regulations. It is~~
30 ~~hereby declared to be the purpose of this section to enunciate~~

1 further that the purpose of this act is to provide additional
2 and cumulative remedies to abate the pollution of the air of
3 this Commonwealth. Any action for the assessment of civil
4 penalties brought for the enforcement of a municipal air
5 pollution ordinance or regulation shall be brought in accordance
6 with the procedures set forth in such ordinance. Where any
7 municipal ordinance or regulation does not provide a procedure
8 for the assessment of civil penalties, the provisions [of
9 subsection (h) of this section] related to assessment and
10 collection of civil penalties of section 9.1 of this act shall
11 apply.

12 [(h) Any person, as herein defined, except a department,
13 board, bureau, or agency of the Commonwealth, engaging in
14 conduct in violation of a municipal air pollution control
15 ordinance, shall, for each offense, upon conviction thereof in a
16 civil proceeding before a judge of the Municipal Court of
17 Philadelphia, district justice, magistrate, alderman or justice
18 of the peace be sentenced to pay the cost of prosecution and a
19 civil penalty of not less than twenty five dollars (\$25.00), nor
20 more than five hundred dollars (\$500.00), for each day of
21 continued violation. Such a penalty may be assessed whether or
22 not the violation was wilful. Failure to pay any such penalty
23 within the time prescribed by law shall be punishable as a civil
24 contempt. Notwithstanding anything contained in section 9.2 of
25 this act, all civil penalties and fees collected under this
26 subsection shall be paid to the appropriate political
27 subdivision, as provided by law, and shall be collectible in any
28 manner provided by law for the collection of debt. If any person
29 liable to pay any such penalty neglects or refuses to pay the
30 same after demand, the amount, together with interest and any

~~costs that may accrue, shall be a lien in favor of the appropriate political subdivision upon the property, both real and personal, of such person, but only after the same has been entered and docketed of record by the prothonotary of the county where such is situated: Provided, That nothing contained in this subsection shall preclude any public official from seeking, at law or at equity or before any appropriate administrative body, the assessment of civil penalties in the amount provided by section 9.1 of this act.]~~

~~Section 12.1.— Construction.— Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to abate the pollution of the air of this Commonwealth, and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act, or the granting of any plan approval or permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisance shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the~~

1 ~~reason that such nuisance constitutes air pollution.~~

2 ~~[Section 13. Public Nuisances. A violation of any order or~~
3 ~~of any provision of any rule or regulation promulgated pursuant~~
4 ~~to a local air pollution code or to a State air pollution act,~~
5 ~~which limits or controls the emission of any air contaminant~~
6 ~~shall constitute a public nuisance and shall be abatable in the~~
7 ~~manner provided by law.]~~

8 ~~Section 13. Public Nuisances. A violation of this act, the~~
9 ~~Clean Air Act or of any rule or regulation promulgated under~~
10 ~~either this act or the Clean Air Act or any order, plan approval~~
11 ~~or permit issued by the department under this act shall~~
12 ~~constitute a public nuisance. The department shall have the~~
13 ~~authority to order any person causing a public nuisance to abate~~
14 ~~the public nuisance. In addition, the department or any~~
15 ~~Commonwealth agency which undertakes to abate a public nuisance~~
16 ~~may recover the expenses of abatement following the process for~~
17 ~~assessment and collection of a civil penalty contained in~~
18 ~~section 9.1 of this act. Whenever the nuisance is maintained or~~
19 ~~continued contrary to this act, the Clean Air Act or any rule or~~
20 ~~regulation promulgated under either this act or the Clean Air~~
21 ~~Act, any order, plan approval or permit, the nuisance may be~~
22 ~~abatable in the manner provided by this act. Any person who~~
23 ~~causes the public nuisance shall be liable for the cost of~~
24 ~~abatement.~~

25 ~~Section 13.1. Search Warrants. Whenever an agent or employe~~
26 ~~of the department, charged with the enforcement of the~~
27 ~~provisions of this act, has been refused access to property, or~~
28 ~~has been refused the right to examine any air contamination~~
29 ~~source, or air pollution control equipment or device, or is~~
30 ~~refused access to or examination of books, papers and records~~

~~pertinent to any matter under investigation, such agent or
employee may apply for a search warrant to any Commonwealth
official authorized by the laws of the Commonwealth to issue the
same to enable him to have access [and], examine and seize such
property, air contamination source, air pollution control
equipment or device, or books, papers and records, as the case
may be. It shall be sufficient probable cause to issue a search
warrant that the inspection is necessary to properly enforce the
provisions of this act.~~

~~Section 15. Sections 13.3, 13.4 and 13.5 of the act are
repealed.~~

~~Section 16. The act is amended by adding sections to read:~~

~~Section 13.6. Suits to Abate Nuisances and Restrain
Violations. (a) Any activity or condition declared by this act
to be a nuisance or which is otherwise in violation of this act
shall be abatable in the manner provided by law or equity for
the abatement of public nuisance. In addition, in order to
restrain or prevent any violation of this act, the Clean Air Act
or the rules and regulations promulgated under either this act
or the Clean Air Act or any plan approval or permit or orders
issued by the department, or to restrain the maintenance and
threat of public nuisance, suits may be instituted in equity or
at law in the name of the Commonwealth upon relation of the
Attorney General, the General Counsel, the district attorney of
any county or the solicitor of any municipality affected, after
notice has first been served upon the Attorney General of the
intention of the General Counsel, district attorney or solicitor
to so proceed. Such proceedings may be prosecuted in the
Commonwealth Court or in the court of common pleas of the county
where the activity has taken place, the condition exists or the~~

~~public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may, in its decree, fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of the same.~~

~~(b) In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, notice of the application therefor having been given to the defendant in accordance with the rules of equity practice, and in any such case the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality shall not be required to give bond. In any such proceeding the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. In addition to an injunction, the court in such equity proceedings may levy civil penalties in the same manner as the department in accordance with section 9.1 of this act.~~

~~(c) Except as provided in subsection (d) of this section, any person may commence a civil action to compel compliance with this act or any rule, regulation, order or plan approval or permit issued pursuant to this act by any owner, operator, landowner or occupier alleged to be causing or contributing to a violation of any provision of this act, the Clean Air Act or any~~

~~rule or regulation promulgated under either this act or the Clean Air Act or any plan approval, permit or order issued by the department. In addition to seeking to compel compliance, any person may request the court to award civil damages. The court shall use the factors and amounts contained in section 9.1 of this act in awarding civil damages under this subsection. Such damages shall be paid into the Clean Air Fund established by section 9.2 of this act or be used to prevent air pollution in the county where the violation occurred. Except where 42 Pa.C.S. (relating to judiciary and judicial procedure) requires otherwise, the courts of common pleas shall have jurisdiction of such actions. Such an action may not be commenced if the department has commenced and is diligently prosecuting a civil action in a Federal or State court or is in litigation before the hearing board to require the alleged violator to comply with this act, the Clean Air Act, any rule or regulation promulgated under either this act or the Clean Air Act or any order, plan approval or permit issued pursuant to this act, but, in any such action in a Federal or State court or before the hearing board, any person having or representing an interest which is or may be adversely affected may intervene as a matter of right without posting bond.~~

~~(d) An action pursuant to subsection (c) of this section may not be commenced prior to sixty (60) days after the plaintiff has given notice, in writing, of the violation to the department and to any alleged violator.~~

~~(e) The sixty (60) day notice provisions of subsection (d) of this section to the contrary notwithstanding, any action pursuant to subsection (c) of this section may be initiated immediately upon written notification to the department in the~~

~~case where the violation or condition complained of constitutes
an imminent threat to the health or safety of the plaintiff or
would immediately affect a legal interest of the plaintiff.~~

~~(f) The court, in issuing any final order in any action
brought pursuant to subsection (c) of this section, may award
costs of litigation, including attorney and expert witness fees,
to any party whenever the court determines such an award is
appropriate. Except as provided in subsection (b) of this
section, the court may, if a temporary restraining order or
preliminary injunction is sought, require the filing of a bond
or equivalent security in accordance with the Pennsylvania Rules
of Civil Procedure.~~

~~Section 17. This act shall take effect immediately.~~

SECTION 1. SECTION 2 OF THE ACT OF JANUARY 8, 1960 (1959
P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL ACT,
AMENDED JUNE 12, 1968 (P.L.163, NO.92), IS AMENDED TO READ:

SECTION 2. DECLARATION OF POLICY.--(A) IT IS HEREBY
DECLARED TO BE THE POLICY OF THE COMMONWEALTH OF PENNSYLVANIA TO
PROTECT THE AIR RESOURCES OF THE COMMONWEALTH TO THE DEGREE
NECESSARY FOR THE (I) PROTECTION OF PUBLIC HEALTH, SAFETY AND
WELL-BEING OF ITS CITIZENS; (II) PREVENTION OF INJURY TO PLANT
AND ANIMAL LIFE AND TO PROPERTY; (III) PROTECTION OF THE COMFORT
AND CONVENIENCE OF THE PUBLIC AND THE PROTECTION OF THE
RECREATIONAL RESOURCES OF THE COMMONWEALTH; [AND] (IV)
DEVELOPMENT, ATTRACTION AND EXPANSION OF INDUSTRY, COMMERCE AND
AGRICULTURE[.]; AND (V) IMPLEMENTATION OF THE PROVISIONS OF THE
CLEAN AIR ACT IN THE COMMONWEALTH.

(B) IT IS FURTHER DECLARED THAT:

(1) INTERSTATE POLLUTION TRANSPORT COMMISSIONS ESTABLISHED
UNDER THE CLEAN AIR ACT SHOULD DEVELOP POLLUTION CONTROL

1 STRATEGIES VIA A PROCESS WHICH INVOLVES PUBLIC REVIEW AND
2 OPPORTUNITY FOR COMMENT.

3 (2) THE PUBLIC SHOULD BE INVOLVED IN DEVELOPING AND
4 COMMITTING THE COMMONWEALTH TO THE ADOPTION OF PARTICULAR
5 POLLUTION CONTROL STRATEGIES THROUGH REVIEW OF STATE
6 IMPLEMENTATION PLANS REQUIRED TO BE SUBMITTED BY THE CLEAN AIR
7 ACT.

8 (3) THE DEPARTMENT SHOULD HAVE ADEQUATE STAFF AND TECHNICAL
9 RESOURCES NEEDED TO COMPLY WITH THE CLEAN AIR ACT. THE
10 DEPARTMENT SHALL BE REQUIRED TO EXPLORE THE ROLE PRIVATE
11 INDUSTRY CAN PLAY IN DEVELOPING AND IMPLEMENTING THE CLEAN AIR
12 PROGRAMS AS A MECHANISM TO INSURE THE COMMONWEALTH MEETS CLEAN
13 AIR ACT DEADLINES.

14 (4) STATES SHOULD NOT BE PENALIZED FOR MISSING CLEAN AIR ACT
15 DEADLINES WHEN THE DELAY IS THE RESULT OF THE FEDERAL GOVERNMENT
16 NOT FINALIZING GUIDANCE TO STATES ON IMPLEMENTING THE ACT. THE
17 COMMONWEALTH AND OTHER STATES MUST BE GIVEN A REASONABLE
18 OPPORTUNITY TO MEET CLEAN AIR ACT DEADLINES.

19 SECTION 2. SECTION 3 OF THE ACT, AMENDED OCTOBER 26, 1972
20 (P.L.989, NO.245), IS AMENDED TO READ:

21 SECTION 3. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES,
22 WHEN USED IN THIS ACT, UNLESS THE CONTEXT CLEARLY INDICATES
23 OTHERWISE, SHALL HAVE THE MEANING ASCRIBED TO THEM IN THIS
24 SECTION:

25 [(1) "DEPARTMENT." DEPARTMENT OF ENVIRONMENTAL RESOURCES OF
26 THE COMMONWEALTH OF PENNSYLVANIA.

27 (2) "BOARD." THE ENVIRONMENTAL QUALITY BOARD ESTABLISHED IN
28 THE DEPARTMENT BY THE ACT OF DECEMBER 3, 1970 (P.L.834).

29 (2.1) "HEARING BOARD." THE ENVIRONMENTAL HEARING BOARD
30 ESTABLISHED IN THE DEPARTMENT BY THE ACT OF DECEMBER 3, 1970

1 (P.L.834).

2 (3) "PERSON." ANY INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION
3 FOR PROFIT OR NOT FOR PROFIT, ASSOCIATION, PARTNERSHIP, FIRM,
4 TRUST, ESTATE, DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE
5 COMMONWEALTH, POLITICAL SUBDIVISION, MUNICIPALITY, DISTRICT,
6 AUTHORITY OR ANY OTHER LEGAL ENTITY WHATSOEVER WHICH IS
7 RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND DUTIES.

8 (4) "AIR CONTAMINANT." SMOKE, DUST, FUME, GAS, ODOR, MIST,
9 VAPOR, POLLEN OR ANY COMBINATION THEREOF.

10 (5) "AIR POLLUTION." THE PRESENCE IN THE OUTDOOR ATMOSPHERE
11 OF ANY FORM OF CONTAMINANT INCLUDING BUT NOT LIMITED TO THE
12 DISCHARGING FROM STACKS, CHIMNEYS, OPENINGS, BUILDINGS,
13 STRUCTURES, OPEN FIRES, VEHICLES, PROCESSES, OR ANY OTHER SOURCE
14 OF ANY SMOKE, SOOT, FLY ASH, DUST, CINDERS, DIRT, NOXIOUS OR
15 OBNOXIOUS ACIDS, FUMES, OXIDES, GASES, VAPORS, ODORS, TOXIC OR
16 RADIOACTIVE SUBSTANCES, WASTE, OR ANY OTHER MATTER IN SUCH
17 PLACE, MANNER, OR CONCENTRATION INIMICAL OR WHICH MAY BE
18 INIMICAL TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR WHICH IS,
19 OR MAY BE INJURIOUS TO HUMAN, PLANT OR ANIMAL LIFE, OR TO
20 PROPERTY, OR WHICH UNREASONABLY INTERFERES WITH THE COMFORTABLE
21 ENJOYMENT OF LIFE OR PROPERTY.

22 (6) "AIR CONTAMINATION." THE PRESENCE IN THE OUTDOOR
23 ATMOSPHERE OF AN AIR CONTAMINANT WHICH CONTRIBUTES TO ANY
24 CONDITION OF AIR POLLUTION.

25 (7) "AIR CONTAMINATION SOURCE." ANY PLACE, FACILITY OR
26 EQUIPMENT, STATIONARY OR MOBILE, AT, FROM OR BY REASON OF WHICH
27 THERE IS EMITTED INTO THE OUTDOOR ATMOSPHERE ANY AIR
28 CONTAMINANT.

29 (8) "STATIONARY AIR CONTAMINATION SOURCE." ANY AIR
30 CONTAMINATION SOURCE OTHER THAN THAT WHICH, WHEN OPERATED, MOVES

1 IN A GIVEN DIRECTION UNDER ITS OWN POWER.

2 (9) "REGION." ANY GEOGRAPHICAL SUBDIVISION OF THE
3 COMMONWEALTH WHOSE BOUNDARIES SHALL BE DETERMINED BY THE BOARD.

4 (10) "APPROVED AIR POLLUTION CONTROL AGENCY." AN AIR
5 POLLUTION CONTROL AGENCY OF ANY POLITICAL SUBDIVISION OF THE
6 COMMONWEALTH WHICH HAS BEEN GRANTED APPROVAL BY THE BOARD.]

7 "ADMINISTRATOR." THE ADMINISTRATOR OF THE UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY.

9 "AIR CONTAMINANT." SMOKE, DUST, FUME, GAS, ODOR, MIST,
10 RADIOACTIVE SUBSTANCE, VAPOR, POLLEN OR ANY COMBINATION THEREOF.

11 "AIR CONTAMINATION." THE PRESENCE IN THE OUTDOOR ATMOSPHERE
12 OF AN AIR CONTAMINANT WHICH CONTRIBUTES TO ANY CONDITION OF AIR
13 POLLUTION.

14 "AIR CONTAMINATION SOURCE." ANY PLACE, FACILITY OR
15 EQUIPMENT, STATIONARY OR MOBILE, AT, FROM OR BY REASON OF WHICH
16 THERE IS EMITTED INTO THE OUTDOOR ATMOSPHERE ANY AIR
17 CONTAMINANT.

18 "AIR POLLUTION." THE PRESENCE IN THE OUTDOOR ATMOSPHERE OF
19 ANY FORM OF CONTAMINANT INCLUDING BUT NOT LIMITED TO THE
20 DISCHARGING FROM STACKS, CHIMNEYS, OPENINGS, BUILDINGS,
21 STRUCTURES, OPEN FIRES, VEHICLES, PROCESSES, OR ANY OTHER SOURCE
22 OF ANY SMOKE, SOOT, FLY ASH, DUST, CINDERS, DIRT, NOXIOUS OR
23 OBNOXIOUS ACIDS, FUMES, OXIDES, GASES, VAPORS, ODORS, TOXIC,
24 HAZARDOUS OR RADIOACTIVE SUBSTANCES, WASTE, OR ANY OTHER MATTER
25 IN SUCH PLACE, MANNER, OR CONCENTRATION INIMICAL OR WHICH MAY BE
26 INIMICAL TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR WHICH IS,
27 OR MAY BE INJURIOUS TO HUMAN, PLANT OR ANIMAL LIFE, OR TO
28 PROPERTY, OR WHICH UNREASONABLY INTERFERES WITH THE COMFORTABLE
29 ENJOYMENT OF LIFE OR PROPERTY.

30 "APPROVED AIR POLLUTION CONTROL AGENCY." AN AIR POLLUTION

CONTROL AGENCY OF ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH
WHICH HAS BEEN GRANTED APPROVAL BY THE ENVIRONMENTAL QUALITY
BOARD.

"BOARD" OR "EOB." THE ENVIRONMENTAL QUALITY BOARD.

"CLEAN AIR ACT." PUBLIC LAW 95-95 AS AMENDED, 42 U.S.C. §
7401 ET SEQ.

"DEPARTMENT." THE DEPARTMENT OF ENVIRONMENTAL RESOURCES OF
THE COMMONWEALTH.

"ENVIRONMENTAL PROTECTION AGENCY" OR "EPA." THE UNITED
STATES ENVIRONMENTAL PROTECTION AGENCY OR THE ADMINISTRATOR OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

"GASOLINE DISPENSING FACILITY." A FACILITY FROM WHICH
GASOLINE IS TRANSFERRED TO MOTOR VEHICLE FUEL TANKS.

"HEARING BOARD." THE ENVIRONMENTAL HEARING BOARD.

"PERSON." ANY INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION FOR
PROFIT OR NOT FOR PROFIT, ASSOCIATION, PARTNERSHIP, FIRM, TRUST,
ESTATE, DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE COMMONWEALTH
OR THE FEDERAL GOVERNMENT, POLITICAL SUBDIVISION, MUNICIPALITY,
DISTRICT, AUTHORITY OR ANY OTHER LEGAL ENTITY WHATSOEVER WHICH
IS RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND DUTIES.

"PLAN APPROVAL." THE WRITTEN APPROVAL FROM THE DEPARTMENT OF
ENVIRONMENTAL RESOURCES WHICH AUTHORIZES A PERSON TO CONSTRUCT,
ASSEMBLE, INSTALL OR MODIFY ANY STATIONARY AIR CONTAMINATION
SOURCE OR INSTALL THEREON ANY AIR POLLUTION CONTROL EQUIPMENT OR
DEVICE.

"REGION." ANY GEOGRAPHICAL SUBDIVISION OF THE COMMONWEALTH
WHOSE BOUNDARIES SHALL BE DETERMINED BY THE ENVIRONMENTAL
QUALITY BOARD.

"SMALL BUSINESS STATIONARY SOURCE." A STATIONARY SOURCE
THAT:

1 (1) IS OWNED OR OPERATED BY A PERSON THAT EMPLOYS ONE
2 HUNDRED (100) OR FEWER INDIVIDUALS;

3 (2) IS A SMALL BUSINESS AS DEFINED IN THE SMALL BUSINESS ACT
4 (PUBLIC LAW 85-536, 15 U.S.C. § 78A ET SEQ.);

5 (3) IS NOT A MAJOR STATIONARY SOURCE;

6 (4) DOES NOT EMIT FIFTY (50) TONS PER YEAR OF ANY REGULATED
7 POLLUTANT; AND

8 (5) EMITS LESS THAN SEVENTY-FIVE (75) TONS PER YEAR OF ALL
9 REGULATED POLLUTANTS.

10 "STATE IMPLEMENTATION PLAN." THE PLAN OR PLAN REVISION THAT
11 A STATE IS AUTHORIZED AND REQUIRED TO SUBMIT UNDER SECTION 110
12 OF THE CLEAN AIR ACT (PUBLIC LAW 95-95 AS AMENDED, 42 U.S.C. §
13 7410) TO PROVIDE FOR ATTAINMENT OF THE NATIONAL AMBIENT AIR
14 QUALITY STANDARDS.

15 "STATIONARY AIR CONTAMINATION SOURCE." ANY AIR CONTAMINATION
16 SOURCE OTHER THAN THAT WHICH, WHEN OPERATED, MOVES IN A GIVEN
17 DIRECTION UNDER ITS OWN POWER.

18 SECTION 3. SECTION 4 OF THE ACT, AMENDED OCTOBER 26, 1972
19 (P.L.989, NO.245) AND REPEALED IN PART APRIL 28, 1978 (P.L.202,
20 NO.53), IS AMENDED TO READ:

21 SECTION 4. POWERS AND DUTIES OF THE DEPARTMENT OF
22 ENVIRONMENTAL RESOURCES.--THE DEPARTMENT SHALL HAVE POWER AND
23 ITS DUTY SHALL BE TO--

24 (1) IMPLEMENT THE PROVISIONS OF THE CLEAN AIR ACT IN THE
25 COMMONWEALTH.

26 [(1)] (2) ENTER ANY BUILDING, PROPERTY, PREMISES OR PLACE
27 AND INSPECT ANY AIR CONTAMINATION SOURCE FOR THE PURPOSE OF
28 INVESTIGATING AN ACTUAL OR A SUSPECTED SOURCE OF AIR POLLUTION
29 OR FOR THE PURPOSE OF ASCERTAINING THE COMPLIANCE OR NON-
30 COMPLIANCE WITH [ANY RULE OR REGULATION WHICH MAY HAVE BEEN

1 ADOPTED AND PROMULGATED BY THE BOARD HEREUNDER.] THIS ACT, ANY
2 RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN
3 APPROVAL, PERMIT OR ORDER OF THE DEPARTMENT. IN CONNECTION WITH
4 SUCH INSPECTION OR INVESTIGATION, SAMPLES OF AIR, AIR
5 CONTAMINANTS, FUEL, PROCESS MATERIAL OR OTHER MATTER MAY BE
6 TAKEN FOR ANALYSIS, A DUPLICATE OF THE ANALYTICAL REPORT SHALL
7 BE FURNISHED PROMPTLY TO THE PERSON WHO IS SUSPECTED OF CAUSING
8 SUCH AIR POLLUTION OR AIR CONTAMINATION.

9 [(2)] (3) HAVE ACCESS TO, AND REQUIRE THE PRODUCTION OF,
10 BOOKS [AND], PAPERS AND RECORDS, INCLUDING, BUT NOT LIMITED TO,
11 COMPUTERIZED INFORMATION IN A FORMAT AS THE DEPARTMENT MAY
12 REASONABLY PRESCRIBE PERTINENT TO ANY MATTER UNDER
13 INVESTIGATION.

14 [(2.1)] (4) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
15 CONTAMINATION SOURCE TO ESTABLISH AND MAINTAIN SUCH RECORDS AND
16 MAKE SUCH REPORTS AND FURNISH SUCH INFORMATION, INCLUDING
17 COMPUTERIZED INFORMATION IN A FORMAT AS THE DEPARTMENT MAY
18 REASONABLY PRESCRIBE.

19 [(2.2)] (5) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
20 CONTAMINATION SOURCE TO INSTALL, USE AND MAINTAIN SUCH AIR
21 CONTAMINANT MONITORING EQUIPMENT OR METHODS AS THE DEPARTMENT
22 MAY REASONABLY PRESCRIBE.

23 [(2.3)] (6) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
24 CONTAMINATION SOURCE TO SAMPLE THE EMISSIONS THEREOF IN
25 ACCORDANCE WITH SUCH METHODS AND PROCEDURES AND AT SUCH
26 LOCATIONS AND INTERVALS OF TIME AS THE DEPARTMENT MAY REASONABLY
27 PRESCRIBE AND TO PROVIDE THE DEPARTMENT WITH THE RESULTS
28 THEREOF.

29 [(3)] (7) ENTER UPON ANY PROPERTY ON WHICH AN AIR
30 CONTAMINATION SOURCE MAY BE LOCATED AND MAKE SUCH TESTS UPON THE

1 SOURCE AS ARE NECESSARY TO DETERMINE WHETHER THE AIR
2 CONTAMINANTS BEING EMITTED FROM SUCH AIR CONTAMINATION SOURCE
3 ARE BEING EMITTED AT A RATE IN EXCESS OF A RATE PROVIDED FOR BY
4 [BOARD RULE OR REGULATION] THIS ACT, ANY RULE OR REGULATIONS
5 PROMULGATED UNDER THIS ACT OR ANY PLAN APPROVAL, PERMIT OR ORDER
6 OF THE DEPARTMENT OR OTHERWISE CAUSING AIR POLLUTION. WHENEVER
7 THE DEPARTMENT DETERMINES THAT A SOURCE TEST IS NECESSARY, IT
8 SHALL GIVE REASONABLE WRITTEN OR ORAL NOTICE TO THE PERSON
9 OWNING, OPERATING, OR OTHERWISE IN CONTROL OF SUCH SOURCE, THAT
10 [IT] THE DEPARTMENT WILL CONDUCT A TEST ON SUCH SOURCE.
11 THEREAFTER, THE PERSON TO WHOM SUCH NOTICE IS GIVEN SHALL
12 PROVIDE SUCH REASONABLY SAFE ACCESS TO THE TESTING AREA, AND
13 SUCH SAMPLING [HOLES] PORTS, FACILITIES, ELECTRICAL POWER AND
14 WATER AS THE DEPARTMENT SHALL SPECIFY IN ITS NOTICE.

15 [(4)] (8) RECEIVE, INITIATE AND INVESTIGATE COMPLAINTS,
16 INSTITUTE AND CONDUCT SURVEYS AND TESTING PROGRAMS, CONDUCT
17 GENERAL ATMOSPHERIC SAMPLING PROGRAMS, MAKE OBSERVATIONS OF
18 CONDITIONS WHICH MAY OR DO CAUSE AIR POLLUTION, MAKE TESTS OR
19 OTHER DETERMINATIONS AT AIR CONTAMINATION SOURCES, AND ASSESS
20 THE DEGREE OF ABATEMENT REQUIRED.

21 [(4.1)] (9) (I) ISSUE ORDERS TO ANY PERSON OWNING OR
22 OPERATING AN AIR CONTAMINATION SOURCE, OR OWNING OR POSSESSING
23 LAND ON WHICH SUCH SOURCE IS LOCATED, IF SUCH SOURCE IS
24 INTRODUCING OR IS LIKELY TO INTRODUCE AIR CONTAMINANTS INTO THE
25 OUTDOOR ATMOSPHERE IN EXCESS OF ANY [BOARD RULE OR REGULATION,
26 OR ANY PERMIT REQUIREMENT] RATE PROVIDED FOR BY THIS ACT, ANY
27 RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN
28 APPROVAL OR PERMIT APPLICABLE TO SUCH SOURCE, OR AT SUCH A LEVEL
29 SO AS TO CAUSE AIR POLLUTION. ANY SUCH ORDER MAY REQUIRE THE
30 CESSATION OF ANY OPERATION OR ACTIVITY WHICH IS INTRODUCING AIR

1 CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE SO AS TO CAUSE AIR
2 POLLUTION, THE REDUCTION OF EMISSIONS FROM SUCH AIR
3 CONTAMINATION SOURCE, MODIFICATION OR REPAIR OF SUCH SOURCE OR
4 AIR POLLUTION CONTROL DEVICE OR EQUIPMENT OR CERTAIN OPERATING
5 AND MAINTENANCE PROCEDURES WITH RESPECT TO SUCH SOURCE OR AIR
6 POLLUTION CONTROL DEVICE OR EQUIPMENT, INSTITUTION OF A
7 REASONABLE PROCESS CHANGE, INSTALLATION OF AIR POLLUTION CONTROL
8 DEVICES OR EQUIPMENT, OR ANY OR ALL OF SAID REQUIREMENTS AS THE
9 DEPARTMENT DEEMS NECESSARY. SUCH ORDERS MAY SPECIFY A TIME FOR
10 COMPLIANCE, REQUIRE SUBMISSION OF A PROPOSED PLAN FOR
11 COMPLIANCE, AND REQUIRE SUBMISSION OF PERIODIC REPORTS
12 CONCERNING COMPLIANCE. IF A TIME FOR COMPLIANCE IS GIVEN, THE
13 DEPARTMENT MAY, IN ITS DISCRETION, REQUIRE THE POSTING OF A BOND
14 IN THE AMOUNT OF TWICE THE MONEY TO BE EXPENDED IN REACHING
15 COMPLIANCE.

16 (II) ALL DEPARTMENT ORDERS SHALL BE IN WRITING, CONTAIN
17 THEREIN A STATEMENT OF THE REASONS FOR THEIR ISSUANCE, AND BE
18 SERVED EITHER PERSONALLY OR BY CERTIFIED MAIL. WITHIN THIRTY
19 (30) DAYS AFTER SERVICE OF ANY SUCH ORDER THE PERSON TO WHOM THE
20 ORDER IS ISSUED OR ANY OTHER PERSON AGGRIEVED BY SUCH ORDER MAY
21 FILE WITH THE HEARING BOARD AN APPEAL SETTING FORTH WITH
22 PARTICULARITY THE GROUNDS RELIED UPON. AN APPEAL TO THE HEARING
23 BOARD OF THE DEPARTMENT'S ORDER SHALL NOT ACT AS A SUPERSEDEAS:
24 PROVIDED, HOWEVER, THAT UPON APPLICATION AND FOR CAUSE SHOWN,
25 THE HEARING BOARD MAY ISSUE SUCH A SUPERSEDEAS.

26 [(5)] (10) INSTITUTE, IN A COURT OF COMPETENT JURISDICTION
27 PROCEEDINGS TO COMPEL COMPLIANCE WITH [ANY] THIS ACT, ANY RULE
28 OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN APPROVAL,
29 PERMIT OR ORDER OF THE DEPARTMENT [FROM WHICH THERE HAS BEEN NO
30 APPEAL OR WHICH HAS BEEN SUSTAINED ON APPEAL].

1 [(6)] (11) ACT AS THE AGENT FOR THE BOARD IN HOLDING PUBLIC
2 HEARINGS WHEN SO DIRECTED BY THE BOARD.

3 [(7)] (12) INSTITUTE PROSECUTIONS UNDER THIS ACT.

4 [(8)] (13) RECOMMEND THE MINIMUM JOB QUALIFICATIONS OF
5 PERSONNEL EMPLOYED BY COUNTY AND MUNICIPAL AIR POLLUTION CONTROL
6 AGENCIES HEREAFTER CREATED.

7 [(9)] (14) REQUIRE THE SUBMISSION OF, AND CONSIDER FOR
8 APPROVAL, PLANS AND SPECIFICATIONS OF AIR POLLUTION CONTROL
9 EQUIPMENT, DEVICES OR PROCESS CHANGES, AND INSPECT SUCH
10 INSTALLATIONS OR MODIFICATIONS TO INSURE COMPLIANCE WITH THE
11 PLANS WHICH HAVE BEEN APPROVED.

12 [(10)] (15) CONDUCT OR CAUSE TO BE CONDUCTED STUDIES AND
13 RESEARCH WITH RESPECT TO AIR CONTAMINANTS, THEIR NATURE, CAUSES
14 AND EFFECTS, AND WITH RESPECT TO THE CONTROL, PREVENTION,
15 ABATEMENT AND REDUCTION OF AIR POLLUTION AND AIR CONTAMINATION.

16 [(10.1)] (16) EVALUATE MOTOR VEHICLE EMISSION CONTROL
17 PROGRAMS, INCLUDING VEHICLE EMISSION STANDARDS, CLEAN
18 ALTERNATIVE FUELS, OXYGENATED FUELS, REFORMULATED FUELS, VEHICLE
19 MILES OF TRAVEL, CONGESTION LEVELS, TRANSPORTATION CONTROL
20 MEASURES AND OTHER TRANSPORTATION CONTROL STRATEGIES WITH
21 RESPECT TO THEIR EFFECT UPON AIR POLLUTION AND DETERMINE THE
22 NEED FOR MODIFICATIONS OF SUCH PROGRAMS.

23 [(11)] (17) DETERMINE BY MEANS OF FIELD STUDIES AND SAMPLING
24 THE DEGREE OF AIR POLLUTION EXISTING IN ANY PART OF THE
25 COMMONWEALTH.

26 [(12)] (18) PREPARE AND DEVELOP A GENERAL COMPREHENSIVE PLAN
27 FOR THE CONTROL AND ABATEMENT OF EXISTING AIR POLLUTION AND AIR
28 CONTAMINATION AND FOR THE ABATEMENT, CONTROL AND PREVENTION OF
29 ANY NEW AIR POLLUTION AND AIR CONTAMINATION, RECOGNIZING VARYING
30 REQUIREMENTS FOR THE DIFFERENT AREAS OF THE COMMONWEALTH, AND TO

1 SUBMIT A COMPREHENSIVE PLAN TO THE BOARD FOR ITS CONSIDERATION
2 AND APPROVAL.

3 [(13)] (19) ENCOURAGE THE FORMULATION AND EXECUTION OF PLANS
4 IN CONJUNCTION WITH AIR POLLUTION CONTROL AGENCIES OR CIVIL
5 ASSOCIATIONS OF COUNTIES, CITIES, BOROUGHES, TOWNS AND TOWNSHIPS
6 OF THE COMMONWEALTH WHEREIN ANY SOURCES OF AIR POLLUTION OR AIR
7 CONTAMINATION MAY BE LOCATED, AND ENLIST THE COOPERATION OF
8 THOSE WHO MAY BE IN CONTROL OF SUCH SOURCES FOR THE CONTROL,
9 PREVENTION AND ABATEMENT OF SUCH AIR POLLUTION AND AIR
10 CONTAMINATION.

11 [(14)] (20) ENCOURAGE VOLUNTARY EFFORTS AND COOPERATION BY
12 ALL PERSONS CONCERNED IN CONTROLLING, PREVENTING, ABATING AND
13 REDUCING AIR POLLUTION AND AIR CONTAMINATION.

14 [(15)] (21) CONDUCT AND SUPERVISE EDUCATIONAL PROGRAMS WITH
15 RESPECT TO THE CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF
16 AIR POLLUTION AND AIR CONTAMINATION, INCLUDING THE PREPARATION
17 AND DISTRIBUTION OF INFORMATION RELATING TO THE MEANS OF
18 CONTROLLING AND PREVENTING SUCH AIR POLLUTION AND AIR
19 CONTAMINATION.

20 [(16)] (22) DEVELOP AND CONDUCT IN COOPERATION WITH LOCAL
21 COMMUNITIES DEMONSTRATION PROGRAMS RELATING TO AIR CONTAMINANTS,
22 AIR POLLUTION AND AIR CONTAMINATION AND THE CONTROL, PREVENTION,
23 ABATEMENT AND REDUCTION OF AIR POLLUTION AND AIR CONTAMINATION.

24 [(17)] (23) PROVIDE ADVISORY TECHNICAL CONSULTATIVE SERVICES
25 TO LOCAL COMMUNITIES FOR THE CONTROL, PREVENTION, ABATEMENT AND
26 REDUCTION OF AIR POLLUTION AND AIR CONTAMINATION.

27 [(18)] (24) COOPERATE WITH THE APPROPRIATE AGENCIES OF THE
28 UNITED STATES OR OF OTHER STATES OR ANY INTERSTATE AGENCIES WITH
29 RESPECT TO THE CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF
30 AIR POLLUTION, AND WHERE APPROPRIATE FORMULATE INTERSTATE AIR

1 POLLUTION CONTROL COMPACTS OR AGREEMENTS FOR THE SUBMISSION
2 THEREOF TO THE GENERAL ASSEMBLY.

3 [(19)] (25) SERVE AS THE AGENCY OF THE COMMONWEALTH FOR THE
4 RECEIPT OF MONEYS FROM THE FEDERAL GOVERNMENT OR OTHER PUBLIC OR
5 PRIVATE AGENCIES, AND EXPEND SUCH MONEYS FOR STUDIES AND
6 RESEARCH WITH RESPECT TO AIR CONTAMINANTS, AIR POLLUTION AND THE
7 CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF AIR POLLUTION.

8 (26) DEVELOP AND SUBMIT TO THE ENVIRONMENTAL PROTECTION
9 AGENCY A PROCEDURE TO IMPLEMENT AND ENFORCE THE REGULATIONS
10 WHICH THE ENVIRONMENTAL PROTECTION AGENCY ADOPTS UNDER OF
11 SECTION 183(E) OF THE CLEAN AIR ACT TO REDUCE EMISSIONS FROM
12 CONSUMER AND COMMERCIAL PRODUCTS, PROVIDED THE DEPARTMENT WILL
13 RECEIVE CREDITS FOR THE REDUCTIONS ATTRIBUTED TO THE FEDERAL
14 CONSUMER AND COMMERCIAL PRODUCTS REGULATIONS UNDER SECTION 182
15 OF THE CLEAN AIR ACT REGULATIONS, AND THE DEPARTMENT HAS THE
16 RESOURCES TO IMPLEMENT AND ENFORCE THE PROGRAM.

17 [(20)] (27) DO ANY AND ALL OTHER ACTS AND THINGS NOT
18 INCONSISTENT WITH ANY PROVISION OF THIS ACT, WHICH IT MAY DEEM
19 NECESSARY OR PROPER FOR THE EFFECTIVE ENFORCEMENT OF THIS ACT
20 AND THE RULES OR REGULATIONS [WHICH HAVE BEEN] PROMULGATED
21 [THEREUNDER] UNDER THIS ACT.

22 SECTION 4. SECTION 4.1 OF THE ACT, ADDED DECEMBER 2, 1976
23 (P.L.1263, NO.279), IS AMENDED TO READ:

24 SECTION 4.1. AGRICULTURAL REGULATIONS PROHIBITED.--[THE]
25 EXCEPT AS MAY BE REQUIRED BY THE CLEAN AIR ACT OR THE
26 REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT, THE
27 ENVIRONMENTAL QUALITY BOARD SHALL NOT HAVE THE POWER NOR THE
28 AUTHORITY TO ADOPT RULES AND REGULATIONS RELATING TO AIR
29 CONTAMINANTS AND AIR POLLUTION ARISING FROM THE PRODUCTION OF
30 AGRICULTURAL COMMODITIES IN THEIR UNMANUFACTURED STATE BUT THIS

1 PROHIBITION SHALL NOT INCLUDE THE USE OF MATERIALS PRODUCED OR
2 MANUFACTURED OFF THE PREMISES OF THE FARM OPERATION.

3 SECTION 5. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

4 SECTION 4.2. PERMISSIBLE ACTIONS.--(A) IN IMPLEMENTING THE
5 REQUIREMENTS OF SECTION 109 OF THE CLEAN AIR ACT, THE BOARD MAY
6 ADOPT, BY REGULATION, ONLY THOSE CONTROL MEASURES OR OTHER
7 REQUIREMENTS WHICH ARE REASONABLY REQUIRED, IN ACCORDANCE WITH
8 THE CLEAN AIR ACT DEADLINES, TO ACHIEVE AND MAINTAIN THE AMBIENT
9 AIR QUALITY STANDARDS OR TO SATISFY RELATED CLEAN AIR ACT
10 REQUIREMENTS, UNLESS OTHERWISE SPECIFICALLY AUTHORIZED OR
11 REQUIRED BY THIS ACT OR SPECIFICALLY REQUIRED BY THE CLEAN AIR
12 ACT.

13 (B) CONTROL MEASURES OR OTHER REQUIREMENTS ADOPTED UNDER
14 SUBSECTION (A) OF THIS SECTION SHALL BE NO MORE STRINGENT THAN
15 THOSE REQUIRED BY THE CLEAN AIR ACT UNLESS AUTHORIZED OR
16 REQUIRED BY THIS ACT OR SPECIFICALLY REQUIRED BY THE CLEAN AIR
17 ACT. THIS REQUIREMENT SHALL NOT APPLY IF THE BOARD DETERMINES
18 THAT IT IS REASONABLY NECESSARY FOR A CONTROL MEASURE OR OTHER
19 REQUIREMENT TO EXCEED MINIMUM CLEAN AIR ACT REQUIREMENTS IN
20 ORDER FOR THE COMMONWEALTH:

21 (1) TO ACHIEVE OR MAINTAIN AMBIENT AIR QUALITY STANDARDS;

22 (2) TO SATISFY RELATED CLEAN AIR ACT REQUIREMENTS AS THEY
23 SPECIFICALLY RELATE TO THE COMMONWEALTH;

24 (3) TO PREVENT AN ASSESSMENT OR IMPOSITION OF CLEAN AIR ACT
25 SANCTIONS; OR

26 (4) TO COMPLY WITH A FINAL DECREE OF A FEDERAL COURT.

27 (C) THE BOARD MAY NOT BY REGULATION ADOPT AN AMBIENT AIR
28 QUALITY STANDARD FOR A SPECIFIC POLLUTANT WHICH IS MORE
29 STRINGENT THAN THE AIR QUALITY STANDARD WHICH THE EPA HAS
30 ADOPTED FOR THE SPECIFIC POLLUTANT PURSUANT TO SECTION 109 OF

1 THE CLEAN AIR ACT.

2 (D) IN ANY CHALLENGE TO THE ENFORCEMENT OF REGULATIONS
3 ADOPTED TO ACHIEVE AND MAINTAIN THE AMBIENT AIR QUALITY
4 STANDARDS OR TO SATISFY RELATED CLEAN AIR ACT REQUIREMENTS, THE
5 PERSON CHALLENGING THE REGULATION SHALL HAVE THE BURDEN TO
6 DEMONSTRATE THAT THE CONTROL MEASURE OR OTHER REQUIREMENT OR THE
7 STRINGENCY OF THE CONTROL MEASURE OR REQUIREMENT IS NOT
8 REASONABLY REQUIRED TO ACHIEVE OR MAINTAIN THE STANDARD OR TO
9 SATISFY RELATED CLEAN AIR ACT REQUIREMENTS.

10 (E) NO PERSON MAY FILE A PREENFORCEMENT REVIEW CHALLENGE
11 UNDER THIS SECTION BASED IN ANY MANNER UPON THE STANDARDS SET
12 FORTH IN SUBSECTION (B) OF THIS SECTION.

13 (F) THIS SECTION SHALL NOT APPLY TO RULES AND REGULATIONS
14 APPROVED AS A FINAL RULEMAKING BY THE BOARD PRIOR TO THE
15 EFFECTIVE DATE OF THIS SECTION OR TO ANY AMBIENT AIR QUALITY
16 STANDARDS ADOPTED BY THE BOARD WHERE NO SUCH STANDARD HAS BEEN
17 ADOPTED BY THE EPA.

18 (G) THIS SECTION SHALL NOT BE CONSTRUED TO WEAKEN OR
19 OTHERWISE AFFECT SITE-SPECIFIC STANDARDS OR OTHER REQUIREMENTS
20 FOR INDIVIDUAL SOURCES OR FACILITIES IN PLACE PRIOR TO THE
21 EFFECTIVE DATE OF THIS SECTION.

22 SECTION 4.3. EVALUATION.--BEGINNING FIVE (5) YEARS AFTER THE
23 EFFECTIVE DATE OF THIS SECTION AND EVERY FIVE (5) YEARS
24 THEREAFTER, THE DEPARTMENT SHALL CONDUCT AND SUBMIT TO THE
25 GENERAL ASSEMBLY AN EVALUATION OF THE EFFECTIVENESS OF THE
26 PROGRAMS ADOPTED TO IMPLEMENT THE CLEAN AIR ACT. THE EVALUATION
27 SHALL INCLUDE:

28 (1) A DETERMINATION OF WHETHER THE LIMITATION IMPOSED IN
29 SECTION 4.2 HAS HINDERED IN ANY WAY THE COMMONWEALTH'S EFFORTS
30 TO COMPLY WITH THE CLEAN AIR ACT AND A RECOMMENDATION ON WHETHER

1 THAT PROVISION SHOULD BE CHANGED.

2 (2) THE SPECIFIC STEPS TAKEN TO IMPLEMENT THE CLEAN AIR ACT
3 AND PROGRESS MADE TOWARD MEETING THE EMISSION REDUCTIONS
4 REQUIRED BY THE ACT AND RECOMMENDATIONS ON ANY ADDITIONAL STEPS
5 WHICH MUST BE TAKEN.

6 (3) AN EVALUATION OF THE FUNDING AVAILABLE TO IMPLEMENT THE
7 CLEAN AIR ACT PROGRAMS AND WHETHER THAT FUNDING IS SUFFICIENT OR
8 INADEQUATE AND RECOMMENDATIONS ON WHERE ADJUSTMENTS SHOULD BE
9 MADE.

10 (4) AN ANALYSIS OF THE COSTS IMPOSED ON MOBILE AND
11 STATIONARY AIR CONTAMINATION SOURCES TO IMPLEMENT THE
12 REQUIREMENTS OF THE CLEAN AIR ACT, INCLUDING ON INDIVIDUALS AND
13 COMPANIES. THE ANALYSIS OF COSTS SHALL ALSO CONSIDER THE
14 BENEFITS OF COMPLIANCE WITH THE CLEAN AIR ACT REQUIREMENTS AND
15 THE PUBLIC HEALTH, ENVIRONMENTAL AND ECONOMIC COSTS TO THE
16 COMMONWEALTH FOR FAILING TO MEET THE REQUIREMENTS, INCLUDING THE
17 IMPACT OF SANCTIONS.

18 (5) AN EVALUATION, IN CONSULTATION WITH THE DEPARTMENT OF
19 COMMERCE AND THE OFFICE OF SMALL BUSINESS OMBUDSMAN, OF THE
20 ADEQUACY OF MEASURES TAKEN BY THE COMMONWEALTH TO ASSIST SMALL
21 BUSINESSES IN COMPLYING WITH THE CLEAN AIR ACT.

22 (6) A SUMMARY OF THE ACTIVITIES UNDERTAKEN BY THE CITIZENS
23 ADVISORY COUNCIL AND THE AIR TECHNICAL ADVISORY COMMITTEE UNDER
24 SECTION 7.6.

25 (7) AN EVALUATION OF THE EFFECTIVENESS OF THE NORTHEAST
26 OZONE TRANSPORT COMMISSION IN MEETING THE MANDATES OF THE CLEAN
27 AIR ACT AND RECOMMENDATIONS ON ANY CHANGES THAT COULD MAKE THE
28 COMMISSION MORE EFFECTIVE.

29 (8) AN ASSESSMENT OF THE IMPACT OF MISSING FEDERAL DEADLINES
30 IDENTIFIED UNDER SECTION 7.12 HAS HAD OR WILL HAVE ON THE STATE

1 IMPLEMENTATION OF THE CLEAN AIR ACT PROGRAMS.

2 SECTION 6. SECTIONS 5 AND 6 OF THE ACT, AMENDED OCTOBER 26,
3 1972 (P.L.989, NO.245), ARE AMENDED TO READ:

4 SECTION 5. ENVIRONMENTAL QUALITY BOARD.--(A) THE BOARD
5 SHALL HAVE THE POWER AND ITS DUTY SHALL BE TO--

6 (1) ADOPT RULES AND REGULATIONS, FOR THE PREVENTION,
7 CONTROL, REDUCTION AND ABATEMENT OF AIR POLLUTION, APPLICABLE
8 THROUGHOUT THE COMMONWEALTH OR TO SUCH PARTS OR REGIONS OR
9 SUBREGIONS THEREOF SPECIFICALLY DESIGNATED IN SUCH REGULATION
10 WHICH SHALL BE APPLICABLE TO ALL AIR CONTAMINATION SOURCES
11 REGARDLESS OF WHETHER SUCH SOURCE IS REQUIRED TO BE UNDER PERMIT
12 BY THIS ACT. SUCH RULES AND REGULATIONS MAY ESTABLISH MAXIMUM
13 ALLOWABLE EMISSION RATES OF AIR CONTAMINANTS FROM SUCH SOURCES,
14 PROHIBIT OR REGULATE THE COMBUSTION OF CERTAIN FUELS, PROHIBIT
15 OR REGULATE OPEN BURNING, PROHIBIT OR REGULATE ANY PROCESS OR
16 SOURCE OR CLASS OF PROCESSES OR SOURCES, REQUIRE THE
17 INSTALLATION OF SPECIFIED CONTROL DEVICES OR EQUIPMENT, OR
18 DESIGNATE THE CONTROL EFFICIENCY OF AIR POLLUTION CONTROL
19 DEVICES OR EQUIPMENT REQUIRED IN SPECIFIC PROCESSES OR SOURCES
20 OR CLASSES OF PROCESSES OR SOURCES. SUCH RULES AND REGULATIONS
21 SHALL BE ADOPTED PURSUANT TO THE PROVISIONS OF THE ACT OF JULY
22 31, 1968 (P.L.769), KNOWN AS THE "COMMONWEALTH DOCUMENTS LAW,"
23 UPON SUCH NOTICE AND AFTER SUCH PUBLIC HEARINGS AS THE BOARD
24 DEEMS APPROPRIATE. IN EXERCISING ITS AUTHORITY TO ADOPT RULES
25 AND REGULATIONS, THE BOARD MAY, AND TO THE EXTENT DEEMED
26 DESIRABLE BY IT SHALL, CONSULT WITH A COUNCIL OF TECHNICAL
27 ADVISERS, PROPERLY QUALIFIED BY EDUCATION OR EXPERIENCE IN AIR
28 POLLUTION MATTERS, APPOINTED BY THE BOARD AND TO SERVE AT THE
29 PLEASURE OF THE BOARD, TO CONSIST OF SUCH NUMBER OF ADVISERS AS
30 THE BOARD MAY APPOINT, BUT SUCH TECHNICAL ADVISERS SHALL RECEIVE

1 NO COMPENSATION, OTHER THAN THEIR ACTUAL AND NECESSARY EXPENSES,
2 FOR THEIR SERVICES TO THE BOARD.

3 (2) ESTABLISH AND PUBLISH MAXIMUM QUANTITIES OF AIR
4 CONTAMINANTS THAT MAY BE PERMITTED UNDER VARIOUS CONDITIONS AT
5 THE POINT OF USE FROM ANY AIR CONTAMINANT SOURCE IN VARIOUS
6 AREAS OF THE COMMONWEALTH SO AS TO CONTROL AIR POLLUTION.

7 (3) BY [THE] RULE OR REGULATION, CLASSIFY AIR CONTAMINANT
8 SOURCES, ACCORDING TO LEVELS AND TYPES OF EMISSIONS AND OTHER
9 CHARACTERISTICS WHICH RELATE TO AIR POLLUTION. CLASSIFICATIONS
10 MADE PURSUANT TO THIS SUBSECTION SHALL APPLY TO THE ENTIRE
11 COMMONWEALTH OR ANY PART THEREOF. ANY PERSON WHO OWNS OR
12 OPERATES AN AIR CONTAMINANT SOURCE OF ANY CLASS TO WHICH THE
13 RULES AND REGULATIONS OF THE BOARD UNDER THIS SUBSECTION APPLY,
14 SHALL MAKE REPORTS CONTAINING INFORMATION AS MAY BE REQUIRED BY
15 THE BOARD CONCERNING LOCATION, SIZE AND HEIGHT OF AIR
16 CONTAMINANT OUTLETS, PROCESSES EMPLOYED, FUELS USED AND THE
17 NATURE AND TIME PERIODS OR DURATION OF EMISSIONS, AND SUCH OTHER
18 INFORMATION AS IS RELEVANT TO AIR POLLUTION AND AVAILABLE OR
19 REASONABLY CAPABLE OF BEING ASSEMBLED.

20 (4) RECOMMEND TO THE SECRETARY OF TRANSPORTATION PERFORMANCE
21 OR SPECIFICATION STANDARDS, OR BOTH, FOR EMISSION CONTROL
22 SYSTEMS AND DEVICES ON MOTOR VEHICLES.

23 (5) ADOPT RULES AND REGULATIONS FOR THE PROTECTION OF PUBLIC
24 HEALTH AND SAFETY FOR PERIODS WHEN THE ACCUMULATION OF AIR
25 CONTAMINANTS IN ANY AREA IS ATTAINING OR HAS ATTAINED LEVELS
26 WHICH, IF SUSTAINED OR EXCEEDED, COULD LEAD TO AN ACUTE THREAT
27 TO THE HEALTH OF THE PUBLIC. SUCH RULES AND REGULATIONS SHALL
28 CONTAIN APPROPRIATE PROCEDURES TO PROTECT PUBLIC HEALTH AND
29 SAFETY DURING SUCH PERIODS.

30 (6) ADOPT RULES AND REGULATIONS FOR THE APPROVAL AND THE

RECISION AND SUSPENSION OF APPROVAL OF LOCAL AIR POLLUTION
CONTROL AGENCIES.

(7) ADOPT RULES AND REGULATIONS DESIGNED TO REDUCE EMISSIONS
FROM MOTOR VEHICLES, INCLUDING CENTRALLY CLEAN-FUELED FLEETS,
CLEAN ALTERNATIVE FUELS, OXYGENATED FUELS, REFORMULATED FUELS,
VEHICLE MILES OF TRAVEL, TRANSPORTATION CONTROL MEASURES AND
OTHER TRANSPORTATION CONTROL STRATEGIES. SUCH RULES AND
REGULATIONS SHALL BE DEVELOPED IN CONSULTATION WITH THE
DEPARTMENT OF TRANSPORTATION. THE BOARD SHALL NOT ADOPT
REGULATIONS MANDATING THE SALE OR USE OF ANY SET OF
SPECIFICATIONS FOR MOTOR FUEL PRESCRIBED BY THE STATE OF
CALIFORNIA UNDER 42 U.S.C. § 7545(C)(4)(B) UNLESS THE SET OF
SPECIFICATIONS IS REQUIRED UNDER THE CLEAN AIR ACT OR THE
REGULATIONS PROMULGATED THEREUNDER.

(8) ADOPT RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS
OF THE CLEAN AIR ACT. THE RULES AND REGULATIONS ADOPTED TO
IMPLEMENT THE PROVISIONS OF THE CLEAN AIR ACT SHALL BE
CONSISTENT WITH THE REQUIREMENTS OF THE CLEAN AIR ACT AND THE
REGULATIONS ADOPTED THEREUNDER.

(9) ADOPT RULES AND REGULATIONS TO EXEMPT SOURCES OR
CATEGORIES OF SOURCES OF MINOR SIGNIFICANCE FROM THE PROVISIONS
OF SECTION 6.1.

(10) ADOPT RULES AND REGULATIONS ESTABLISHING PROVISIONS TO
ALLOW CHANGES WITHIN A PERMITTED FACILITY OR ONE OPERATING
PURSUANT TO CLAUSE (3) OF SUBSECTION (B) OF SECTION 6.1 WITHOUT
REQUIRING A PERMIT REVISION, IF THE CHANGES ARE NOT
MODIFICATIONS UNDER ANY PROVISION OF 42 U.S.C. CH. 85 SUBCH. I
(RELATING TO PROGRAMS AND ACTIVITIES), AND THE CHANGES DO NOT
EXCEED THE EMISSIONS ALLOWABLE UNDER THE PERMIT WHETHER
EXPRESSED THEREIN AS A RATE OF EMISSIONS OR IN TERMS OF TOTAL

1 EMISSIONS: PROVIDED, THAT THE FACILITY PROVIDES THE DEPARTMENT
2 AND THE ADMINISTRATOR WITH WRITTEN NOTIFICATION IN ADVANCE OF
3 THE PROPOSED CHANGES WHICH SHALL BE A MINIMUM OF SEVEN (7) DAYS,
4 UNLESS THE BOARD PROVIDES IN ITS REGULATIONS A DIFFERENT TIME
5 FRAME FOR EMERGENCIES.

6 (11) THE BOARD MAY BY REGULATION REQUIRE REVISIONS TO
7 PERMITS FOR MAJOR SOURCES TO INCORPORATE APPLICABLE STANDARDS
8 AND REGULATIONS PROMULGATED PURSUANT TO THE CLEAN AIR ACT AND
9 ADOPTED BY THE BOARD AFTER THE ISSUANCE OF SUCH PERMIT AS
10 REQUIRED BY SECTION 502(B)(9) OF THE CLEAN AIR ACT.

11 (12) THE BOARD MAY BY REGULATION ADOPT RULES CONTAINING
12 REASONABLE PROCEDURES CONSISTENT WITH THE NEED FOR EXPEDITIOUS
13 ACTION BY THE DEPARTMENT ON PLAN APPROVALS AND OPERATING PERMIT
14 APPLICATIONS TO MAKE AVAILABLE TO THE PUBLIC ANY PLAN APPROVAL
15 OR OPERATING PERMIT APPLICATION, COMPLIANCE PLAN, PLAN APPROVAL,
16 OPERATING PERMIT AND MONITORING OR COMPLIANCE REPORT AS REQUIRED
17 BY SECTION 502(B)(8) OF THE CLEAN AIR ACT.

18 (13) ADOPT, BY REGULATION, PROCEDURES TO CONSIDER VARIANCES
19 FROM THE LIMITS ON THE VOLATILE ORGANIC COMPOUND CONTENT OF
20 EXTREME PERFORMANCE COATINGS AND PAINTS WHICH ARE REQUIRED TO BE
21 USED BY THE FEDERAL AVIATION ADMINISTRATION OR THE DEPARTMENT OF
22 DEFENSE TO MEET AVIATION OR MILITARY SPECIFICATIONS IF SUCH
23 VARIANCES ARE AUTHORIZED BY THE CLEAN AIR ACT.

24 (B) THE BOARD SHALL NOT HAVE THE POWER TO--

25 (1) ADOPT ANY REGULATION RESTRICTING OR DENYING ANY PERMIT
26 APPLICATION OR OTHERWISE LAWFUL ACTIVITY BASED UPON ANY
27 TRANSPORTATION CONTROL MEASURES OR TRANSPORTATION CONTROL
28 STRATEGIES.

29 (2) ADOPT ANY REGULATION RESTRICTING ANY MUNICIPALITY'S
30 POWERS REGARDING LAND DEVELOPMENT, SUBDIVISION APPROVAL, ZONING

CHANGE, BUILDING PERMIT OR ANY OTHER DEVELOPMENT ACTIVITY
BECAUSE OF THE RULES OR REGULATIONS ADOPTED UNDER THIS ACT.

SECTION 6. ENVIRONMENTAL HEARING BOARD.--THE HEARING BOARD
SHALL HAVE THE POWER AND ITS DUTY SHALL BE TO HEAR AND DETERMINE
ALL APPEALS FROM [ORDERS ISSUED BY] APPEALABLE ACTIONS OF THE
DEPARTMENT AS DEFINED IN THE ACT OF JULY 13, 1988 (P.L.530,
NO.94), KNOWN AS THE "ENVIRONMENTAL HEARING BOARD ACT," IN
ACCORDANCE WITH THE PROVISIONS OF THIS ACT. ANY AND ALL ACTION
TAKEN BY THE HEARING BOARD WITH REFERENCE TO ANY SUCH APPEAL
SHALL BE IN THE FORM OF AN ADJUDICATION, AND ALL SUCH ACTION
SHALL BE SUBJECT TO THE PROVISIONS OF [THE ACT OF JUNE 4, 1945
(P.L.1388), KNOWN AS THE "ADMINISTRATIVE AGENCY LAW."] 2 PA.C.S.
(RELATING TO ADMINISTRATIVE LAW AND PROCEDURE).

SECTION 7. SECTION 6.1 OF THE ACT, ADDED OCTOBER 26, 1972
(P.L.989, NO.245) AND REPEALED IN PART APRIL 28, 1978 (P.L.202,
NO.53), IS AMENDED TO READ:

SECTION 6.1. PLAN APPROVALS AND PERMITS.--(A) [ON OR AFTER
JULY 1, 1972, NO] NO PERSON SHALL CONSTRUCT, ASSEMBLE, INSTALL
OR MODIFY ANY STATIONARY AIR CONTAMINATION SOURCE, OR INSTALL
THEREON ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE [OR
REACTIVATE ANY AIR CONTAMINATION SOURCE AFTER SAID SOURCE HAS
BEEN OUT OF OPERATION OR PRODUCTION FOR A PERIOD OF ONE YEAR OR
MORE] UNLESS SUCH PERSON HAS APPLIED TO AND RECEIVED [FROM THE
DEPARTMENT] WRITTEN PLAN APPROVAL [SO TO DO] FROM THE DEPARTMENT
TO DO SO: PROVIDED, HOWEVER, THAT NO SUCH WRITTEN APPROVAL SHALL
BE NECESSARY WITH RESPECT TO NORMAL ROUTINE MAINTENANCE
OPERATIONS, NOR TO ANY SUCH SOURCE, EQUIPMENT OR DEVICE USED
SOLELY FOR THE SUPPLYING OF HEAT OR HOT WATER TO ONE STRUCTURE
INTENDED AS A ONE-FAMILY OR TWO-FAMILY DWELLING, [OR WITH
RESPECT TO ANY OTHER CLASS OF UNITS AS THE BOARD, BY RULE OR

1 REGULATION, MAY EXEMPT FROM THE REQUIREMENTS OF THIS SECTION.]
2 NOR WHERE CONSTRUCTION, ASSEMBLY, INSTALLATION OR MODIFICATION
3 IS SPECIFICALLY AUTHORIZED BY THE RULES OR REGULATIONS OF THE
4 DEPARTMENT TO BE CONDUCTED WITHOUT WRITTEN APPROVAL. ALL
5 APPLICATIONS FOR APPROVAL SHALL BE MADE IN WRITING AND SHALL BE
6 ON SUCH FORMS AND CONTAIN SUCH INFORMATION AS THE DEPARTMENT
7 SHALL PRESCRIBE AND SHALL HAVE APPENDED THERETO DETAILED PLANS
8 AND SPECIFICATIONS RELATED TO THE PROPOSED INSTALLATION.

9 (B) (1) NO PERSON SHALL OPERATE ANY STATIONARY AIR
10 CONTAMINATION SOURCE [WHICH IS SUBJECT TO THE PROVISIONS OF
11 SUBSECTION (A) OF THIS SECTION] UNLESS THE DEPARTMENT SHALL HAVE
12 ISSUED TO SUCH PERSON A PERMIT TO OPERATE SUCH SOURCE UNDER THE
13 PROVISIONS OF THIS SECTION IN RESPONSE TO A WRITTEN APPLICATION
14 FOR A PERMIT SUBMITTED ON FORMS AND CONTAINING SUCH INFORMATION
15 AS THE DEPARTMENT MAY PRESCRIBE[.] OR WHERE CONSTRUCTION,
16 ASSEMBLY, INSTALLATION MODIFICATION IS SPECIFICALLY AUTHORIZED
17 BY THE RULES OR REGULATIONS OF THE DEPARTMENT TO BE CONDUCTED
18 WITHOUT WRITTEN APPROVAL. THE DEPARTMENT SHALL PROVIDE PUBLIC
19 NOTICE AND THE RIGHT TO COMMENT ON ALL PERMITS PRIOR TO ISSUANCE
20 OR DENIAL AND MAY HOLD PUBLIC HEARINGS CONCERNING ANY PERMIT.

21 (2) [NO PERMIT SHALL] A PERMIT MAY BE ISSUED AFTER THE
22 EFFECTIVE DATE OF THIS AMENDMENT TO ANY APPLICANT [UNLESS IT
23 APPEARS THAT, WITH RESPECT TO THE SOURCE,] FOR A STATIONARY AIR
24 CONTAMINATION SOURCE REQUIRING CONSTRUCTION, ASSEMBLY,
25 INSTALLATION OR MODIFICATION, WHERE THE REQUIREMENTS OF
26 SUBSECTION (A) OF THIS SECTION HAVE BEEN MET AND [THAT] THERE
27 HAS BEEN PERFORMED UPON SUCH SOURCE A TEST OPERATION OR
28 EVALUATION WHICH SHALL SATISFY THE DEPARTMENT THAT THE AIR
29 CONTAMINATION SOURCE WILL NOT DISCHARGE INTO THE OUTDOOR
30 ATMOSPHERE ANY AIR CONTAMINANTS AT A RATE IN EXCESS OF THAT

1 PERMITTED BY APPLICABLE REGULATION OF THE BOARD, OR IN VIOLATION
2 OF ANY PERFORMANCE OR EMISSION STANDARD OR OTHER REQUIREMENT
3 ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY OR THE
4 DEPARTMENT FOR SUCH SOURCE, AND WHICH WILL NOT CAUSE AIR
5 POLLUTION.

6 (3) A STATIONARY AIR CONTAMINATION SOURCE OPERATING LAWFULLY
7 WITHOUT A PERMIT FOR WHICH FEES REQUIRED BY SECTION 6.3 OF THIS
8 ACT OR THE REGULATIONS PROMULGATED UNDER THIS ACT HAVE BEEN PAID
9 IS AUTHORIZED TO CONTINUE TO OPERATE WITHOUT A PERMIT UNTIL ONE
10 HUNDRED TWENTY (120) DAYS AFTER THE DEPARTMENT PROVIDES NOTICE
11 TO THE SOURCE THAT A PERMIT IS REQUIRED OR UNTIL NOVEMBER 1,
12 1996, WHICHEVER OCCURS FIRST. IF THE APPLICANT SUBMITS A
13 COMPLETE PERMIT APPLICATION WITHIN THE TIME FRAMES IN THIS
14 SUBSECTION, AND THE DEPARTMENT FAILS TO ISSUE A PERMIT THROUGH
15 NO FAULT OF THE APPLICANT, THE SOURCE MAY CONTINUE TO OPERATE IF
16 THE FEES REQUIRED BY SECTION 6.3 OR THE REGULATIONS PROMULGATED
17 UNDER THIS ACT HAVE BEEN PAID AND THE SOURCE IS OPERATED IN
18 CONFORMANCE WITH THIS ACT, THE CLEAN AIR ACT AND THE REGULATIONS
19 PROMULGATED UNDER BOTH THIS ACT AND THE CLEAN AIR ACT. FOR ANY
20 PERFORMANCE OR EMISSION STANDARD OR OTHER REQUIREMENT
21 ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY OR THE
22 DEPARTMENT FOR THE SOURCE SUBSEQUENT TO THE EFFECTIVE DATE OF
23 THIS ACT BUT PRIOR TO THE PERMIT ISSUANCE DATE, THE PERMIT MAY
24 CONTAIN A COMPLIANCE SCHEDULE AUTHORIZING THE SOURCE TO OPERATE
25 OUT OF COMPLIANCE AND REQUIRING THE SOURCE TO ACHIEVE COMPLIANCE
26 AS SOON AS POSSIBLE BUT NO LATER THAN THE TIME REQUIRED BY THIS
27 ACT, THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED UNDER
28 EITHER THIS ACT OR THE CLEAN AIR ACT. FOR PURPOSES OF THIS
29 SUBSECTION, A SOURCE IS OPERATING LAWFULLY WITHOUT A PERMIT
30 WHERE IT IS A SOURCE FOR WHICH NO PERMIT WAS PREVIOUSLY REQUIRED

1 AND THE SOURCE IS OPERATING IN COMPLIANCE WITH APPLICABLE
2 REGULATORY REQUIREMENTS.

3 (4) FOR REPERMITTING OF ANY STATIONARY AIR CONTAMINATION
4 SOURCE WHICH IS OPERATING UNDER A VALID PERMIT ON THE EFFECTIVE
5 DATE OF THIS ACT OR WHICH HAS RECEIVED A PERMIT UNDER THE
6 PROVISIONS OF CLAUSES (2) AND (3) OF THIS SUBSECTION AND WHICH
7 IS REQUIRED TO MEET PERFORMANCE OR EMISSION STANDARDS OR OTHER
8 REQUIREMENTS ESTABLISHED SUBSEQUENT TO THE ISSUANCE OF THE
9 EXISTING PERMIT, THE NEW PERMIT MAY CONTAIN A COMPLIANCE
10 SCHEDULE AUTHORIZING THE SOURCE TO OPERATE OUT OF COMPLIANCE AND
11 REQUIRING THE SOURCE TO ACHIEVE COMPLIANCE AS SOON AS POSSIBLE
12 BUT NO LATER THAN THE TIME REQUIRED BY THIS ACT, THE CLEAN AIR
13 ACT OR THE REGULATIONS PROMULGATED UNDER EITHER THIS ACT OR THE
14 CLEAN AIR ACT.

15 (B.1) [PERMITS] A PERMIT OR PLAN APPROVAL ISSUED HEREUNDER
16 MAY CONTAIN SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS
17 NECESSARY TO ASSURE THE PROPER OPERATION OF THE SOURCE. [EACH
18 PERMITTEE, ON OR BEFORE THE ANNIVERSARY DATE SET FORTH IN HIS
19 PERMIT, SHALL SUBMIT TO THE DEPARTMENT AN ANNUAL REPORT
20 CONTAINING SUCH INFORMATION AS THE DEPARTMENT SHALL PRESCRIBE
21 RELATIVE TO THE OPERATION AND MAINTENANCE OF THE INSTALLATION
22 UNDER PERMIT.

23 (C) ANY PERMIT ISSUED HEREUNDER MAY BE REVOKED OR SUSPENDED
24 IF THE PERMITTEE OPERATES THE SOURCE SUBJECT TO THE PERMIT IN
25 SUCH A MANNER AS TO BE IN VIOLATION OF THE CONDITIONS OF ANY
26 PERMIT OR RULE OR REGULATION OF THE BOARD OR IN SUCH A MANNER AS
27 TO CAUSE AIR POLLUTION, IF THE PERMITTEE FAILS TO PROPERLY OR
28 ADEQUATELY MAINTAIN OR REPAIR ANY AIR POLLUTION CONTROL DEVICE
29 OR EQUIPMENT ATTACHED TO OR OTHERWISE MADE A PART OF THE SOURCE,
30 OR IF THE PERMITTEE HAS FAILED TO SUBMIT ANY ANNUAL REPORT AS

1 REQUIRED UNDER THIS SECTION.

2 (D) THE DEPARTMENT MAY REFUSE TO GRANT APPROVAL FOR ANY
3 STATIONARY AIR CONTAMINATION SOURCE SUBJECT TO THE PROVISIONS OF
4 SUBSECTION (A) OF THIS SECTION OR TO ISSUE A PERMIT TO OPERATE
5 SUCH SOURCE IF IT APPEARS, FROM THE DATA AVAILABLE TO THE
6 DEPARTMENT, THAT THE PROPOSED SOURCE, OR PROPOSED CHANGES IN
7 SUCH SOURCE, ARE LIKELY EITHER TO CAUSE AIR POLLUTION OR TO
8 VIOLATE ANY BOARD RULE OR REGULATION APPLICABLE TO SUCH SOURCE,
9 OR IF, IN THE DESIGN OF SUCH SOURCE, NO PROVISION IS MADE FOR
10 ADEQUATE FACILITIES TO CONDUCT SOURCE TESTING. THE DEPARTMENT
11 MAY ALSO REFUSE TO ISSUE A PERMIT TO ANY PERSON WHO HAS
12 CONSTRUCTED, INSTALLED OR MODIFIED ANY AIR CONTAMINATION SOURCE,
13 OR INSTALLED ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE ON
14 SUCH SOURCE CONTRARY TO THE PLANS AND SPECIFICATIONS APPROVED BY
15 THE DEPARTMENT.] THE BOARD SHALL BY REGULATION ESTABLISH A
16 PERMIT SHIELD FOR PERMITS ISSUED UNDER THE AUTHORITY DELEGATED
17 TO THE COMMONWEALTH BY THE EPA UNDER TITLE V OF THE CLEAN AIR
18 ACT. THE PROGRAM SHALL BE CONSISTENT WITH THE REQUIREMENTS OF
19 SECTION 504(F) OF THE CLEAN AIR ACT AND THE REGULATIONS
20 PROMULGATED THEREUNDER. EACH PERMITTEE, ON A SCHEDULE
21 ESTABLISHED BY THE DEPARTMENT, SHALL SUBMIT REPORTS TO THE
22 DEPARTMENT CONTAINING SUCH INFORMATION AS THE DEPARTMENT MAY
23 PRESCRIBE RELATIVE TO THE OPERATION AND MAINTENANCE OF THE
24 SOURCE.

25 (B.2) A PERMIT ISSUED OR REISSUED UNDER SUBSECTION (B) OF
26 THIS SECTION SHALL BE ISSUED FOR A FIVE (5) YEAR TERM UNLESS A
27 SHORTER TERM IS REQUIRED TO COMPLY WITH THE CLEAN AIR ACT AND
28 REGULATIONS PROMULGATED THEREUNDER OR THE PERMITTEE REQUESTS A
29 SHORTER TERM, EXCEPT THAT A PERMIT FOR ACID DEPOSITION CONTROL
30 SHALL BE ISSUED FOR A FIVE (5) YEAR TERM. A PERMIT MAY BE

1 TERMINATED, MODIFIED, SUSPENDED OR REVOKED AND REISSUED FOR
2 CAUSE. THE TERMS AND CONDITIONS OF AN EXPIRED PERMIT ARE
3 AUTOMATICALLY CONTINUED PENDING THE ISSUANCE OF A NEW PERMIT
4 WHERE THE PERMITTEE HAS SUBMITTED A TIMELY AND COMPLETE
5 APPLICATION FOR A NEW PERMIT AND PAID THE FEES REQUIRED BY
6 SECTION 6.3 OR THE REGULATIONS PROMULGATED UNDER THIS ACT AND
7 THE DEPARTMENT IS UNABLE, THROUGH NO FAULT OF THE PERMITTEE, TO
8 ISSUE OR DENY A NEW PERMIT BEFORE THE EXPIRATION DATE OF THE
9 PREVIOUS PERMIT. FAILURE OF THE DEPARTMENT TO ISSUE OR DENY A
10 NEW PERMIT PRIOR TO THE EXPIRATION DATE OF THE PREVIOUS PERMIT
11 SHALL BE AN APPEALABLE ACTION AS DESCRIBED IN SECTION 10.2. THE
12 HEARING BOARD MAY REQUIRE THAT THE DEPARTMENT TAKE ACTION ON AN
13 APPLICATION WITHOUT ADDITIONAL DELAY.

14 (B.3) THE BOARD SHALL, BY REGULATION, ESTABLISH ADEQUATE,
15 STREAMLINED AND REASONABLE PROCEDURES FOR EXPEDITIOUSLY
16 DETERMINING WHEN APPLICATIONS ARE COMPLETE AND FOR EXPEDITIOUS
17 REVIEW OF APPLICATIONS. THE DEPARTMENT SHALL APPROVE OR
18 DISAPPROVE A COMPLETE APPLICATION, CONSISTENT WITH THE
19 PROCEDURES ESTABLISHED BY THE BOARD FOR CONSIDERATION OF SUCH
20 APPLICATIONS, WITHIN EIGHTEEN (18) MONTHS AFTER THE DATE OF
21 RECEIPT OF THE COMPLETE APPLICATION EXCEPT THAT THE DEPARTMENT
22 SHALL ESTABLISH A PHASED SCHEDULE FOR ACTING ON PERMIT
23 APPLICATIONS SUBMITTED WITHIN THE FIRST FULL YEAR AFTER THE
24 EFFECTIVE DATE OF THE TITLE V PERMIT PROGRAM ESTABLISHED TO
25 IMPLEMENT THE REQUIREMENTS OF THE CLEAN AIR ACT. THE SCHEDULE
26 SHALL ASSURE THAT AT LEAST ONE-THIRD OF SUCH PERMITS SHALL BE
27 ACTED UPON BY THE DEPARTMENT ANNUALLY OVER A PERIOD NOT TO
28 EXCEED THREE (3) YEARS AFTER SUCH EFFECTIVE DATE. FAILURE OF THE
29 DEPARTMENT TO ISSUE OR DENY A PERMIT BY A DEADLINE ESTABLISHED
30 BY THIS SUBSECTION SHALL BE AN APPEALABLE ACTION AS DESCRIBED IN

1 SECTION 10.2 OF THIS ACT. THE HEARING BOARD MAY REQUIRE THAT THE
2 DEPARTMENT TAKE ACTION ON AN APPLICATION WITHOUT ADDITIONAL
3 DELAY.

4 (B.4) (1) DURING THE TERM OF A PERMIT, A PERMITTEE MAY
5 REACTIVATE ANY SOURCE UNDER THE PERMIT THAT HAS BEEN OUT OF
6 OPERATION OR PRODUCTION FOR A PERIOD OF ONE YEAR OR MORE:
7 PROVIDED, THAT THE PERMITTEE HAS SUBMITTED A REACTIVATION PLAN
8 TO AND RECEIVED WRITTEN APPROVAL FROM THE DEPARTMENT. THE
9 REACTIVATION PLAN SHALL DESCRIBE THE MEASURES THAT WILL BE TAKEN
10 TO ENSURE THE SOURCE WILL BE REACTIVATED IN COMPLIANCE WITH ALL
11 APPLICABLE PERMIT REQUIREMENTS. A REACTIVATION PLAN MAY BE
12 SUBMITTED TO AND APPROVED BY THE DEPARTMENT AT ANY TIME DURING
13 THE TERM OF A PERMIT. THE DEPARTMENT SHALL TAKE ACTION ON THE
14 REACTIVATION PLAN WITHIN THIRTY (30) DAYS UNLESS THE DEPARTMENT
15 DETERMINES THAT ADDITIONAL TIME IS NEEDED BASED ON THE SIZE OR
16 COMPLEXITY OF THE REACTIVATED SOURCE.

17 (2) A REACTIVATION PLAN MAY ALSO BE SUBMITTED TO AND
18 APPROVED BY THE DEPARTMENT AS PART OF THE PLAN APPROVAL OR
19 PERMIT APPLICATION PROCESS. AN OWNER OR OPERATOR WHO HAS AN
20 APPROVED REACTIVATION PLAN SHALL NOTIFY THE DEPARTMENT PRIOR TO
21 THE REACTIVATION OF THE SOURCE.

22 (B.5) THE BOARD SHALL ADOPT THE REGULATIONS REQUIRED BY
23 SUBSECTIONS (B.1), (B.3) AND (I) AS PART OF THE REGULATORY
24 PACKAGE TO IMPLEMENT THE OPERATING PERMIT PROGRAM REQUIRED BY
25 TITLE V OF THE CLEAN AIR ACT.

26 (C) A PLAN APPROVAL OR PERMIT ISSUED HEREUNDER MAY BE
27 TERMINATED, MODIFIED, SUSPENDED OR REVOKED AND REISSUED IF THE
28 PERMITTEE CONSTRUCTS OR OPERATES THE SOURCE SUBJECT TO THE PLAN
29 APPROVAL OR PERMIT IN SUCH A MANNER AS TO BE IN VIOLATION OF
30 THIS ACT, THE CLEAN AIR ACT, THE REGULATIONS PROMULGATED UNDER

1 EITHER THIS ACT OR THE CLEAN AIR ACT, A PLAN APPROVAL OR PERMIT
2 OR IN SUCH A MANNER AS TO CAUSE AIR POLLUTION, IF THE PERMITTEE
3 FAILS TO PROPERLY OR ADEQUATELY MAINTAIN OR REPAIR ANY AIR
4 POLLUTION CONTROL DEVICE OR EQUIPMENT ATTACHED TO OR OTHERWISE
5 MADE A PART OF THE SOURCE, IF THE PERMITTEE HAS FAILED TO SUBMIT
6 A REPORT REQUIRED BY A PLAN APPROVAL OR OPERATING PERMIT UNDER
7 THIS SECTION OR IF THE ENVIRONMENTAL PROTECTION AGENCY
8 DETERMINES THAT THE PERMIT IS NOT IN COMPLIANCE WITH THE
9 REQUIREMENTS OF THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED
10 UNDER THE CLEAN AIR ACT.

11 (D) THE DEPARTMENT MAY REFUSE TO GRANT PLAN APPROVAL FOR ANY
12 STATIONARY AIR CONTAMINATION SOURCE SUBJECT TO THE PROVISIONS OF
13 SUBSECTION (A) OF THIS SECTION OR TO ISSUE A PERMIT TO ANY
14 SOURCE THAT THE DEPARTMENT DETERMINES IS LIKELY TO CAUSE AIR
15 POLLUTION OR TO VIOLATE THIS ACT, THE CLEAN AIR ACT OR THE
16 REGULATIONS PROMULGATED UNDER EITHER THIS ACT OR THE CLEAN AIR
17 ACT APPLICABLE TO SUCH SOURCE, OR IF, IN THE DESIGN OF SUCH
18 SOURCE, NO PROVISION IS MADE FOR ADEQUATE VERIFICATION OF
19 COMPLIANCE, INCLUDING SOURCE TESTING OR ALTERNATIVE MEANS TO
20 VERIFY COMPLIANCE. THE DEPARTMENT MAY ALSO REFUSE TO ISSUE A
21 PERMIT OR MAY FOR CAUSE TERMINATE OR REVOKE AND REISSUE ANY
22 PERMIT TO ANY PERSON IF THE ENVIRONMENTAL PROTECTION AGENCY
23 DETERMINES THAT THE PERMIT IS NOT IN COMPLIANCE WITH THE
24 REQUIREMENTS OF THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED
25 UNDER THE CLEAN AIR ACT OR IF THE APPLICANT HAS CONSTRUCTED,
26 INSTALLED, MODIFIED OR OPERATED ANY AIR CONTAMINATION SOURCE OR
27 INSTALLED ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE ON SUCH
28 SOURCE CONTRARY TO THE PLANS AND SPECIFICATIONS APPROVED BY THE
29 DEPARTMENT.

30 (E) WHENEVER THE DEPARTMENT SHALL REFUSE TO GRANT AN

1 APPROVAL OR TO ISSUE OR REISSUE A PERMIT HEREUNDER OR TERMINATE,
2 MODIFY, SUSPEND OR REVOKE A PLAN APPROVAL OR PERMIT ALREADY
3 ISSUED, SUCH ACTION SHALL BE IN THE FORM OF A WRITTEN NOTICE TO
4 THE PERSON AFFECTED THEREBY INFORMING HIM OF THE ACTION TAKEN BY
5 THE DEPARTMENT AND SETTING FORTH, IN SUCH NOTICE, A FULL AND
6 COMPLETE STATEMENT OF THE REASONS FOR SUCH ACTION. SUCH NOTICE
7 SHALL BE SERVED UPON THE PERSON AFFECTED, EITHER PERSONALLY OR
8 BY CERTIFIED MAIL, AND THE ACTION SET FORTH IN THE NOTICE SHALL
9 BE FINAL AND NOT SUBJECT TO REVIEW UNLESS, WITHIN THIRTY (30)
10 DAYS OF THE SERVICE OF SUCH NOTICE, ANY PERSON AFFECTED THEREBY
11 SHALL APPEAL TO THE HEARING BOARD, SETTING FORTH WITH
12 PARTICULARITY THE GROUNDS RELIED UPON. THE HEARING BOARD SHALL
13 HEAR THE APPEAL PURSUANT TO THE PROVISIONS OF THE RULES AND
14 REGULATIONS RELATING TO PRACTICE AND PROCEDURE BEFORE THE
15 HEARING BOARD, AND THEREAFTER, SHALL ISSUE AN ADJUDICATION
16 AFFIRMING, MODIFYING OR OVERRULING THE ACTION OF THE DEPARTMENT.

17 [(F) THE BOARD MAY, BY RULE, REQUIRE THE PAYMENT OF A
18 REASONABLE FEE, NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00), FOR
19 THE PROCESSING OF ANY APPLICATION FOR PLAN APPROVAL OR FOR AN
20 OPERATING PERMIT UNDER THE PROVISIONS OF THIS SECTION.]

21 (F) THE DEPARTMENT MAY, BY REGULATION, ESTABLISH A GENERAL
22 PLAN APPROVAL AND A GENERAL PERMIT PROGRAM. AFTER THE PROGRAM IS
23 ESTABLISHED, THE DEPARTMENT MAY GRANT GENERAL PLAN APPROVAL OR A
24 GENERAL PERMIT FOR ANY CATEGORY OF STATIONARY AIR CONTAMINATION
25 SOURCE IF THE DEPARTMENT DETERMINES THAT THE SOURCES IN SUCH
26 CATEGORY ARE SIMILAR IN NATURE, AND CAN BE ADEQUATELY REGULATED
27 USING STANDARDIZED SPECIFICATIONS AND CONDITIONS. ANY APPLICANT
28 PROPOSING TO USE A GENERAL PLAN APPROVAL OR GENERAL PERMIT SHALL
29 NOTIFY THE DEPARTMENT AND RECEIVE WRITTEN APPROVAL PRIOR TO THE
30 PROPOSED USE. THE DEPARTMENT SHALL TAKE ACTION ON A NOTIFICATION

1 WITHIN THIRTY (30) DAYS.

2 (G) THE DEPARTMENT MAY, BY REGULATION, ESTABLISH A PLAN
3 APPROVAL AND PERMIT PROGRAM FOR STATIONARY SOURCES OPERATED AT
4 MULTIPLE TEMPORARY LOCATIONS. AFTER THE PROGRAM IS ESTABLISHED,
5 THE DEPARTMENT MAY GRANT A PLAN APPROVAL OR ISSUE A SINGLE
6 PERMIT TO ANY STATIONARY AIR CONTAMINATION SOURCE THAT MAY BE
7 OPERATED AT MULTIPLE TEMPORARY LOCATIONS. SUCH APPROVAL OR
8 PERMIT SHALL REQUIRE THE OWNER OR OPERATOR TO NOTIFY THE
9 DEPARTMENT AND MUNICIPALITY WHERE THE OPERATION SHALL TAKE PLACE
10 IN ADVANCE OF EACH CHANGE IN LOCATION AND MAY REQUIRE A SEPARATE
11 APPLICATION AND PERMIT OR APPROVAL FEE FOR OPERATIONS AT EACH
12 LOCATION. ANY APPLICANT PROPOSING TO USE THE PLAN APPROVAL OR
13 PERMIT AUTHORIZED BY THIS SUBSECTION SHALL NOTIFY THE DEPARTMENT
14 AND RECEIVE WRITTEN APPROVAL PRIOR TO THE PROPOSED USE. THE
15 DEPARTMENT SHALL TAKE ACTION ON A REQUEST WITHIN THIRTY (30)
16 DAYS.

17 (H) THE DEPARTMENT SHALL ESTABLISH COMPREHENSIVE PLAN
18 APPROVAL AND OPERATING PERMIT PROGRAMS WHICH MEET THE
19 REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT.

20 (I) THE BOARD SHALL BY REGULATION ESTABLISH PROVISIONS TO
21 ALLOW CHANGES WITHIN A PERMITTED FACILITY OR ONE OPERATING
22 PURSUANT TO CLAUSE (3) OF SUBSECTION (B) OF SECTION 6.1 WITHOUT
23 REQUIRING A PERMIT REVISION, IF THE CHANGES ARE NOT
24 MODIFICATIONS UNDER ANY PROVISION OF 42 U.S.C. CH. 85 SUBCH. I
25 (RELATING TO PROGRAMS AND ACTIVITIES) AND THE CHANGES DO NOT
26 EXCEED THE EMISSIONS ALLOWABLE UNDER THE PERMIT WHETHER
27 EXPRESSED THEREIN AS A RATE OF EMISSIONS OR IN TERMS OF TOTAL
28 EMISSIONS: PROVIDED, THAT THE FACILITY PROVIDES THE
29 ADMINISTRATOR AND THE DEPARTMENT WITH WRITTEN NOTIFICATION AT
30 LEAST SEVEN (7) DAYS IN ADVANCE OF THE PROPOSED CHANGES, UNLESS

1 THE BOARD PROVIDES IN ITS REGULATIONS A DIFFERENT TIME FRAME FOR
2 EMERGENCIES.

3 (J) THE DEPARTMENT SHALL MAKE AVAILABLE TO THE PUBLIC ANY
4 PERMIT APPLICATION, COMPLIANCE PLAN, PERMIT AND MONITORING OR
5 COMPLIANCE REPORT REQUIRED BY THIS ACT.

6 (K) THE DEPARTMENT SHALL REQUIRE REVISIONS TO ANY PERMIT TO
7 INCORPORATE APPLICABLE STANDARDS AND REGULATIONS PROMULGATED
8 UNDER THE CLEAN AIR ACT AFTER THE ISSUANCE OF SUCH PERMIT. SUCH
9 REVISIONS SHALL OCCUR AS EXPEDITIOUSLY AS PRACTICABLE, BUT NOT
10 LATER THAN EIGHTEEN (18) MONTHS AFTER THE PROMULGATION OF SUCH
11 STANDARDS AND REGULATIONS. NO SUCH REVISION SHALL BE REQUIRED IF
12 THE EFFECTIVE DATE OF THE STANDARDS OR REGULATIONS IS A DATE
13 AFTER THE EXPIRATION OF THE PERMIT TERM OR IF LESS THAN THREE
14 (3) YEARS REMAIN ON THE PERMIT. SUCH PERMIT REVISION SHALL BE
15 TREATED AS A PERMIT RENEWAL IF IT COMPLIES WITH THE REQUIREMENTS
16 OF THIS ACT REGARDING RENEWALS.

17 SECTION 8. SECTION 6.2(A) OF THE ACT, ADDED OCTOBER 26, 1972
18 (P.L.989, NO.245), IS AMENDED TO READ:

19 SECTION 6.2. EMERGENCY PROCEDURE.--(A) ANY OTHER PROVISION
20 OF LAW TO THE CONTRARY NOTWITHSTANDING, IF THE DEPARTMENT FINDS,
21 IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD
22 ADOPTED UNDER THE PROVISIONS OF CLAUSE (5) OF SECTION 5 OF THIS
23 ACT, THAT A GENERALIZED CONDITION OF AIR POLLUTION EXISTS AND
24 THAT IT CREATES AN EMERGENCY REQUIRING IMMEDIATE ACTION TO
25 PROTECT HUMAN HEALTH OR SAFETY, THE DEPARTMENT, WITH THE
26 CONCURRENCE OF THE GOVERNOR, SHALL ORDER OR DIRECT PERSONS
27 CAUSING OR CONTRIBUTING TO THE AIR POLLUTION TO IMMEDIATELY
28 REDUCE OR DISCONTINUE THE EMISSION OF AIR CONTAMINANTS.

29 * * *

30 SECTION 9. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

1 SECTION 6.3. FEES.--(A) THIS SECTION AUTHORIZES THE
2 ESTABLISHMENT OF FEES SUFFICIENT TO COVER THE INDIRECT AND
3 DIRECT COSTS OF ADMINISTERING THE AIR POLLUTION CONTROL PLAN
4 APPROVAL PROCESS, OPERATING PERMIT PROGRAM REQUIRED BY TITLE V
5 OF THE CLEAN AIR ACT, OTHER REQUIREMENTS OF THE CLEAN AIR ACT
6 AND THE INDIRECT AND DIRECT COSTS OF ADMINISTERING THE SMALL
7 BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
8 COMPLIANCE ASSISTANCE PROGRAM, COMPLIANCE ADVISORY COMMITTEE AND
9 OFFICE OF SMALL BUSINESS OMBUDSMAN. THIS SECTION ALSO AUTHORIZES
10 THE BOARD BY REGULATION TO ESTABLISH FEES TO SUPPORT THE AIR
11 POLLUTION CONTROL PROGRAM AUTHORIZED BY THIS ACT AND NOT COVERED
12 BY FEES REQUIRED BY SECTION 502(B) OF THE CLEAN AIR ACT.

13 (B) AN ANNUAL INTERIM AIR EMISSION FEE OF FOURTEEN DOLLARS
14 (\$14.00) PER TON ON EMISSIONS OF SULFUR DIOXIDE, NITROGEN
15 OXIDES, PARTICULATE MATTER OF TEN (10) MICRONS OR LESS AND
16 VOLATILE ORGANIC COMPOUNDS IS HEREBY ESTABLISHED TO COVER THE
17 REASONABLE DIRECT AND INDIRECT COSTS OF DEVELOPING AND
18 ADMINISTERING THE AIR POLLUTION CONTROL OPERATING PERMIT PROGRAM
19 REQUIRED BY TITLE V OF THE CLEAN AIR ACT, OTHER REQUIREMENTS OF
20 THE CLEAN AIR ACT AND THE REASONABLE INDIRECT AND DIRECT COSTS
21 OF ADMINISTERING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
22 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM, COMPLIANCE
23 ADVISORY COMMITTEE AND THE OFFICE OF SMALL BUSINESS OMBUDSMAN TO
24 BE COLLECTED DURING FISCAL YEAR 1992-1993 COVERING ACTUAL
25 EMISSIONS OCCURRING IN CALENDAR YEAR 1991, FISCAL YEAR 1993-94
26 COVERING ACTUAL EMISSIONS OCCURRING IN CALENDAR YEAR 1992, AND
27 FISCAL YEAR 1994-1995 COVERING ACTUAL EMISSIONS OCCURRING DURING
28 CALENDAR YEAR 1993. THE INTERIM FEE SHALL NOT APPLY TO AIR
29 EMISSIONS OF LESS THAN ONE HUNDRED (100) TONS FOR ANY OF THE
30 LISTED POLLUTANTS, PROVIDED THAT WHEN EMISSIONS EXCEED ONE

1 HUNDRED (100) TONS THE ENTIRE AMOUNT OF ALL AIR EMISSIONS FOR
2 ANY OF THE LISTED POLLUTANTS UP TO FIVE THOUSAND FIVE HUNDRED
3 (5,500) TONS SHALL BE CHARGEABLE EMISSIONS FOR INTERIM FEE
4 PURPOSES.

5 (C) THE BOARD SHALL ESTABLISH, BY REGULATION, A PERMANENT
6 ANNUAL AIR EMISSION FEE AS REQUIRED FOR REGULATED POLLUTANTS BY
7 SECTION 502(B) OF THE CLEAN AIR ACT TO COVER THE REASONABLE
8 DIRECT AND INDIRECT COSTS OF ADMINISTERING THE OPERATING PERMIT
9 PROGRAM REQUIRED BY TITLE V OF THE CLEAN AIR ACT, OTHER RELATED
10 REQUIREMENTS OF THE CLEAN AIR ACT AND THE REASONABLE INDIRECT
11 AND DIRECT COSTS OF ADMINISTERING THE SMALL BUSINESS STATIONARY
12 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
13 PROGRAM, COMPLIANCE ADVISORY COMMITTEE AND THE OFFICE OF SMALL
14 BUSINESS OMBUDSMAN TO BE COLLECTED STARTING IN FISCAL YEAR 1995-
15 1996 COVERING AIR EMISSIONS OCCURRING DURING CALENDAR YEAR 1994.
16 IN NO CASE SHALL THE AMOUNT OF THE PERMANENT FEE BE MORE THAN
17 THAT WHICH IS NECESSARY TO COMPLY WITH SECTION 502(B) OF THE
18 CLEAN AIR ACT. THE PERMANENT FEE SHALL NOT APPLY TO EMISSIONS OF
19 MORE THAN FOUR THOUSAND (4,000) TONS FOR ANY REGULATED
20 POLLUTANT. IN THE EVENT A FINAL REGULATION CONTAINING THE
21 PERMANENT ANNUAL AIR EMISSION FEE IS NOT EFFECTIVE BY JULY 1,
22 1995, THE PERMANENT ANNUAL AIR EMISSION FEE FOR SOURCES SUBJECT
23 TO THE TITLE V OPERATING PERMIT PROGRAM SHALL BE THE ADJUSTED
24 MINIMUM DOLLAR AMOUNT SET UNDER SECTION 502(B) OF THE CLEAN AIR
25 ACT UNTIL SUCH TIME AS THE FINAL REGULATION IS EFFECTIVE.

26 (D) UNLESS PRECLUDED BY THE CLEAN AIR ACT, THE BOARD SHALL
27 ESTABLISH A PERMANENT AIR EMISSION FEE WHICH CONSIDERS THE SIZE
28 OF THE AIR CONTAMINATION SOURCE, THE RESOURCES NECESSARY TO
29 PROCESS THE APPLICATION FOR PLAN APPROVAL OR AN OPERATING
30 PERMIT, THE COMPLEXITY OF THE PLAN APPROVAL OR OPERATING PERMIT,

1 THE QUANTITY AND TYPE OF EMISSIONS FROM THE SOURCES, THE AMOUNT
2 OF FEES CHARGED IN NEIGHBORING STATES, THE IMPORTANCE OF NOT
3 PLACING EXISTING OR PROSPECTIVE SOURCES IN THIS COMMONWEALTH AT
4 A COMPETITIVE DISADVANTAGE AND OTHER RELEVANT FACTORS.

5 (E) UNTIL ALTERNATIVE FEES ARE ESTABLISHED BY THE BOARD
6 UNDER SUBSECTION (C) OF THIS SECTION, STATIONARY AIR
7 CONTAMINATION SOURCES SHALL PAY THE FOLLOWING INTERIM FEES:

8 (1) TWO HUNDRED DOLLARS (\$200.00) FOR THE PROCESSING OF AN
9 APPLICATION FOR AN OPERATING PERMIT.

10 (2) TWO HUNDRED DOLLARS (\$200.00) FOR ANNUAL OPERATING
11 PERMIT ADMINISTRATION FEE.

12 (F) NO EMISSIONS FEE ESTABLISHED UNDER SUBSECTION (B), (C)
13 OR (J) OF THIS SECTION SHALL BE PAYABLE BY ANY STATE ENTITY OR
14 POLITICAL SUBDIVISION IN RELATION TO ANY PUBLICLY OWNED OR
15 OPERATED FACILITY.

16 (G) ANY FEES IMPOSED UNDER THIS SECTION IN AREAS WITH
17 APPROVED LOCAL AIR POLLUTION CONTROL PROGRAMS SHALL BE DEPOSITED
18 IN A RESTRICTED ACCOUNT ESTABLISHED BY THE GOVERNING BODY
19 AUTHORIZING THE LOCAL PROGRAM FOR USE BY THAT PROGRAM TO
20 IMPLEMENT THE PROVISIONS OF THIS ACT FOR WHICH THEY ARE
21 RESPONSIBLE. THE GOVERNING BODY SHALL ANNUALLY SUBMIT TO THE
22 DEPARTMENT AN AUDIT OF THE ACCOUNT IN ORDER TO INSURE THE FUNDS
23 WERE PROPERLY SPENT.

24 (H) (1) UNLESS THE BOARD ESTABLISHES A DIFFERENT PAYMENT
25 SCHEDULE BY REGULATION, EACH FACILITY SUBJECT TO THE EMISSION
26 FEES ESTABLISHED IN SUBSECTIONS (B) AND (C) OF THIS SECTION
27 SHALL REPORT ITS EMISSIONS AND PAY THE FEE WITHIN ONE HUNDRED
28 TWENTY (120) DAYS AFTER RECEIPT OF A REPORTING FORM FROM THE
29 DEPARTMENT OR BY SEPTEMBER 1 OF EACH YEAR FOR THE EMISSION FROM
30 THE PRECEDING YEAR, WHICHEVER OCCURS FIRST.

1 (2) AN AIR CONTAMINATION SOURCE THAT FAILS TO PAY THE FEES
2 WITHIN THE TIME FRAME ESTABLISHED BY THIS ACT OR BY REGULATION
3 SHALL PAY A PENALTY OF FIFTY PER CENTUM OF THE FEE AMOUNT, PLUS
4 INTEREST ON THE FEE AMOUNT COMPUTED IN ACCORDANCE WITH SECTION
5 6621(A)(2) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
6 514, 26 U.S.C. § 1 ET SEQ.) FROM THE DATE THE FEE WAS REQUIRED
7 TO BE PAID. IN ADDITION, SUCH SOURCE MAY HAVE ITS PERMIT
8 TERMINATED OR SUSPENDED. THE FEE, PENALTY AND INTEREST MAY BE
9 COLLECTED FOLLOWING THE PROCESS FOR ASSESSMENT AND COLLECTION OF
10 A CIVIL PENALTY CONTAINED IN SECTION 9.1.

11 (I) THE PERMANENT AIR EMISSION FEE IMPOSED UNDER SUBSECTION
12 (C) SHALL BE INCREASED IN EACH YEAR AFTER IMPLEMENTATION OF THE
13 FEE BY REGULATION BY THE PERCENTAGE, IF ANY, BY WHICH THE
14 CONSUMER PRICE INDEX FOR THE MOST RECENT CALENDAR YEAR EXCEEDS
15 THE CONSUMER PRICE INDEX FOR THE CALENDAR YEAR 1989. FOR
16 PURPOSES OF THIS SUBSECTION:

17 (1) THE CONSUMER PRICE INDEX FOR ANY CALENDAR YEAR IS THE
18 AVERAGE OF THE CONSUMER PRICE INDEX FOR ALL-URBAN CONSUMERS,
19 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, AS OF THE
20 CLOSE OF THE TWELVE (12) MONTH PERIOD ENDING ON AUGUST 31 OF
21 EACH CALENDAR YEAR.

22 (2) THE REVISION OF THE CONSUMER PRICE INDEX WHICH IS MOST
23 CONSISTENT WITH THE CONSUMER PRICE INDEX FOR CALENDAR YEAR 1989
24 SHALL BE USED.

25 (J) THE BOARD MAY, BY REGULATION, ESTABLISH THE FOLLOWING
26 CATEGORIES OF FEES NOT RELATED TO TITLE V OF THE CLEAN AIR ACT.
27 UNTIL SUCH REGULATIONS ARE ADOPTED STATIONARY AIR CONTAMINATION
28 SOURCES SHALL PAY THE FOLLOWING FEES:

29 (1) TWO HUNDRED DOLLARS (\$200.00) FOR THE PROCESSING OF ANY
30 APPLICATION FOR PLAN APPROVAL.

1 (2) TWO HUNDRED DOLLARS (\$200.00) FOR THE PROCESSING OF ANY
2 APPLICATION FOR AN OPERATING PERMIT.

3 (3) TWO HUNDRED DOLLARS (\$200.00) FOR ANNUAL OPERATING
4 PERMIT ADMINISTRATION FEE.

5 IN REGARD TO FEES ESTABLISHED UNDER THIS SUBSECTION, INDIVIDUAL
6 SOURCES REQUIRED TO BE REGULATED BY TITLE V OF THE CLEAN AIR ACT
7 SHALL ONLY BE SUBJECT TO PLAN APPROVAL FEES AUTHORIZED IN THIS
8 SUBSECTION.

9 (K) NO ADMINISTRATIVE ACTION SHALL PREVENT THE DEPOSIT OF
10 THE FEES ESTABLISHED PURSUANT TO THIS SECTION IN THE CLEAN AIR
11 FUND ESTABLISHED IN SECTION 9.2 DURING THE FISCAL YEAR IN WHICH
12 THEY ARE COLLECTED. THE FEES SHALL ONLY BE USED FOR THE PURPOSES
13 AUTHORIZED IN THIS SECTION AND SECTION 9.2 AND SHALL NOT BE
14 TRANSFERRED OR DIVERTED TO ANY OTHER PURPOSE BY ADMINISTRATIVE
15 ACTION.

16 (L) ANY FEES, PENALTIES AND INTEREST OWED THE COMMONWEALTH
17 FOR DELINQUENT PAYMENT COLLECTED UNDER THIS SECTION SHALL BE
18 DEPOSITED IN THE CLEAN AIR FUND.

19 (M) AS USED IN THIS SECTION, THE TERM "REGULATED POLLUTANT"
20 SHALL MEAN A VOLATILE ORGANIC COMPOUND, EACH POLLUTANT REGULATED
21 UNDER SECTIONS 111 AND 112 OF THE CLEAN AIR ACT AND EACH
22 POLLUTANT FOR WHICH A NATIONAL PRIMARY AMBIENT AIR QUALITY
23 STANDARD HAS BEEN PROMULGATED, EXCEPT THAT CARBON MONOXIDE SHALL
24 BE EXCLUDED FROM THIS REFERENCE.

25 SECTION 6.4. FEE FOR CERTAIN OZONE AREAS.--(A) IF AN AREA
26 IDENTIFIED IN A STATE IMPLEMENTATION PLAN OR ANY REVISION AS A
27 SEVERE OR EXTREME OZONE NONATTAINMENT AREA HAS FAILED TO MEET
28 THE NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARD FOR OZONE BY
29 THE APPLICABLE ATTAINMENT DATE, EACH MAJOR SOURCE OF VOLATILE
30 ORGANIC COMPOUNDS (VOCs), AS DEFINED IN THE CLEAN AIR ACT AND

1 THE REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT, LOCATED IN
2 THE AREA SHALL, EXCEPT WITH RESPECT TO EMISSIONS DURING ANY YEAR
3 TREATED AS AN EXTENSION YEAR UNDER SECTION 181(A)(5) OF THE
4 CLEAN AIR ACT, PAY A FEE TO THE DEPARTMENT AS A PENALTY FOR SUCH
5 FAILURE FOR EACH CALENDAR YEAR BEGINNING AFTER THE ATTAINMENT
6 DATE, UNTIL THE AREA IS REDESIGNATED AS AN ATTAINMENT AREA FOR
7 OZONE. THIS FEE SHALL BE ASSESSED AND COLLECTED FOLLOWING THE
8 PROCESS FOR COLLECTION AND ASSESSMENT OF A CIVIL PENALTY
9 CONTAINED IN SECTION 9.1.

10 (B) (1) THE FEE SHALL EQUAL FIVE THOUSAND DOLLARS
11 (\$5,000.00), ADJUSTED IN ACCORDANCE WITH CLAUSE (3) OF THIS
12 SUBSECTION, PER TON OF VOC EMITTED BY THE SOURCE DURING THE
13 CALENDAR YEAR IN EXCESS OF EIGHTY PER CENTUM OF THE BASELINE
14 AMOUNT, COMPUTED UNDER CLAUSE (2) OF THIS SUBSECTION. THE FEE
15 SHALL BE IN ADDITION TO ALL OTHER FEES REQUIRED TO BE PAID BY
16 THE SOURCE.

17 (2) (I) FOR PURPOSES OF THIS SECTION, THE BASELINE AMOUNT
18 SHALL BE COMPUTED, IN ACCORDANCE WITH SUCH GUIDANCE AS THE
19 ADMINISTRATOR MAY PROVIDE, AS THE LOWER OF THE AMOUNT OF ACTUAL
20 VOC EMISSIONS (REFERRED TO AS ACTUALS) OR VOC EMISSIONS ALLOWED
21 UNDER THE PERMIT APPLICABLE TO THE SOURCE OR, IF NO SUCH PERMIT
22 HAS BEEN ISSUED FOR THE ATTAINMENT YEAR, THE AMOUNT OF VOC
23 EMISSIONS ALLOWED UNDER THE APPLICABLE IMPLEMENTATION PLAN
24 (REFERRED TO AS ALLOWABLES) DURING THE ATTAINMENT YEAR.

25 (II) NOTWITHSTANDING SUBCLAUSE (I) OF THIS CLAUSE, THE
26 ADMINISTRATOR MAY ISSUE GUIDANCE AUTHORIZING THE BASELINE AMOUNT
27 TO BE DETERMINED IN ACCORDANCE WITH THE LOWER OF AVERAGE ACTUALS
28 OR AVERAGE ALLOWABLES, DETERMINED OVER A PERIOD OF MORE THAN ONE
29 CALENDAR YEAR. THIS GUIDANCE MAY PROVIDE THAT THE AVERAGE
30 CALCULATION FOR A SPECIFIC SOURCE MAY BE USED IF THAT SOURCE'S

1 EMISSIONS ARE IRREGULAR, CYCLICAL OR OTHERWISE VARY
2 SIGNIFICANTLY FROM YEAR TO YEAR.

3 (3) THE FEE AMOUNT UNDER CLAUSE (1) OF THIS SUBSECTION SHALL
4 BE ADJUSTED ANNUALLY, BEGINNING 1991 IN ACCORDANCE WITH
5 SUBSECTIONS (H) AND (I) OF SECTION 6.3.

6 (C) FOR AREAS WITH A TOTAL POPULATION UNDER TWO HUNDRED
7 THOUSAND (200,000) WHICH FAIL TO ATTAIN THE STANDARD BY THE
8 APPLICABLE ATTAINMENT DATE, NO SANCTION UNDER THIS SECTION OR
9 UNDER ANY OTHER PROVISIONS OF THIS ACT SHALL APPLY IF THE AREA
10 CAN DEMONSTRATE, CONSISTENT WITH GUIDANCE ISSUED BY THE
11 ENVIRONMENTAL PROTECTION AGENCY, THAT ATTAINMENT IN THE AREA IS
12 PREVENTED BECAUSE OF OZONE OR OZONE PRECURSORS TRANSPORTED FROM
13 OTHER AREAS. THE PROHIBITION APPLIES ONLY IN CASES IN WHICH THE
14 AREA HAS MET ALL REQUIREMENTS AND IMPLEMENTED ALL MEASURES
15 APPLICABLE TO THE AREA UNDER THE CLEAN AIR ACT.

16 SECTION 6.5. ACID DEPOSITION CONTROL.--(A) THE DEPARTMENT
17 IS AUTHORIZED TO DEVELOP A PERMIT PROGRAM FOR ACID DEPOSITION
18 CONTROL IN ACCORDANCE WITH TITLES IV AND V OF THE CLEAN AIR ACT
19 AND TO SUBMIT IT TO THE ADMINISTRATOR FOR APPROVAL.

20 (B) FOR PURPOSES OF THE PERMIT PROGRAM AUTHORIZED UNDER
21 SUBSECTION (A) OF THIS SECTION, THE DEFINITIONS IN SECTIONS 402
22 AND 501 OF THE CLEAN AIR ACT ARE INCORPORATED HEREIN BY
23 REFERENCE.

24 (C) THE OWNER OR OPERATOR OR THE DESIGNATED REPRESENTATIVE
25 OF EACH SOURCE AFFECTED UNDER SECTION 405 OF THE CLEAN AIR ACT
26 SHALL SUBMIT A PERMIT APPLICATION AND COMPLIANCE PLAN FOR THE
27 AFFECTED SOURCE TO THE DEPARTMENT NO LATER THAN JANUARY 1, 1996.
28 IN THE CASE OF AFFECTED SOURCES FOR WHICH APPLICATION AND PLANS
29 ARE TIMELY RECEIVED, THE PERMIT APPLICATION AND THE COMPLIANCE
30 PLAN, INCLUDING AMENDMENTS THERETO, SHALL BE BINDING ON THE

1 OWNER OR OPERATOR OR THE DESIGNATED REPRESENTATIVE OF THE OWNERS
2 OR OPERATORS AND SHALL BE ENFORCEABLE AS A PERMIT FOR PURPOSES
3 OF THIS SECTION UNTIL A PERMIT IS ISSUED BY THE DEPARTMENT. ANY
4 PERMIT ISSUED BY THE DEPARTMENT SHALL REQUIRE THE SOURCE TO
5 ACHIEVE COMPLIANCE AS SOON AS POSSIBLE BUT NO LATER THAN THE
6 DATE REQUIRED BY THIS ACT, THE CLEAN AIR ACT OR THE REGULATIONS
7 PROMULGATED UNDER EITHER THIS ACT OR THE CLEAN AIR ACT FOR THE
8 SOURCE.

9 (D) AT ANY TIME AFTER THE SUBMISSION OF A PERMIT APPLICATION
10 AND COMPLIANCE PLAN, THE APPLICANT MAY SUBMIT A REVISED
11 APPLICATION AND COMPLIANCE PLAN. IN CONSIDERING ANY PERMIT
12 APPLICATION AND COMPLIANCE PLAN UNDER THIS SECTION, THE
13 DEPARTMENT SHALL COORDINATE WITH THE PENNSYLVANIA PUBLIC UTILITY
14 COMMISSION CONSISTENT WITH REQUIREMENTS THAT MAY BE ESTABLISHED
15 BY THE ADMINISTRATOR.

16 (E) IN ADDITION TO OTHER PROVISIONS, PERMITS ISSUED BY THE
17 DEPARTMENT SHALL PROHIBIT ALL OF THE FOLLOWING:

18 (1) ANNUAL EMISSIONS OF SULFUR DIOXIDE IN EXCESS OF THE
19 NUMBER OF ALLOWANCES TO EMIT SULFUR DIOXIDE THAT THE OWNER OR
20 OPERATOR OR DESIGNATED REPRESENTATIVE HOLD FOR THE UNIT.

21 (2) EXCEEDANCES OF APPLICABLE EMISSIONS RATES OR STANDARDS,
22 INCLUDING AMBIENT AIR QUALITY STANDARDS.

23 (3) THE USE OF ANY ALLOWANCE PRIOR TO THE YEAR FOR WHICH IT
24 IS ALLOCATED.

25 (4) CONTRAVENTION OF ANY OTHER PROVISION OF THE PERMIT.

26 SECTION 6.6. HAZARDOUS AIR POLLUTANTS.--(A) THE REGULATIONS
27 ESTABLISHING PERFORMANCE OR EMISSION STANDARDS PROMULGATED UNDER
28 SECTION 112 OF THE CLEAN AIR ACT ARE INCORPORATED BY REFERENCE
29 INTO THE DEPARTMENT'S PERMITTING PROGRAM. AFTER THE EFFECTIVE
30 DATE OF THE PERFORMANCE OR EMISSION STANDARD, NEW,

1 RECONSTRUCTED, MODIFIED AND EXISTING SOURCES SHALL COMPLY WITH
2 THE PERFORMANCE OR EMISSION STANDARDS PURSUANT TO THE COMPLIANCE
3 SCHEDULE ESTABLISHED UNDER SECTION 112 OF THE CLEAN AIR ACT AND
4 THE REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT. THE
5 ENVIRONMENTAL QUALITY BOARD MAY NOT ESTABLISH A MORE STRINGENT
6 PERFORMANCE OR EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANT
7 EMISSIONS FROM EXISTING SOURCES, EXCEPT AS PROVIDED IN
8 SUBSECTION (D). THIS SECTION SHALL NOT APPLY TO RULES AND
9 REGULATIONS ADOPTED AS FINAL PRIOR TO THE EFFECTIVE DATE OF THIS
10 ACT AND SHALL NOT BE CONSTRUED TO WEAKEN STANDARDS FOR
11 INDIVIDUAL SOURCES OR FACILITIES IN EFFECT PRIOR TO THE
12 EFFECTIVE DATE OF THIS ACT. THE BOARD MAY ESTABLISH PERFORMANCES
13 OR EMISSION STANDARDS FOR SOURCES OR CATEGORIES OF SOURCES WHICH
14 ARE NOT INCLUDED ON THE LIST OF SOURCE CATEGORIES ESTABLISHED
15 UNDER SECTION 112(C) OF THE CLEAN AIR ACT. FOR PURPOSES OF THIS
16 SECTION, THE TERM "PERFORMANCE STANDARD" INCLUDES DESIGN,
17 EQUIPMENT, WORK PRACTICE OR OPERATIONAL STANDARDS OR ANY
18 COMBINATION THEREOF.

19 (B) IN THE EVENT THE ADMINISTRATOR HAS NOT PROMULGATED A
20 STANDARD TO CONTROL THE EMISSIONS OF HAZARDOUS AIR POLLUTANTS
21 FOR A CATEGORY OR SUBCATEGORY OF MAJOR SOURCES UNDER SECTION 112
22 OF THE CLEAN AIR ACT, PURSUANT TO A SCHEDULE ESTABLISHED
23 PURSUANT TO SECTION 112(C) OF THE CLEAN AIR ACT, THE DEPARTMENT
24 SHALL HAVE THE AUTHORITY TO ESTABLISH A PERFORMANCE OR EMISSION
25 STANDARD ON A CASE-BY-CASE BASIS FOR INDIVIDUAL SOURCES OR A
26 CATEGORY OF SOURCES. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO
27 MAKE THE DETERMINATIONS REQUIRED BY SECTION 112(G)(2) OF THE
28 CLEAN AIR ACT REGARDING THE CONSTRUCTION, RECONSTRUCTION AND
29 MODIFICATION OF SOURCES. ANY PERSON CHALLENGING THE PERFORMANCE
30 OR EMISSION STANDARDS ESTABLISHED BY THE DEPARTMENT SHALL HAVE

1 THE BURDEN TO DEMONSTRATE THAT THE PERFORMANCE OR EMISSION
2 STANDARD DOES NOT MEET THE REQUIREMENTS OF SECTION 112 OF THE
3 CLEAN AIR ACT. THE DEPARTMENT SHALL INCORPORATE THE STANDARD TO
4 CONTROL THE EMISSIONS OF HAZARDOUS AIR POLLUTANTS INTO THE PLAN
5 APPROVAL OR OPERATING PERMIT OF ANY SOURCE WITHIN THE CATEGORY
6 OR SUBCATEGORY. THE PERFORMANCE OR EMISSION STANDARD ESTABLISHED
7 ON A CASE-BY-CASE BASIS BY THE DEPARTMENT SHALL BE EQUIVALENT TO
8 THE LIMITATION THAT WOULD APPLY TO THE SOURCE IF A PERFORMANCE
9 OR EMISSION STANDARD HAD BEEN PROMULGATED BY THE ADMINISTRATOR
10 UNDER SECTION 112 OF THE CLEAN AIR ACT.

11 (C) THE DEPARTMENT IS AUTHORIZED TO REQUIRE THAT NEW SOURCES
12 DEMONSTRATE IN THE PLAN APPROVAL APPLICATION THAT THE SOURCE
13 WILL REDUCE OR CONTROL EMISSIONS OF AIR POLLUTANTS, INCLUDING
14 HAZARDOUS AIR POLLUTANTS, BY USING THE BEST AVAILABLE
15 TECHNOLOGY.

16 (D) WHEN NEEDED TO PROTECT PUBLIC HEALTH, WELFARE AND THE
17 ENVIRONMENT FROM EMISSIONS OF HAZARDOUS AIR POLLUTANTS FROM NEW
18 AND EXISTING SOURCES, THE DEPARTMENT MAY IMPOSE HEALTH RISK-
19 BASED EMISSION STANDARDS OR OPERATING PRACTICE REQUIREMENTS. IN
20 DEVELOPING SUCH HEALTH RISK-BASED EMISSION STANDARDS OR
21 OPERATING PRACTICE REQUIREMENTS, THE DEPARTMENT SHALL PROVIDE AN
22 EXPLANATION AND RATIONALE FOR SUCH STANDARDS OR REQUIREMENTS AND
23 PROVIDE FOR PUBLIC REVIEW AND COMMENTS ON PLAN APPROVALS,
24 OPERATING PERMITS, GUIDELINES AND REGULATIONS WHICH CONTAIN
25 HEALTH RISK-BASED EMISSION STANDARDS OR OPERATING PRACTICE
26 REQUIREMENTS. STANDARDS OR REQUIREMENTS ADOPTED PURSUANT TO THIS
27 SUBSECTION SHALL BE DEVELOPED USING AN ANALYSIS WHICH, AMONG
28 OTHER FACTORS, CONSIDERS, WHERE APPROPRIATE FOR A SOURCE OR
29 SOURCE CATEGORY, THE CRITERIA SET FORTH IN SECTION 112(F)(1) OF
30 THE CLEAN AIR ACT IN ASSESSING THE PROPOSED RISK TO THE PUBLIC

1 HEALTH, WELFARE AND THE ENVIRONMENT FROM THE SOURCE.

2 (E) THE DEPARTMENT SHALL HAVE THE AUTHORITY TO REQUIRE, IN
3 THE PLAN APPROVAL AND OPERATING PERMIT, REASONABLE MONITORING,
4 RECORDKEEPING AND REPORTING REQUIREMENTS FOR SOURCES WHICH EMIT
5 HAZARDOUS AIR POLLUTANTS.

6 (F) NOTHING IN THIS SECTION SHALL PRECLUDE THE DEPARTMENT
7 FROM TAKING AN EMERGENCY ACTION WHERE THERE IS AN IMMEDIATE OR
8 POTENTIAL THREAT TO PUBLIC HEALTH, WELFARE AND THE ENVIRONMENT
9 FROM AN AIR POLLUTANT, INCLUDING A HAZARDOUS AIR POLLUTANT.

10 (G) THE EARLY EMISSIONS REDUCTION PROGRAM AUTHORIZED UNDER
11 SECTION 112(I)(5) OF THE CLEAN AIR ACT IS INCORPORATED BY
12 REFERENCE IN THE DEPARTMENT'S PERMITTING PROGRAM.

13 SECTION 6.7. CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM
14 GASOLINE DISPENSING FACILITIES.--(A) AFTER THE DATE SPECIFIED
15 IN SUBSECTION (B) OR (C) OF THIS SECTION NO OWNER OR OPERATOR OF
16 A GASOLINE DISPENSING FACILITY SUBJECT TO THIS SECTION MAY
17 TRANSFER OR ALLOW THE TRANSFER OF GASOLINE INTO A MOTOR VEHICLE
18 FUEL TANK UNLESS THE DISPENSING FACILITY IS EQUIPPED WITH A
19 DEPARTMENT APPROVED AND PROPERLY OPERATING STAGE II VAPOR
20 RECOVERY OR VAPOR COLLECTION SYSTEM. UNLESS A HIGHER PERCENT
21 REDUCTION IS REQUIRED BY EPA UNDER SECTION 182 OF THE CLEAN AIR
22 ACT, APPROVAL BY THE DEPARTMENT OF A STAGE II VAPOR COLLECTION
23 SYSTEM WILL BE BASED ON A DETERMINATION THAT THE SYSTEM WILL
24 COLLECT AT LEAST NINETY PER CENTUM BY WEIGHT OF THE GASOLINE
25 VAPORS THAT ARE DISPLACED OR DRAWN FROM A VEHICLE FUEL TANK
26 DURING REFUELING AND THE CAPTURED VAPORS ARE RETURNED TO A VAPOR
27 TIGHT HOLDING SYSTEM OR VAPOR CONTROL SYSTEM.

28 (B) (1) THIS SUBSECTION APPLIES TO GASOLINE DISPENSING
29 FACILITIES LOCATED IN AREAS CLASSIFIED AS MODERATE, SERIOUS OR
30 SEVERE OZONE NONATTAINMENT AREAS UNDER SECTION 181 OF THE CLEAN

AIR ACT, INCLUDING THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER,
BERKS, BUCKS, BUTLER, CHESTER, DELAWARE, FAYETTE, MONTGOMERY,
PHILADELPHIA, WASHINGTON AND WESTMORELAND WITH MONTHLY
THROUGHPUTS GREATER THAN 10,000 GALLONS (37,850 LITERS). IN THE
CASE OF INDEPENDENT SMALL BUSINESS MARKETERS OF GASOLINE AS
DEFINED IN SECTION 325 OF THE CLEAN AIR ACT THIS SECTION SHALL
NOT APPLY IF THE MONTHLY THROUGHPUT IS LESS THAN 50,000 GALLONS
(189,250 LITERS).

(2) FACILITIES FOR WHICH CONSTRUCTION WAS COMMENCED AFTER
NOVEMBER 15, 1990, SHALL ACHIEVE COMPLIANCE NOT LATER THAN SIX
MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION.

(3) FACILITIES WHICH DISPENSE GREATER THAN 100,000 GALLONS
(378,500 LITERS) OF GASOLINE PER MONTH, BASED ON AVERAGE MONTHLY
SALES FOR THE TWO-YEAR PERIOD IMMEDIATELY PRECEDING THE
EFFECTIVE DATE OF THIS SECTION, SHALL ACHIEVE COMPLIANCE NOT
LATER THAN ONE YEAR FROM THE EFFECTIVE DATE OF THIS SECTION.

(4) ALL OTHER AFFECTED FACILITIES SHALL ACHIEVE COMPLIANCE
NOT LATER THAN TWO YEARS FROM THE EFFECTIVE DATE OF THIS
SECTION.

(C) GASOLINE DISPENSING FACILITIES WITH ANNUAL THROUGHPUTS
GREATER THAN 10,000 GALLONS (37,850 LITERS) IN THE COUNTIES OF
BUCKS, CHESTER, DELAWARE, MONTGOMERY AND PHILADELPHIA SHALL BE
SUBJECT TO THE REQUIREMENTS OF THIS SECTION IMMEDIATELY UPON THE
ADDITION OR REPLACEMENT OF ANY UNDERGROUND GASOLINE STORAGE
TANKS FOR WHICH CONSTRUCTION WAS COMMENCED AFTER THE EFFECTIVE
DATE OF THIS SECTION.

(D) FOR PURPOSES OF THIS SECTION THE TERM "CONSTRUCTION"
SHALL INCLUDE, BUT IS NOT LIMITED TO, THE ADDITION OR
REPLACEMENT OF ANY UNDERGROUND STORAGE TANK.

(E) OWNERS OR OPERATORS, OR BOTH, OF GASOLINE DISPENSING

FACILITIES SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL:

(1) INSTALL ALL NECESSARY STAGE II VAPOR COLLECTION AND CONTROL SYSTEMS, PROVIDE NECESSARY MAINTENANCE AND MAKE ANY MODIFICATIONS NECESSARY TO COMPLY WITH THE REQUIREMENTS.

(2) PROVIDE ADEQUATE TRAINING AND WRITTEN INSTRUCTIONS TO THE OPERATOR OF THE AFFECTED GASOLINE DISPENSING FACILITY TO ASSURE PROPER OPERATION OF THE SYSTEM.

(3) IMMEDIATELY REMOVE FROM SERVICE AND TAG ANY DEFECTIVE NOZZLE OR DISPENSING SYSTEM UNTIL THE DEFECTIVE COMPONENT IS REPLACED OR REPAIRED. A COMPONENT REMOVED FROM SERVICE SHALL NOT BE RETURNED TO SERVICE UNTIL THE DEFECT IS CORRECTED. IF THE DEPARTMENT FINDS THAT A DEFECTIVE NOZZLE OR DISPENSING SYSTEM IS NOT PROPERLY TAGGED DURING AN INSPECTION, THE COMPONENT SHALL NOT BE RETURNED TO SERVICE UNTIL THE DEFECT IS CORRECTED, AND THE DEPARTMENT APPROVES ITS RETURN TO SERVICE.

(4) CONSPICUOUSLY POST OPERATING INSTRUCTIONS FOR THE SYSTEM IN THE GASOLINE DISPENSING AREA WHICH, AT A MINIMUM, INCLUDES THE FOLLOWING:

(I) A CLEAR DESCRIPTION OF HOW TO CORRECTLY DISPENSE GASOLINE WITH THE VAPOR RECOVERY NOZZLES UTILIZED AT THE SITE.

(II) A WARNING THAT CONTINUED ATTEMPTS TO DISPENSE GASOLINE AFTER THE SYSTEM INDICATES THAT THE VEHICLE FUEL TANK IS FULL MAY RESULT IN SPILLAGE OR RECIRCULATION OF THE GASOLINE INTO THE VAPOR COLLECTION SYSTEM.

(III) A TELEPHONE NUMBER ESTABLISHED BY THE DEPARTMENT FOR THE PUBLIC TO REPORT PROBLEMS EXPERIENCED WITH THE SYSTEM.

(5) MAINTAIN RECORDS OF MONTHLY THROUGHPUT, TYPE AND DURATION OF ANY FAILURES OF THE SYSTEM AND MAINTENANCE AND REPAIR RECORDS. THE RECORDS SHALL BE KEPT FOR AT LEAST TWO YEARS AND SHALL BE MADE AVAILABLE FOR INSPECTION BY THE DEPARTMENT.

1 (F) IN THE EVENT AN AREA IS RECLASSIFIED FROM ATTAINMENT OR
2 MARGINAL NONATTAINMENT TO SERIOUS, SEVERE OR MODERATE
3 NONATTAINMENT UNDER SECTION 181 OF THE CLEAN AIR ACT, GASOLINE
4 DISPENSING FACILITIES LOCATED IN THE RECLASSIFIED AREA SHALL BE
5 SUBJECT TO THE REQUIREMENTS OF SUBSECTION (B)(1). FOR PURPOSES
6 OF ESTABLISHING AN EFFECTIVE DATE FOR THE RECLASSIFIED AREA,
7 THAT DATE SHALL BE THE DATE OF PUBLICATION OF FINAL NOTICE OF
8 RECLASSIFICATION IN THE FEDERAL REGISTER.

9 (G) IF AT ANY TIME PRIOR TO NOVEMBER 15, 1996, THE UNITED
10 STATES ENVIRONMENTAL PROTECTION AGENCY PROMULGATES A REQUIREMENT
11 FOR ALTERNATIVE AUTOMOBILE REFUELING EMISSIONS CONTROL SYSTEMS
12 IDENTIFIED IN SECTION 7521 OF THE CLEAN AIR ACT, THE
13 REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO GASOLINE
14 DISPENSING FACILITIES LOCATED IN AREAS CLASSIFIED AS MODERATE
15 OZONE NONATTAINMENT AREAS UNDER SECTION 181 OF THE CLEAN AIR
16 ACT, INCLUDING THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER,
17 BERKS, BUTLER, FAYETTE, WASHINGTON AND WESTMORELAND.

18 (H) THIS SECTION SHALL BE SUBJECT TO THE PROVISIONS OF
19 SECTION 4.2(A) THROUGH (E).

20 SECTION 7.1. COMPLIANCE REVIEW.--(A) THE DEPARTMENT SHALL
21 NOT ISSUE, REISSUE OR MODIFY ANY PLAN APPROVAL OR PERMIT
22 PURSUANT TO THIS ACT OR AMEND ANY PLAN APPROVAL OR PERMIT ISSUED
23 UNDER THIS ACT AND MAY SUSPEND, TERMINATE OR REVOKE ANY PERMIT
24 OR PLAN APPROVAL PREVIOUSLY ISSUED UNDER THIS ACT IF IT FINDS
25 THAT THE APPLICANT OR PERMITTEE OR A GENERAL PARTNER, PARENT OR
26 SUBSIDIARY CORPORATION OF THE APPLICANT OR PERMITTEE IS IN
27 VIOLATION OF THIS ACT, OR THE RULES AND REGULATIONS PROMULGATED
28 UNDER THIS ACT, ANY PLAN APPROVAL, PERMIT OR ORDER OF THE
29 DEPARTMENT, AS INDICATED BY THE DEPARTMENT'S COMPLIANCE DOCKET,
30 UNLESS THE VIOLATION IS BEING CORRECTED TO THE SATISFACTION OF

1 THE DEPARTMENT.

2 (B) THE DEPARTMENT MAY REFUSE TO ISSUE ANY PLAN APPROVAL OR
3 PERMIT PURSUANT TO THIS ACT IF IT FINDS THAT THE APPLICANT OR
4 PERMITTEE OR A PARTNER, PARENT OR SUBSIDIARY CORPORATION OF THE
5 APPLICANT OR PERMITTEE HAS SHOWN A LACK OF INTENTION OR ABILITY
6 TO COMPLY WITH THIS ACT OR THE REGULATIONS PROMULGATED UNDER
7 THIS ACT OR ANY PLAN APPROVAL, PERMIT OR ORDER OF THE
8 DEPARTMENT, AS INDICATED BY PAST OR PRESENT VIOLATIONS, UNLESS
9 THE LACK OF INTENTION OR ABILITY TO COMPLY IS BEING OR HAS BEEN
10 CORRECTED TO THE SATISFACTION OF THE DEPARTMENT.

11 (C) IN PERFORMING THE COMPLIANCE REVIEW REQUIRED UNDER THIS
12 SECTION, THE DEPARTMENT SHALL ONLY CONSIDER VIOLATIONS ARISING
13 UNDER THIS ACT THAT OCCURRED OR ARE OCCURRING IN PENNSYLVANIA.

14 (D) A PERMITTEE OR APPLICANT MAY APPEAL ANY VIOLATION
15 ARISING UNDER THIS ACT WHICH THE DEPARTMENT PLACES ON THE
16 COMPLIANCE DOCKET.

17 SECTION 7.2. PERMIT COMPLIANCE SCHEDULES.--IN ADDITION TO
18 THE OTHER ENFORCEMENT PROVISIONS OF THIS ACT, THE DEPARTMENT MAY
19 ISSUE A PERMIT UNDER CLAUSES (3) AND (4) OF SUBSECTION (B) OF
20 SECTION 6.1 TO A SOURCE THAT IS OUT OF COMPLIANCE WITH THIS ACT,
21 THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED UNDER EITHER
22 THIS ACT OR THE CLEAN AIR ACT. ANY SUCH PERMIT MUST CONTAIN AN
23 ENFORCEABLE SCHEDULE REQUIRING THE SOURCE TO ATTAIN COMPLIANCE.
24 THE COMPLIANCE SCHEDULE MAY CONTAIN INTERIM MILESTONE DATES FOR
25 COMPLETING ANY PHASE OF THE REQUIRED WORK, AS WELL AS A FINAL
26 COMPLIANCE DATE, AND MAY CONTAIN STIPULATED PENALTIES FOR
27 FAILURE TO MEET THE COMPLIANCE SCHEDULE. IF THE PERMITTEE FAILS
28 TO ACHIEVE COMPLIANCE BY THE FINAL COMPLIANCE DATE, THE PERMIT
29 SHALL TERMINATE. THE PERMIT SHALL BE PART OF AN OVERALL
30 RESOLUTION OF THE OUTSTANDING NONCOMPLIANCE AND MAY INCLUDE THE

PAYMENT OF AN APPROPRIATE CIVIL PENALTY FOR PAST VIOLATIONS AND
SHALL CONTAIN SUCH OTHER TERMS AND CONDITIONS AS THE DEPARTMENT
DEEMS APPROPRIATE. A PERMIT MAY INCORPORATE BY REFERENCE A
COMPLIANCE SCHEDULE CONTAINED WITHIN A CONSENT ORDER AND
AGREEMENT, INCLUDING ALL PROVISIONS RELATED TO IMPLEMENTATION OR
ENFORCEMENT OF THE COMPLIANCE SCHEDULE OR CONSENT ORDER AND
AGREEMENT.

SECTION 7.3. RESPONSIBILITIES OF OWNERS AND OPERATORS.--(A)
WHENEVER THE DEPARTMENT FINDS THAT AIR POLLUTION OR DANGER OF
AIR POLLUTION IS OR MAY BE RESULTING FROM AN AIR CONTAMINATION
SOURCE IN THE COMMONWEALTH, THE DEPARTMENT MAY ORDER THE OWNER
OR OPERATOR TO TAKE CORRECTIVE ACTION IN A MANNER SATISFACTORY
TO THE DEPARTMENT, OR IT MAY ORDER THE OWNER OR OPERATOR TO
ALLOW ACCESS TO THE LAND BY THE DEPARTMENT OR A THIRD PARTY TO
TAKE SUCH ACTION.

(B) FOR PURPOSES OF COLLECTING OR RECOVERING THE COSTS
INVOLVED IN TAKING CORRECTIVE ACTION OR PURSUING A COST RECOVERY
ACTION PURSUANT TO AN ORDER OR RECOVERING THE COST OF
LITIGATION, OVERSIGHT, MONITORING, SAMPLING, TESTING AND
INVESTIGATION RELATED TO A CORRECTIVE ACTION, THE DEPARTMENT MAY
COLLECT THE AMOUNT IN THE SAME MANNER AS CIVIL PENALTIES ARE
ASSESSED AND COLLECTED FOLLOWING THE PROCESS FOR ASSESSMENT AND
COLLECTION OF A CIVIL PENALTY CONTAINED IN SECTION 9.1.

SECTION 7.4. INTERSTATE TRANSPORT COMMISSION.--(A) THE
COMMONWEALTH THROUGH ITS REPRESENTATIVES ON AN INTERSTATE
TRANSPORT COMMISSION FORMED UNDER THE CLEAN AIR ACT SHALL
PROVIDE PUBLIC REVIEW OF RECOMMENDATIONS FOR ADDITIONAL CONTROL
MEASURES PRIOR TO FINAL COMMISSION ACTION CONSISTENT WITH THE
COMMISSION'S PUBLIC REVIEW REQUIREMENTS UNDER SECTION 184(C)(1)
OF THE CLEAN AIR ACT. THE OPPORTUNITY FOR PUBLIC REVIEW

1 ESTABLISHED UNDER THIS SECTION SHALL RUN CONCURRENTLY WITH THE
2 COMMISSION'S PUBLIC COMMENT PERIOD ESTABLISHED UNDER SECTION
3 184(C)(1) OF THE CLEAN AIR ACT.

4 (B) CONTROL STRATEGIES APPROVED BY AN INTERSTATE TRANSPORT
5 COMMISSION AND BY THE COMMONWEALTH'S REPRESENTATIVES AND SET
6 FORTH IN RESOLUTIONS OR MEMORANDA OF UNDERSTANDING SHALL BE
7 CONSIDERED COMMITMENTS BY THE EXECUTIVE TO PURSUE SUBSEQUENT
8 LEGISLATIVE, REGULATORY OR OTHER ADMINISTRATIVE ACTIONS TO
9 IMPLEMENT THE CONTROL STRATEGIES.

10 (C) THE COMMONWEALTH STRONGLY RECOMMENDS THAT AN INTERSTATE
11 TRANSPORT COMMISSION ADOPT FORMAL PROCEDURES WHICH ALLOW FOR AN
12 OPEN PUBLIC REVIEW AND COMMENT PERIOD PRIOR TO THE ADOPTION OF
13 RESOLUTIONS OR CONSIDERATION OF MEMORANDA OF UNDERSTANDING OR
14 OTHER ACTIONS WHICH RECOMMEND THAT STATES ADOPT CONTROL
15 STRATEGIES. THE COMMONWEALTH'S REPRESENTATIVES SHALL TAKE
16 ACTIONS CONSISTENT WITH THIS RECOMMENDATION.

17 SECTION 7.5. PUBLIC REVIEW OF STATE IMPLEMENTATION PLANS.--

18 (A) A STATE IMPLEMENTATION PLAN REQUIRED BY THE CLEAN AIR ACT
19 WHICH COMMITS THE COMMONWEALTH TO ADOPT AIR POLLUTION CONTROL
20 MEASURES OR PROCEDURES SHALL BE THE SUBJECT OF A PUBLIC COMMENT
21 PERIOD. THE PUBLIC COMMENT PERIOD SHALL BE NO LESS THAN SIXTY
22 (60) DAYS AND THE DEPARTMENT MAY, AT ITS DISCRETION, HOLD PUBLIC
23 INFORMATIONAL MEETINGS OR PUBLIC HEARINGS AS PART OF THE COMMENT
24 PERIOD.

25 (B) NOTICE OF A PROPOSED STATE IMPLEMENTATION PLAN SHALL BE
26 PUBLISHED IN THE PENNSYLVANIA BULLETIN AND IN SUFFICIENT
27 NEWSPAPERS HAVING GENERAL CIRCULATION IN THE AREA COVERED BY THE
28 STATE IMPLEMENTATION PLAN. IF THE STATE IMPLEMENTATION PLAN
29 COVERS THE ENTIRE STATE, NOTICE SHALL BE PUBLISHED IN AT LEAST
30 SIX (6) NEWSPAPERS OF GENERAL CIRCULATION THROUGHOUT THE

1 COMMONWEALTH.

2 (C) A STATE IMPLEMENTATION PLAN SUBJECT TO THIS SECTION
3 SHALL INCLUDE THE FOLLOWING PROVISIONS:

4 (1) STATEMENTS CLEARLY INDICATING THE SPECIFIC PROVISIONS OF
5 THE CLEAN AIR ACT WITH WHICH THE STATE IMPLEMENTATION PLAN IS
6 INTENDED TO COMPLY.

7 (2) AN ANALYSIS OF THE ALTERNATIVE CONTROL STRATEGIES
8 CONSIDERED IF APPLICABLE IN ARRIVING AT THE RECOMMENDED CONTROL
9 STRATEGIES AND THE REASONS THE DEPARTMENT OR OTHER AGENCY
10 SELECTED THE FINAL STRATEGY.

11 (3) AN ANALYSIS OF THE ECONOMIC IMPACT OF THE ALTERNATIVE
12 CONTROL STRATEGIES AND THE SELECTED STRATEGIES ON THE REGULATED
13 COMMUNITY AND LOCAL GOVERNMENTS.

14 (4) AN ANALYSIS OF THE STAFF AND TECHNICAL RESOURCES NEEDED
15 BY THE DEPARTMENT OR OTHER AGENCY TO IMPLEMENT THE CONTROL
16 STRATEGY.

17 (D) AFTER THE PUBLIC COMMENT PERIOD AND PRIOR TO THE
18 SUBMISSION TO EPA OF ANY STATE IMPLEMENTATION PLAN REQUIRED BY
19 THE CLEAN AIR ACT WHICH COMMITS THE COMMONWEALTH TO ADOPT AIR
20 POLLUTION CONTROL MEASURES OR PROCEDURES, THE DEPARTMENT SHALL
21 SUBMIT A FINAL STATE IMPLEMENTATION PLAN TO THE BOARD FOR ITS
22 REVIEW TOGETHER WITH A DOCUMENT WHICH RESPONDS TO ALL COMMENTS
23 MADE DURING THE PUBLIC COMMENT PERIOD.

24 (E) THESE PROVISIONS SHALL ALSO APPLY IN THE CASE OF STATE
25 IMPLEMENTATION PLANS REQUIRED BY THE CLEAN AIR ACT WHICH ARE
26 DEVELOPED BY STATE AGENCIES OTHER THAN THE DEPARTMENT WHICH
27 COMMIT THE COMMONWEALTH TO THE ADOPTION OF AIR POLLUTION CONTROL
28 MEASURES OR PROCEDURES.

29 (F) SUBSECTIONS (C) AND (D) OF THIS SECTION SHALL NOT APPLY
30 TO STATE IMPLEMENTATION PLANS OR PORTIONS THEREOF COMPRISED OF

1 PERMIT, EMISSION OFFSET OR REASONABLY AVAILABLE CONTROL
2 TECHNOLOGY REQUIREMENTS FOR INDIVIDUAL SOURCES; CONSENT ORDERS
3 AND AGREEMENTS; OR REGULATIONS.

4 (G) THE REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO
5 STATE IMPLEMENTATION PLANS SUBMITTED BY A LOCAL AIR POLLUTION
6 CONTROL AGENCY.

7 SECTION 7.6. ADVICE TO DEPARTMENT.--(A) THE DEPARTMENT
8 SHALL CONSULT WITH THE CITIZENS ADVISORY COUNCIL ESTABLISHED
9 UNDER SECTION 448 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
10 KNOWN AS "THE ADMINISTRATIVE CODE OF 1929," AS APPROPRIATE, IN
11 THE CONSIDERATION OF STATE IMPLEMENTATION PLANS AND REGULATIONS
12 DEVELOPED BY THE DEPARTMENT AND NEEDED FOR THE IMPLEMENTATION OF
13 THE CLEAN AIR ACT. NOTHING IN THIS SECTION SHALL LIMIT THE
14 COUNCIL'S ABILITY TO CONSIDER, STUDY AND REVIEW DEPARTMENT
15 POLICIES AND OTHER ACTIVITIES RELATED TO THE CLEAN AIR ACT,
16 IMPLEMENTATION AS PROVIDED UNDER SECTION 1922-A OF "THE
17 ADMINISTRATIVE CODE OF 1929." THIS SECTION SHALL NOT APPLY TO
18 STATE IMPLEMENTATION PLANS OR PORTIONS THEREOF COMPRISED OF:
19 PERMIT, EMISSION OFFSET OR OF REASONABLY AVAILABLE CONTROL
20 TECHNOLOGY REQUIREMENTS FOR INDIVIDUAL SOURCES; CONSENT ORDERS
21 AND AGREEMENTS; OR REGULATIONS. THE REQUIREMENTS OF THIS SECTION
22 SHALL NOT APPLY TO STATE IMPLEMENTATION PLANS SUBMITTED BY A
23 LOCAL AIR POLLUTION CONTROL AGENCY.

24 (B) (1) THE SECRETARY OF ENVIRONMENTAL RESOURCES WITHIN
25 THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF THIS ACT SHALL
26 DESIGNATE AN AIR TECHNICAL ADVISORY COMMITTEE. THE COMMITTEE
27 SHALL INCLUDE AT LEAST ELEVEN (11) MEMBERS WITH TECHNICAL
28 BACKGROUNDS IN THE CONTROL OF AIR POLLUTION FROM STATIONARY OR
29 MOBILE SOURCES.

30 (2) THE COMMITTEE, AT THE REQUEST OF THE DEPARTMENT, MAY BE

1 UTILIZED TO PROVIDE TECHNICAL ADVICE ON DEPARTMENT POLICIES,
2 GUIDANCE AND REGULATIONS NEEDED TO IMPLEMENT THE CLEAN AIR ACT.
3 THE COMMITTEE MAY ALSO REQUEST TO REVIEW A DEPARTMENT POLICY,
4 GUIDANCE OR REGULATION NEEDED TO IMPLEMENT THE CLEAN AIR ACT.

5 SECTION 7.7. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM.--

6 (A) THE DEPARTMENT SHALL DEVELOP AND IMPLEMENT A SMALL BUSINESS
7 STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE
8 ASSISTANCE PROGRAM WHICH SHALL INCLUDE THE FOLLOWING:

9 (1) ADEQUATE MECHANISMS FOR DEVELOPING, COLLECTING AND
10 COORDINATING INFORMATION CONCERNING COMPLIANCE METHODS AND
11 TECHNOLOGIES FOR SMALL BUSINESS STATIONARY SOURCES AND PROGRAMS
12 TO ENCOURAGE LAWFUL COOPERATION AMONG SUCH SOURCES AND OTHER
13 PERSONS TO FURTHER COMPLY WITH THIS ACT AND THE CLEAN AIR ACT.

14 (2) ADEQUATE MECHANISMS FOR ASSISTING SMALL BUSINESS
15 STATIONARY SOURCES WITH POLLUTION PREVENTION AND ACCIDENTAL
16 RELEASE DETECTION AND PREVENTION, INCLUDING PROVIDING
17 INFORMATION CONCERNING ALTERNATIVE TECHNOLOGIES, PROCESS CHANGES
18 AND PRODUCTS AND METHODS OF OPERATION THAT HELP REDUCE AIR
19 POLLUTION.

20 (3) A COMPLIANCE ASSISTANCE PROGRAM FOR SMALL BUSINESS
21 STATIONARY SOURCES WHICH ASSISTS SMALL BUSINESS STATIONARY
22 SOURCES IN DETERMINING APPLICABLE REQUIREMENTS AND IN RECEIVING
23 PERMITS UNDER THIS ACT IN A TIMELY AND EFFICIENT MANNER.

24 (4) ADEQUATE MECHANISMS TO ASSURE THAT SMALL BUSINESS
25 STATIONARY SOURCES RECEIVE NOTICE OF THEIR RIGHTS UNDER THIS ACT
26 AND THE CLEAN AIR ACT IN SUCH MANNER AND FORM AS TO ASSURE
27 REASONABLY ADEQUATE TIME FOR SUCH SOURCES TO EVALUATE COMPLIANCE
28 METHODS AND ANY RELEVANT OR APPLICABLE PROPOSED OR FINAL
29 RULEMAKING PLAN, STATE IMPLEMENTATION PLAN REVISION, OR PROGRAM
30 ISSUED UNDER THIS ACT AND THE CLEAN AIR ACT.

1 (5) ADEQUATE MECHANISMS FOR INFORMING SMALL BUSINESS
2 STATIONARY SOURCES OF THEIR OBLIGATIONS UNDER THIS ACT AND THE
3 CLEAN AIR ACT, INCLUDING MECHANISMS FOR REFERRING THESE SOURCES
4 TO QUALIFIED AUDITORS OR, AT THE DEPARTMENT'S OPTION, FOR
5 PROVIDING AUDITS OF THE OPERATIONS OF SUCH SOURCES TO DETERMINE
6 COMPLIANCE WITH THIS ACT.

7 (6) PROCEDURES FOR CONSIDERATION OF REQUESTS FROM A SMALL
8 BUSINESS STATIONARY SOURCE FOR MODIFICATION OF:

9 (I) ANY WORK PRACTICE OR TECHNOLOGICAL METHOD OF COMPLIANCE;
10 OR

11 (II) THE SCHEDULE OF MILESTONES FOR IMPLEMENTING SUCH WORK
12 PRACTICE OR METHOD OF COMPLIANCE PRECEDING ANY APPLICABLE
13 COMPLIANCE DATE, BASED ON THE TECHNOLOGICAL AND FINANCIAL
14 CAPABILITY OF ANY SMALL BUSINESS STATIONARY SOURCES. NO
15 MODIFICATION MAY BE GRANTED UNLESS IT IS IN COMPLIANCE WITH THE
16 APPLICABLE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT,
17 INCLUDING THE REQUIREMENTS OF THE APPLICABLE IMPLEMENTATION
18 PLAN. WHERE APPLICABLE REQUIREMENTS ARE SET FORTH IN FEDERAL
19 REGULATIONS, ONLY MODIFICATIONS AUTHORIZED IN SUCH REGULATIONS
20 MAY BE ALLOWED.

21 (7) PROCEDURES FOR SOLICITING INPUT FROM AND EXCHANGING
22 INFORMATION WITH THE OFFICE OF SMALL BUSINESS OMBUDSMAN
23 REGARDING COMPLIANCE REQUIREMENTS FOR SMALL BUSINESS STATIONARY
24 SOURCES.

25 (8) ADEQUATE MECHANISMS FOR THE COLLECTION AND DISSEMINATION
26 OF INFORMATION TO SMALL BUSINESS STATIONARY SOURCES, INCLUDING,
27 BUT NOT LIMITED TO:

28 (I) DEVELOPING OF SMALL BUSINESS STATIONARY SOURCES GUIDANCE
29 MANUALS INDICATING THE CATEGORIES OF SMALL BUSINESSES SUBJECT TO
30 THE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT, SPECIFIC

1 COMPLIANCE REQUIREMENTS AND OPTIONS, A SCHEDULE OF COMPLIANCE
2 DEADLINES AND OTHER PERTINENT INFORMATION.

3 (II) ESTABLISHMENT OF A TOLL-FREE TELEPHONE NUMBER DEDICATED
4 TO QUESTIONS INVOLVING SMALL BUSINESS STATIONARY SOURCE
5 COMPLIANCE.

6 (9) PROCEDURES FOR ASSURING THE CONFIDENTIALITY OF
7 INFORMATION RECEIVED FROM SMALL BUSINESS STATIONARY SOURCES.

8 (10) PROCEDURES FOR CONDUCTING CONFIDENTIAL, ON-SITE
9 CONSULTATIONS WITH SMALL BUSINESS STATIONARY SOURCES REGARDING
10 APPLICABILITY OF COMPLIANCE REQUIREMENTS.

11 (B) THE DEPARTMENT SHALL EVALUATE THE FEASIBILITY OF
12 CONTRACTING WITH CONSULTANTS TO ADMINISTER ALL OR PART OF THE
13 SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
14 COMPLIANCE ASSISTANCE PROGRAM. THE DEPARTMENT SHALL SUBMIT A
15 REPORT TO THE GOVERNOR, THE GENERAL ASSEMBLY, THE COMPLIANCE
16 ADVISORY COMMITTEE AND THE OFFICE OF SMALL BUSINESS OMBUDSMAN
17 SUMMARIZING THE RESULTS OF THIS EVALUATION AND THE DEPARTMENT'S
18 RECOMMENDATIONS.

19 (C) THE DEPARTMENT SHALL CONSULT WITH THE COMPLIANCE
20 ADVISORY COMMITTEE ESTABLISHED IN SECTION 7.8 AND THE OFFICE OF
21 SMALL BUSINESS OMBUDSMAN ESTABLISHED IN SECTION 7.9, IN
22 DEVELOPING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
23 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

24 (D) THE DEPARTMENT SHALL PROVIDE A REASONABLE OPPORTUNITY
25 FOR PUBLIC COMMENT ON THE PROPOSED SMALL BUSINESS STATIONARY
26 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
27 PROGRAM.

28 (E) THE DEPARTMENT IS AUTHORIZED TO EXPEND FUNDS FROM THE
29 CLEAN AIR FUND COLLECTED PURSUANT TO SUBSECTION (A), (B) OR (C)
30 OF SECTION 6.3 TO SUPPORT THE DEVELOPMENT AND IMPLEMENTATION OF

THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM, THE OFFICE OF SMALL BUSINESS OMBUDSMAN AND THE COMPLIANCE ADVISORY COMMITTEE.

(F) UPON PETITION BY A SOURCE, THE DEPARTMENT MAY, AFTER NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT, INCLUDE AS A SMALL BUSINESS STATIONARY SOURCE FOR PURPOSES OF THIS ACT ANY STATIONARY SOURCE WHICH DOES NOT MEET THE DEFINITION OF "SMALL BUSINESS STATIONARY SOURCE" IN SECTION 3 BUT WHICH DOES NOT EMIT MORE THAN ONE HUNDRED (100) TONS PER YEAR OF ALL REGULATED POLLUTANTS.

(G) THE DEPARTMENT, IN CONSULTATION WITH THE ADMINISTRATOR AND THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, AND AFTER PROVIDING NOTICE AND OPPORTUNITY FOR PUBLIC HEARING, MAY EXCLUDE FROM THE DEFINITION OF "SMALL BUSINESS STATIONARY SOURCE" IN SECTION 3 ANY CATEGORY OR SUBCATEGORY OF SOURCES THAT THE DEPARTMENT DETERMINES TO HAVE SUFFICIENT TECHNICAL AND FINANCIAL CAPABILITIES TO MEET THE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT WITHOUT THE APPLICATION OF THIS SECTION.

(H) THE DEPARTMENT MAY REDUCE ANY FEE REQUIRED UNDER THIS ACT AND THE CLEAN AIR ACT TO TAKE INTO ACCOUNT THE FINANCIAL RESOURCES OF SMALL BUSINESS STATIONARY SOURCES AS AUTHORIZED BY THE CLEAN AIR ACT.

SECTION 7.8. COMPLIANCE ADVISORY COMMITTEE.--(A) THERE IS HEREBY ESTABLISHED A COMPLIANCE ADVISORY COMMITTEE WHICH SHALL PERFORM ALL OF THE FOLLOWING:

(1) PROVIDE GUIDANCE AND RECOMMENDATIONS TO THE DEPARTMENT ON THE DEVELOPMENT OF THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

(2) RENDER ADVISORY OPINIONS CONCERNING THE EFFECTIVENESS OF THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL

1 COMPLIANCE ASSISTANCE PROGRAM, DIFFICULTIES ENCOUNTERED AND
2 DEGREE AND SEVERITY OF ENFORCEMENT.

3 (3) MAKE PERIODIC REPORTS TO THE ADMINISTRATOR CONCERNING
4 THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
5 COMPLIANCE ASSISTANCE PROGRAM.

6 (4) REVIEW INFORMATION FOR SMALL BUSINESS STATIONARY SOURCES
7 TO ASSURE SUCH INFORMATION IS UNDERSTANDABLE BY THE LAYPERSON.

8 (5) HAVE THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
9 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM SERVE AS THE
10 SECRETARIAT FOR THE DEVELOPMENT AND DISSEMINATION OF SUCH
11 REPORTS AND ADVISORY OPINIONS.

12 (6) REVIEW AND ADVISE THE DEPARTMENT ON RULEMAKINGS, STATE
13 IMPLEMENTATION PLANS AND PROGRAMS UNDER THIS ACT AND THE CLEAN
14 AIR ACT WHICH AFFECT SMALL BUSINESS STATIONARY SOURCES.

15 (7) MAKE RECOMMENDATIONS FOR THE DEVELOPMENT OF PROGRAMS TO
16 ASSIST COMPLIANCE FOR SMALL BUSINESS STATIONARY SOURCES,
17 INCLUDING TECHNICAL AND FINANCIAL ASSISTANCE PROGRAMS.

18 (B) THE COMMITTEE SHALL CONSIST OF ELEVEN MEMBERS AS
19 FOLLOWS:

20 (1) FOUR MEMBERS APPOINTED BY THE GOVERNOR, THREE OF WHOM
21 SHALL NOT BE OWNERS OR REPRESENTATIVES OF OWNERS OF SMALL
22 BUSINESS STATIONARY SOURCES.

23 (2) FOUR MEMBERS, EACH OF WHOM SHALL BE AN OWNER OR THE
24 REPRESENTATIVE OF AN OWNER OF A SMALL BUSINESS STATIONARY
25 SOURCE. OF THESE FOUR MEMBERS, ONE SHALL BE APPOINTED BY EACH OF
26 THE FOLLOWING:

27 (I) THE MAJORITY LEADER OF THE SENATE.

28 (II) THE MINORITY LEADER OF THE SENATE.

29 (III) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

30 (IV) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

1 (3) THE SECRETARY OF COMMERCE OR HIS DESIGNEE.

2 (4) THE SECRETARY OF ENVIRONMENTAL RESOURCES OR HIS
3 DESIGNEE.

4 (5) THE SMALL BUSINESS OMBUDSMAN OR HIS DESIGNEE.

5 (C) THE TERMS OF APPOINTED MEMBERS SHALL BE FOR FOUR (4)
6 YEARS. VACANCIES SHALL BE FILLED BY THE ORIGINAL APPOINTING
7 MEMBER FOR THE REMAINDER OF THE UNEXPIRED TERM. INITIAL TERMS OF
8 APPOINTED MEMBERS SHALL BE AS FOLLOWS:

9 (1) OF THE MEMBERS APPOINTED BY THE GOVERNOR UNDER CLAUSE
10 (1) OF SUBSECTION (B) OF THIS SECTION:

11 (I) TWO MEMBERS SHALL BE APPOINTED FOR TWO (2) YEARS.

12 (II) TWO MEMBERS SHALL BE APPOINTED FOR FOUR (4) YEARS.

13 (2) OF THE MEMBERS APPOINTED UNDER CLAUSE (2) OF SUBSECTION
14 (B) OF THIS SECTION:

15 (I) THE MAJORITY LEADER OF THE SENATE SHALL APPOINT ONE
16 MEMBER FOR FOUR (4) YEARS.

17 (II) THE MINORITY LEADER OF THE SENATE SHALL APPOINT ONE
18 MEMBER FOR TWO (2) YEARS.

19 (III) THE MAJORITY LEADER OF THE HOUSE OF REPRESENTATIVES
20 SHALL APPOINT ONE MEMBER FOR THREE (3) YEARS.

21 (IV) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES
22 SHALL APPOINT ONE MEMBER FOR ONE (1) YEAR.

23 SECTION 7.9. SMALL BUSINESS OMBUDSMAN.--(A) THERE IS HEREBY
24 ESTABLISHED AN OFFICE OF SMALL BUSINESS OMBUDSMAN WITHIN THE
25 DEPARTMENT OF COMMERCE FOR THE PURPOSE OF SERVING AS THE PRIMARY
26 POINT OF CONTACT FOR SMALL BUSINESS ON ISSUES RELATING TO
27 COMPLIANCE WITH THIS ACT AND THE CLEAN AIR ACT.

28 (B) THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL PERFORM ALL
29 FUNCTIONS NECESSARY TO IMPLEMENT THE REQUIREMENTS OF SECTION
30 507(A)(3) OF THE CLEAN AIR ACT. THE OFFICE OF SMALL BUSINESS

1 OMBUDSMAN SHALL PERFORM ALL OF THE FOLLOWING FUNCTIONS TO THE
2 EXTENT THEY ARE CONSISTENT WITH THE GUIDELINES DEVELOPED BY THE
3 ENVIRONMENTAL PROTECTION AGENCY:

4 (1) SOLICIT INPUT FROM SMALL BUSINESSES REGARDING COMPLIANCE
5 WITH THIS ACT AND THE CLEAN AIR ACT AND INTERACT WITH
6 ORGANIZATIONS REPRESENTING SMALL BUSINESSES, INCLUDING SMALL
7 BUSINESS DEVELOPMENT CENTERS, THE SMALL BUSINESS ADMINISTRATION,
8 INDUSTRY AND TRADE ASSOCIATIONS AND OTHER ENTITIES.

9 (2) PROVIDE GUIDANCE AND RECOMMENDATIONS TO THE DEPARTMENT
10 ON THE DEVELOPMENT OF THE SMALL BUSINESS STATIONARY SOURCE
11 TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

12 (3) MAKE RECOMMENDATIONS TO THE DEPARTMENT REGARDING THE
13 CONTENT AND OPERATION OF THE SMALL BUSINESS STATIONARY SOURCE
14 TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

15 (4) COLLECT AND DISTRIBUTE INFORMATION AND MATERIALS ON THE
16 REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT.

17 (5) REPORT TO THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
18 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM ON PROBLEMS AND
19 DIFFICULTIES EXPERIENCED BY SMALL BUSINESSES IN COMPLYING WITH
20 THIS ACT AND THE CLEAN AIR ACT.

21 (6) SERVE ON THE COMPLIANCE ADVISORY COMMITTEE ESTABLISHED
22 BY SECTION 7.8.

23 (7) CONDUCT INDEPENDENT EVALUATIONS OF ALL ASPECTS OF THE
24 SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
25 COMPLIANCE ASSISTANCE PROGRAM.

26 (8) REVIEW AND PROVIDE COMMENTS AND RECOMMENDATIONS TO THE
27 ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT REGARDING THE
28 DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS THAT IMPACT SMALL
29 BUSINESSES.

30 (9) ARRANGE FOR AND ASSIST IN THE PREPARATION OF GUIDANCE

1 DOCUMENTS BY THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
2 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM TO ENSURE THAT THE
3 LANGUAGE IS READILY UNDERSTANDABLE BY THE LAY PERSON.

4 (10) ASSIST SMALL BUSINESSES IN LOCATING SOURCES OF FUNDING
5 FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS ACT AND THE CLEAN
6 AIR ACT.

7 (C) THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL REPORT
8 ANNUALLY TO THE GOVERNOR AND GENERAL ASSEMBLY ON THE
9 EFFECTIVENESS OF THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
10 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM AND OTHER ISSUES
11 RELATING TO THE IMPACT OF THE CLEAN AIR ACT IMPLEMENTATION ON
12 SMALL BUSINESSES IN THE COMMONWEALTH.

13 (D) FOR EACH PROPOSED RULEMAKING SIGNIFICANTLY AFFECTING
14 SMALL BUSINESSES, THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL
15 PREPARE A REPORT WHICH CONTAINS A DETAILED ANALYSIS OF THE
16 ECONOMIC IMPACT OF SUCH PROPOSED RULEMAKING ON SMALL BUSINESSES.
17 THE ECONOMIC IMPACT REPORT SHALL BE COMPLETED NO LATER THAN
18 NINETY (90) DAYS FROM THE DATE THAT THE BOARD APPROVES THE
19 PROPOSED RULEMAKING AND SHALL BE SUBMITTED TO THE BOARD FOR
20 CONSIDERATION PRIOR TO APPROVAL OF THE FINAL RULEMAKING PACKAGE;
21 PROVIDED THE REPORT IS AVAILABLE WITHIN THE TIME PERIOD
22 PRESCRIBED BY THIS SECTION. THE DEPARTMENT SHALL PROVIDE THE
23 OMBUDSMAN WITH A REASONABLE OPPORTUNITY TO REVISE THE REPORT TO
24 REFLECT ANY PROPOSED SUBSTANTIAL CHANGE IN THE RULEMAKING WHICH
25 AFFECTS THE INITIAL REPORT.

26 (E) THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

27 (1) AN ANALYSIS OF THE ECONOMIC IMPACT OF THE SELECTED
28 CONTROL STRATEGIES ON SMALL BUSINESS.

29 (2) DATA ON COMPARABLE REGULATORY PROGRAMS OR PLANS
30 ADMINISTERED BY OTHER STATES.

1 (3) AN ASSESSMENT OF THE ECONOMIC IMPACT OF ALTERNATIVE
2 CONTROL STRATEGIES.

3 (4) ALL OTHER INFORMATION THAT THE OFFICE OF SMALL BUSINESS
4 OMBUDSMAN CONSIDERS NECESSARY FOR THE BOARD'S REVIEW.

5 SECTION 7.10. TRANSPORTATION MANAGEMENT ASSOCIATIONS.--(A)
6 THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF
7 TRANSPORTATION, MAY, AFTER PUBLIC NOTICE AND COMMENT, DESIGNATE
8 ONE OR MORE TRANSPORTATION MANAGEMENT ASSOCIATIONS TO SERVE
9 SPECIFIC REGIONS OF THIS COMMONWEALTH TO PROVIDE SERVICES TO
10 EMPLOYERS REQUIRED BY THE CLEAN AIR ACT TO REDUCE EMPLOYE
11 VEHICLE TRIPS AND ENCOURAGE THE USE OF CARPOOLING, VANPOOLING
12 AND PUBLIC TRANSPORTATION TO REDUCE AIR POLLUTION.

13 (B) FOR PURPOSES OF THIS SECTION, TRANSPORTATION MANAGEMENT
14 ASSOCIATIONS SHALL CONSIST OF NONPROFIT CORPORATIONS DESIGNATED
15 BY THE DEPARTMENT TO BROKER TRANSPORTATION SERVICES, INCLUDING,
16 BUT NOT LIMITED TO, PUBLIC TRANSPORTATION, VANPOOLS, CARPOOLS,
17 BICYCLING AND PEDESTRIAN MODES, AS WELL AS STRATEGIES SUCH AS
18 FLEXTIME, STAGGERED WORK HOURS AND COMPRESSED WORK WEEKS FOR
19 CORPORATIONS, EMPLOYES, DEVELOPERS, INDIVIDUALS AND OTHER
20 GROUPS.

21 SECTION 7.11. NOTICE OF SANCTIONS.--(A) WHENEVER THE
22 COMMONWEALTH IS NOTIFIED THAT THE ENVIRONMENTAL PROTECTION
23 AGENCY HAS MADE A FINAL OR PROPOSED FINDING ON A STATE
24 IMPLEMENTATION PLAN SUBMITTED BY THE COMMONWEALTH OR A LOCAL AIR
25 POLLUTION CONTROL AGENCY, THE DEPARTMENT SHALL NOTIFY WITHIN TEN
26 (10) WORKING DAYS OF RECEIPT OF THE NOTICE THE ENVIRONMENTAL
27 RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND THE
28 CONSERVATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE
29 AGENCY'S FINDINGS.

30 (B) WHENEVER THE COMMONWEALTH IS FORMALLY NOTIFIED THAT IT

1 IS SUBJECT TO DISCRETIONARY OR MANDATORY SANCTIONS UNDER SECTION
2 179 OF THE CLEAN AIR ACT, THE DEPARTMENT SHALL WITHIN TEN (10)
3 WORKING DAYS OF THE RECEIPT OF THIS NOTICE NOTIFY THE
4 ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND
5 THE CONSERVATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

6 SECTION 7.12. MISSED FEDERAL DEADLINES.--WHENEVER THE
7 ENVIRONMENTAL PROTECTION AGENCY HAS MISSED A DEADLINE FOR
8 DEVELOPING REGULATIONS OR GUIDANCE ON WHICH STATES MUST RELY TO
9 COMPLY WITH DEADLINES IN THE CLEAN AIR ACT BY MORE THAN NINETY
10 (90) DAYS AND, IN THE OPINION OF THE DEPARTMENT, THE
11 ENVIRONMENTAL PROTECTION AGENCY HAS FAILED TO PROVIDE IT WITH
12 TIMELY GUIDANCE NEEDED TO COMPLY WITH THE ACT IN A TIMELY
13 MANNER, THE DEPARTMENT MAY BRING A LEGAL ACTION AGAINST THE
14 ENVIRONMENTAL PROTECTION AGENCY IN A COURT OF COMPETENT
15 JURISDICTION SEEKING AN INJUNCTION TO RESTRAIN THE ENVIRONMENTAL
16 PROTECTION AGENCY FROM ENFORCING THE APPLICABLE CLEAN AIR ACT
17 DEADLINE ON THE COMMONWEALTH UNTIL AND UNLESS THE ENVIRONMENTAL
18 PROTECTION AGENCY DEVELOPS THE APPROPRIATE REGULATION OR
19 GUIDANCE WHICH ALLOWS THE COMMONWEALTH A REASONABLE OPPORTUNITY
20 TO COMPLY WITH THE CLEAN AIR ACT.

21 SECTION 10. SECTIONS 8, 9, 9.1 AND 9.2 OF THE ACT, AMENDED
22 OR ADDED OCTOBER 26, 1972 (P.L.989, NO.245), ARE AMENDED TO
23 READ:

24 SECTION 8. UNLAWFUL CONDUCT.--IT SHALL BE UNLAWFUL TO FAIL
25 TO COMPLY WITH [ANY RULE OR REGULATION OF THE BOARD], OR TO
26 CAUSE OR ASSIST IN THE VIOLATION OF, ANY OF THE PROVISIONS OF
27 THIS ACT OR THE RULES AND REGULATIONS ADOPTED UNDER THIS ACT OR
28 TO FAIL TO COMPLY WITH ANY ORDER, PLAN APPROVAL, PERMIT OR OTHER
29 REQUIREMENT OF THE DEPARTMENT[, TO VIOLATE OR TO ASSIST IN THE
30 VIOLATION OF ANY OF THE PROVISIONS OF THIS ACT OR RULES AND

1 REGULATIONS ADOPTED HEREUNDER, TO CAUSE AIR POLLUTION, OR TO IN
2 ANY MANNER HINDER, OBSTRUCT, DELAY, RESIST, PREVENT OR IN ANY
3 WAY INTERFERE OR ATTEMPT TO INTERFERE WITH THE DEPARTMENT OR ITS
4 PERSONNEL IN THE PERFORMANCE OF ANY DUTY HEREUNDER.] OR TO CAUSE
5 A PUBLIC NUISANCE; OR TO CAUSE AIR POLLUTION, SOIL OR WATER
6 POLLUTION RESULTING FROM AN AIR POLLUTION INCIDENT; OR TO
7 HINDER, OBSTRUCT, PREVENT OR INTERFERE WITH THE DEPARTMENT OR
8 ITS PERSONNEL IN THEIR PERFORMANCE OF ANY DUTY HEREUNDER,
9 INCLUDING DENYING THE DEPARTMENT ACCESS TO THE SOURCE OR
10 FACILITY; OR TO VIOLATE THE PROVISIONS OF 18 PA.C.S. § 4903
11 (RELATING TO FALSE SWEARING) OR 4904 (RELATING TO UNSWORN
12 FALSIFICATION TO AUTHORITIES) IN REGARD TO PAPERS REQUIRED TO BE
13 SUBMITTED UNDER THIS ACT. THE OWNER OR OPERATOR OF AN AIR
14 CONTAMINATION SOURCE SHALL NOT ALLOW POLLUTION OF THE AIR, WATER
15 OR OTHER NATURAL RESOURCES OF THE COMMONWEALTH RESULTING FROM
16 THE SOURCE. FOR ANY AIR POLLUTANT FOR WHICH THE BOARD HAS SET AN
17 EMISSIONS STANDARD OR FOR ANY SOURCE FOR WHICH A PERMIT HAS BEEN
18 ISSUED BY THE DEPARTMENT, A RELEASE OF SUCH POLLUTANT IN
19 ACCORDANCE WITH THAT STANDARD OR PERMIT SHALL NOT CONSTITUTE A
20 VIOLATION OF THIS ACT.

21 [SECTION 9. PENALTIES.--(A) SUMMARY OFFENSE. ANY PERSON AS
22 HEREIN DEFINED, EXCEPT A DEPARTMENT, BOARD, BUREAU OR AGENCY OF
23 THE COMMONWEALTH, ENGAGING IN UNLAWFUL CONDUCT AS SET FORTH IN
24 SECTION 8 OF THIS ACT, SHALL, FOR EACH OFFENSE, UPON CONVICTION
25 THEREOF IN A SUMMARY PROCEEDING BEFORE A DISTRICT JUSTICE,
26 MAGISTRATE, ALDERMAN OR JUSTICE OF THE PEACE, BE SENTENCED TO
27 PAY THE COSTS OF PROSECUTION AND A FINE OF NOT LESS THAN ONE
28 HUNDRED DOLLARS (\$100.00) NOR MORE THAN ONE THOUSAND DOLLARS
29 (\$1,000.00), AND, IN DEFAULT THEREOF, TO UNDERGO IMPRISONMENT OF
30 NOT LESS THAN TEN (10) DAYS NOR MORE THAN THIRTY (30) DAYS.

1 (B) MISDEMEANORS. ANY PERSON AS HEREIN DEFINED, EXCEPT A
2 DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE COMMONWEALTH, WHO,
3 WITHIN TWO YEARS AFTER BEING CONVICTED OF A SUMMARY OFFENSE
4 PURSUANT TO SUBSECTION (A) OF THIS SECTION, ENGAGES IN SIMILAR
5 UNLAWFUL CONDUCT, SHALL BE GUILTY OF A MISDEMEANOR AND, UPON
6 CONVICTION THEREOF, SHALL, FOR EACH SEPARATE OFFENSE, BE SUBJECT
7 TO A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS (\$500.00) NOR
8 MORE THAN FIVE THOUSAND DOLLARS (\$5,000.00), OR TO IMPRISONMENT
9 FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR EACH SEPARATE OFFENSE
10 HEREUNDER, OR BOTH. FOR THE PURPOSES OF THIS SUBSECTION, SIMILAR
11 UNLAWFUL CONDUCT SHALL MEAN A VIOLATION OF THE SAME ORDER OF THE
12 DEPARTMENT, OR A VIOLATION OF THE SAME PROVISION OF ANY RULE OR
13 REGULATION OF THE DEPARTMENT BY THE SAME ORGANIZATIONAL UNIT OF
14 THE DEFENDANT.

15 (C) FOR THE PURPOSE OF THIS SECTION, VIOLATIONS ON SEPARATE
16 DAYS SHALL BE CONSIDERED SEPARATE OFFENSES. WHERE A PERSON
17 ENGAGES IN CONTINUING UNLAWFUL CONDUCT, SUCH PERSON SHALL BE
18 GUILTY OF SEPARATE OFFENSES FOR EACH DAY SUCH CONDUCT CONTINUES
19 UP UNTIL THE TIME OF HEARING OR TRIAL.

20 (D) UPON CONVICTION OF AN ASSOCIATION, PARTNERSHIP OR
21 CORPORATION OF AN OFFENSE UNDER SUBSECTION (A) OR (B) OF THIS
22 SECTION, THE RESPONSIBLE MEMBERS, OFFICERS, EMPLOYEES OR AGENTS
23 MAY BE IMPRISONED FOR THE TERM PROVIDED THEREIN WHICH SHALL RUN
24 CONCURRENTLY WITH ANY TERM OF IMPRISONMENT IMPOSED UPON SUCH
25 PERSONS INDIVIDUALLY UPON CONVICTION FOR THE SAME OFFENSE.

26 SECTION 9.1. CIVIL PENALTIES.--IN ADDITION TO PROCEEDING
27 UNDER ANY OTHER REMEDY AVAILABLE AT LAW, OR IN EQUITY, FOR A
28 VIOLATION OF A PROVISION OF THIS ACT, OR A RULE OR REGULATION OF
29 THE BOARD, OR AN ORDER OF THE DEPARTMENT, THE HEARING BOARD,
30 AFTER HEARING, MAY ASSESS A CIVIL PENALTY UPON A PERSON FOR SUCH

1 VIOLATION. SUCH A PENALTY MAY BE ASSESSED WHETHER OR NOT THE
2 VIOLATION WAS WILFUL. THE CIVIL PENALTY SO ASSESSED SHALL NOT
3 EXCEED TEN THOUSAND DOLLARS (\$10,000.00), PLUS UP TO TWO
4 THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) FOR EACH DAY OF
5 CONTINUED VIOLATION. IN DETERMINING THE AMOUNT OF THE CIVIL
6 PENALTY, THE HEARING BOARD SHALL CONSIDER THE WILFULNESS OF THE
7 VIOLATION, DAMAGE OR INJURY TO THE OUTDOOR ATMOSPHERE OF THE
8 COMMONWEALTH OR ITS USES, AND OTHER RELEVANT FACTORS. IT SHALL
9 BE PAYABLE TO THE COMMONWEALTH OF PENNSYLVANIA AND SHALL BE
10 COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE COLLECTION OF
11 DEBT. IF ANY PERSON LIABLE TO PAY ANY SUCH PENALTY NEGLECTS OR
12 REFUSES TO PAY THE SAME AFTER DEMAND, THE AMOUNT, TOGETHER WITH
13 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE A LIEN IN FAVOR
14 OF THE COMMONWEALTH UPON THE PROPERTY, BOTH REAL AND PERSONAL,
15 OF SUCH PERSON, BUT ONLY AFTER SAME HAS BEEN ENTERED AND
16 DOCKETED OF RECORD BY THE PROTHONOTARY OF THE COUNTY WHERE SUCH
17 IS SITUATED. THE HEARING BOARD MAY, AT ANY TIME, TRANSMIT TO THE
18 PROTHONOTARIES OF THE RESPECTIVE COUNTIES CERTIFIED COPIES OF
19 ALL SUCH LIENS, AND IT SHALL BE THE DUTY OF EACH PROTHONOTARY TO
20 ENTER AND DOCKET THE SAME OF RECORD IN HIS OFFICE, AND TO INDEX
21 THE SAME AS JUDGMENTS ARE INDEXED, WITHOUT REQUIRING THE PAYMENT
22 OF COSTS AS A CONDITION PRECEDENT TO THE ENTRY THEREOF.]

23 SECTION 9. PENALTIES.--(A) ANY PERSON WHO VIOLATES ANY
24 PROVISION OF THIS ACT, ANY RULE OR REGULATION ADOPTED UNDER THIS
25 ACT, ANY ORDER OF THE DEPARTMENT OR ANY CONDITION OR TERM OF ANY
26 PLAN APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT COMMITS A
27 SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY
28 A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS (\$100.00) NOR MORE
29 THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) FOR EACH
30 SEPARATE OFFENSE, AND, IN DEFAULT OF THE PAYMENT OF SUCH FINE,

1 MAY BE SENTENCED TO IMPRISONMENT FOR NINETY (90) DAYS FOR EACH
2 SEPARATE OFFENSE. EMPLOYES OF THE DEPARTMENT AUTHORIZED TO
3 CONDUCT INSPECTIONS OR INVESTIGATIONS ARE HEREBY DECLARED TO BE
4 LAW ENFORCEMENT OFFICERS AUTHORIZED TO ISSUE OR FILE CITATIONS
5 FOR SUMMARY VIOLATIONS UNDER THIS ACT, AND THE GENERAL COUNSEL
6 IS HEREBY AUTHORIZED TO PROSECUTE THESE OFFENSES. FOR PURPOSES
7 OF THIS SUBSECTION, A SUMMARY OFFENSE MAY BE PROSECUTED BEFORE
8 ANY DISTRICT JUSTICE IN THE COUNTY WHERE THE OFFENSE OCCURRED.
9 THERE IS NO ACCELERATED REHABILITATIVE DISPOSITION AUTHORIZED
10 FOR A SUMMARY OFFENSE.

11 (B) (1) ANY PERSON WHO WILFULLY OR NEGLIGENTLY VIOLATES ANY
12 PROVISION OF THIS ACT, ANY RULE OR REGULATION ADOPTED UNDER THIS
13 ACT OR ANY ORDER OF THE DEPARTMENT OR ANY CONDITION OR TERM OF
14 ANY PLAN APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT COMMITS
15 A MISDEMEANOR OF THE SECOND DEGREE AND SHALL, UPON CONVICTION,
16 BE SENTENCED TO PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS
17 (\$1,000.00) NOR MORE THAN FIFTY THOUSAND DOLLARS (\$50,000.00)
18 FOR EACH SEPARATE OFFENSE OR TO IMPRISONMENT FOR A PERIOD OF NOT
19 MORE THAN TWO (2) YEARS FOR EACH SEPARATE OFFENSE, OR BOTH.

20 (2) ANY PERSON WHO KNOWINGLY MAKES ANY FALSE STATEMENT OR
21 REPRESENTATION IN ANY APPLICATION, RECORD, REPORT, CERTIFICATION
22 OR OTHER DOCUMENT REQUIRED TO BE EITHER FILED OR MAINTAINED BY
23 THIS ACT OR THE REGULATIONS PROMULGATED UNDER THIS ACT OR
24 COMMITTS A MISDEMEANOR OF THE SECOND DEGREE AND SHALL, UPON
25 CONVICTION, BE SENTENCED TO PAY A FINE OF NOT LESS THAN TWO
26 THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) NOR MORE THAN FIFTY
27 THOUSAND DOLLARS (\$50,000.00) FOR EACH SEPARATE OFFENSE OR TO
28 IMPRISONMENT FOR A PERIOD OF NOT MORE THAN TWO (2) YEARS FOR
29 EACH SEPARATE OFFENSE, OR BOTH.

30 (3) ANY PERSON WHO NEGLIGENTLY RELEASES INTO THE AMBIENT AIR

1 ANY HAZARDOUS AIR POLLUTANT LISTED UNDER SECTION 112 OF THE
2 CLEAN AIR ACT OR ANY EXTREMELY HAZARDOUS SUBSTANCE LISTED UNDER
3 SECTION 302(A)(2) OF THE SUPERFUND AMENDMENTS AND
4 REAUTHORIZATION ACT OF 1986 (PUBLIC LAW 99-499, 100 STAT. 1613)
5 THAT IS NOT LISTED IN SECTION 112 OF THE CLEAN AIR ACT AND WHO
6 AT THE TIME NEGLIGENTLY PLACES ANOTHER PERSON IN IMMINENT DANGER
7 OF DEATH OR SERIOUS BODILY INJURY COMMITS A MISDEMEANOR OF THE
8 THIRD DEGREE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY A
9 FINE OF NOT LESS THAN FIVE THOUSAND DOLLARS (\$5,000.00) NOR MORE
10 THAN FIFTY THOUSAND DOLLARS (\$50,000.00) FOR EACH SEPARATE
11 OFFENSE OR TO IMPRISONMENT FOR A PERIOD OF NOT MORE THAN ONE (1)
12 YEAR FOR EACH SEPARATE OFFENSE, OR BOTH.

13 (C) (1) ANY PERSON WHO KNOWINGLY RELEASES INTO THE AMBIENT
14 AIR ANY HAZARDOUS AIR POLLUTANT LISTED UNDER SECTION 112 OF THE
15 CLEAN AIR ACT OR ANY EXTREMELY HAZARDOUS SUBSTANCE LISTED UNDER
16 SECTION 302(A)(2) OF THE SUPERFUND AMENDMENTS AND
17 REAUTHORIZATION ACT OF 1986 THAT IS NOT LISTED IN SECTION 112 OF
18 THE CLEAN AIR ACT AND WHO KNOWS AT THE TIME THAT HE THEREBY
19 PLACES ANOTHER PERSON IN IMMINENT DANGER OF DEATH OR SERIOUS
20 BODILY INJURY COMMITS A FELONY OF THE FIRST DEGREE AND SHALL,
21 UPON CONVICTION, BE SENTENCED TO PAY A FINE OF NOT LESS THAN
22 TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) NOR MORE THAN ONE
23 HUNDRED THOUSAND DOLLARS (\$100,000.00) PER DAY FOR EACH
24 VIOLATION OR TO IMPRISONMENT FOR A PERIOD OF NOT LESS THAN TWO
25 (2) YEARS NOR MORE THAN TWENTY (20) YEARS, OR BOTH. ANY PERSON
26 WHICH IS AN ORGANIZATION COMMITTING SUCH VIOLATION SHALL, UPON
27 CONVICTION UNDER THIS CLAUSE, BE SUBJECT TO A FINE OF NOT MORE
28 THAN ONE MILLION DOLLARS (\$1,000,000.00) PER DAY FOR EACH
29 VIOLATION. IF A CONVICTION OF ANY PERSON UNDER THIS CLAUSE IS
30 FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION OF SUCH

PERSON UNDER THIS CLAUSE, THE MAXIMUM PUNISHMENT SHALL BE
DOUBLED WITH RESPECT TO BOTH THE FINE AND IMPRISONMENT. FOR ANY
AIR POLLUTANT FOR WHICH THE BOARD HAS SET AN EMISSIONS STANDARD
OR FOR ANY SOURCE FOR WHICH A PERMIT HAS BEEN ISSUED BY THE
DEPARTMENT, A RELEASE OF SUCH POLLUTANT IN ACCORDANCE WITH THAT
STANDARD OR PERMIT SHALL NOT CONSTITUTE A VIOLATION OF THIS
SECTION.

(2) IN DETERMINING WHETHER A DEFENDANT WHO IS AN INDIVIDUAL
KNEW THAT THE VIOLATION PLACED ANOTHER PERSON IN IMMINENT DANGER
OF DEATH OR SERIOUS BODILY INJURY:

(I) THE DEFENDANT IS RESPONSIBLE ONLY FOR ACTUAL AWARENESS
OR ACTUAL BELIEF POSSESSED; AND

(II) KNOWLEDGE POSSESSED BY A PERSON OTHER THAN THE
DEFENDANT, BUT NOT BY THE DEFENDANT, MAY NOT BE ATTRIBUTED TO
THE DEFENDANT; EXCEPT THAT, IN PROVING A DEFENDANT'S POSSESSION
OF ACTUAL KNOWLEDGE, CIRCUMSTANTIAL EVIDENCE MAY BE USED,
INCLUDING EVIDENCE THAT THE DEFENDANT TOOK AFFIRMATIVE STEPS TO
BE SHIELDED FROM RELEVANT INFORMATION.

(3) IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION UNDER THIS
SUBSECTION THAT THE CONDUCT CHARGED WAS FREELY CONSENTED TO BY
THE PERSON ENDANGERED AND THAT THE DANGER AND CONDUCT CHARGED
WERE REASONABLY FORESEEABLE HAZARDS OF EITHER OF THE FOLLOWING:

(I) AN OCCUPATION, A BUSINESS OR A PROFESSION, AND THE
PERSON HAD BEEN MADE AWARE OF THE RISKS INVOLVED PRIOR TO GIVING
CONSENT.

(II) MEDICAL TREATMENT OR MEDICAL OR SCIENTIFIC
EXPERIMENTATION CONDUCTED BY PROFESSIONALLY APPROVED METHODS,
AND SUCH OTHER PERSON HAD BEEN MADE AWARE OF THE RISKS INVOLVED
PRIOR TO GIVING CONSENT. THE DEFENDANT MAY ESTABLISH AN
AFFIRMATIVE DEFENSE UNDER THIS SUBCLAUSE BY A PREPONDERANCE OF

1 THE EVIDENCE.

2 (4) ALL GENERAL DEFENSES, AFFIRMATIVE DEFENSES AND BARS TO
3 PROSECUTION THAT MAY APPLY WITH RESPECT TO OTHER STATE CRIMINAL
4 OFFENSES MAY APPLY UNDER THIS CLAUSE AND SHALL BE DETERMINED BY
5 THE COURTS ACCORDING TO THE PRINCIPLES OF COMMON LAW. CONCEPTS
6 OF JUSTIFICATION AND EXCUSE APPLICABLE UNDER THIS SECTION MAY BE
7 DEVELOPED ACCORDING TO THOSE PRINCIPLES.

8 (5) FOR PURPOSES OF THIS SUBSECTION, THE TERM "ORGANIZATION"
9 MEANS A LEGAL ENTITY, OTHER THAN A GOVERNMENT, ESTABLISHED OR
10 ORGANIZED FOR ANY PURPOSE, AND THE TERM INCLUDES A CORPORATION,
11 A COMPANY, AN ASSOCIATION, A FIRM, A PARTNERSHIP, A JOINT STOCK
12 COMPANY, A FOUNDATION, AN INSTITUTION, A TRUST, A SOCIETY, A
13 UNION OR ANY OTHER ASSOCIATION OF PERSONS.

14 (D) FOR PURPOSES OF SUBSECTIONS (B) AND (C) OF THIS SECTION,
15 THE TERM "SERIOUS BODILY INJURY" MEANS BODILY INJURY WHICH
16 INVOLVES A SUBSTANTIAL RISK OF DEATH, UNCONSCIOUSNESS, EXTREME
17 PHYSICAL PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT OR
18 PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY
19 MEMBER, ORGAN OR MENTAL FACULTY.

20 (E) FOR PURPOSES OF THIS SECTION, THE TERM "PERSON"
21 INCLUDES, IN ADDITION TO THE ENTITIES REFERRED TO IN SECTION 3,
22 ANY RESPONSIBLE CORPORATE OFFICER.

23 (F) FOR PURPOSES OF THE PROVISIONS OF SUBSECTIONS (B) AND
24 (C) OF THIS SECTION AND SECTION 9.1, THE TERM "OPERATOR," AS
25 USED IN SUCH PROVISIONS, SHALL INCLUDE ANY PERSON WHO IS SENIOR
26 MANAGEMENT PERSONNEL OR A CORPORATE OFFICER. EXCEPT IN THE CASE
27 OF KNOWING AND WILFUL VIOLATIONS, SUCH TERM SHALL NOT INCLUDE
28 ANY PERSON WHO IS A STATIONARY ENGINEER OR TECHNICIAN
29 RESPONSIBLE FOR THE OPERATION, MAINTENANCE, REPAIR OR MONITORING
30 OF EQUIPMENT AND FACILITIES AND WHO OFTEN HAS SUPERVISORY AND

1 TRAINING DUTIES, BUT WHO IS NOT SENIOR MANAGEMENT PERSONNEL OR A
2 CORPORATE OFFICER. EXCEPT IN THE CASE OF KNOWING AND WILFUL
3 VIOLATIONS, FOR PURPOSES OF CLAUSE (3) OF SUBSECTION (B) OF THIS
4 SECTION, THE TERM "A PERSON" SHALL NOT INCLUDE AN EMPLOYE WHO IS
5 CARRYING OUT HIS NORMAL ACTIVITIES AND WHO IS NOT A PART OF
6 SENIOR MANAGEMENT PERSONNEL OR A CORPORATE OFFICER. EXCEPT IN
7 THE CASE OF KNOWING AND WILFUL VIOLATIONS, FOR THE PURPOSES OF
8 CLAUSES (1) AND (2) OF SUBSECTION (B) AND SUBSECTION (C) OF THIS
9 SECTION, THE TERM "A PERSON" SHALL NOT INCLUDE AN EMPLOYE WHO IS
10 CARRYING OUT HIS NORMAL ACTIVITIES AND WHO IS ACTING UNDER
11 ORDERS FROM THE EMPLOYER.

12 (G) FOR PURPOSES OF THIS SECTION, A PERSON ACTS NEGLIGENTLY
13 WITH RESPECT TO A MATERIAL ELEMENT OF AN OFFENSE WHEN HE SHOULD
14 BE AWARE OF A SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT THE
15 MATERIAL ELEMENT EXISTS OR WILL RESULT FROM HIS CONDUCT. THE
16 RISK MUST BE OF SUCH A NATURE AND DEGREE THAT THE ACTOR'S
17 FAILURE TO PERCEIVE IT, CONSIDERING THE NATURE AND INTENT OF HIS
18 CONDUCT AND THE CIRCUMSTANCES KNOWN TO HIM, INVOLVES A GROSS
19 DEVIATION FROM THE STANDARD OF CARE THAT A REASONABLE PERSON
20 WOULD OBSERVE IN THE ACTOR'S SITUATION.

21 SECTION 9.1. CIVIL PENALTIES.--(A) IN ADDITION TO
22 PROCEEDING UNDER ANY OTHER REMEDY AVAILABLE AT LAW OR IN EQUITY
23 FOR A VIOLATION OF A PROVISION OF THIS ACT OR ANY RULE OR
24 REGULATION PROMULGATED UNDER THIS ACT OR ANY ORDER, PLAN
25 APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT, THE DEPARTMENT
26 MAY ASSESS A CIVIL PENALTY FOR THE VIOLATION. THE PENALTY MAY BE
27 ASSESSED WHETHER OR NOT THE VIOLATION WAS WILFUL. THE CIVIL
28 PENALTY SO ASSESSED SHALL NOT EXCEED TEN THOUSAND DOLLARS
29 (\$10,000.00) PER DAY FOR EACH VIOLATION WHICH OCCURS IN THE
30 FIRST THREE (3) YEARS FOLLOWING ENACTMENT OF THIS SECTION;

FIFTEEN THOUSAND DOLLARS (\$15,000.00) PER DAY FOR EACH VIOLATION WHICH OCCURS IN THE FOURTH YEAR FOLLOWING ENACTMENT OF THIS SECTION; AND TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) PER DAY FOR EACH VIOLATION WHICH OCCURS IN THE FIFTH YEAR AND ALL SUBSEQUENT YEARS FOLLOWING ENACTMENT OF THIS SECTION. IN DETERMINING THE AMOUNT OF THE PENALTY, THE DEPARTMENT SHALL CONSIDER THE WILFULNESS OF THE VIOLATION; DAMAGE TO AIR, SOIL, WATER OR OTHER NATURAL RESOURCES OF THE COMMONWEALTH OR THEIR USES; FINANCIAL BENEFIT TO THE PERSON IN CONSEQUENCE OF THE VIOLATION; DETERRENCE OF FUTURE VIOLATIONS; COST TO THE DEPARTMENT; THE SIZE OF THE SOURCE OR FACILITY; THE COMPLIANCE HISTORY OF THE SOURCE; THE SEVERITY AND DURATION OF THE VIOLATION; DEGREE OF COOPERATION IN RESOLVING THE VIOLATION; THE SPEED WITH WHICH COMPLIANCE IS ULTIMATELY ACHIEVED; WHETHER THE VIOLATION WAS VOLUNTARILY REPORTED; OTHER FACTORS UNIQUE TO THE OWNERS OR OPERATOR OF THE SOURCE OR FACILITY; AND OTHER RELEVANT FACTORS.

(B) WHEN THE DEPARTMENT PROPOSES TO ASSESS A CIVIL PENALTY, IT SHALL INFORM THE PERSON OF THE PROPOSED AMOUNT OF THE PENALTY. THE PERSON CHARGED WITH THE PENALTY SHALL THEN HAVE THIRTY (30) DAYS TO PAY THE PROPOSED PENALTY IN FULL, OR IF THE PERSON WISHES TO CONTEST THE AMOUNT OF THE PENALTY OR THE FACT OF THE VIOLATION TO THE EXTENT NOT ALREADY ESTABLISHED, THE PERSON SHALL FORWARD THE PROPOSED AMOUNT OF THE PENALTY TO THE HEARING BOARD WITHIN THE THIRTY (30) DAY PERIOD FOR PLACEMENT IN AN ESCROW ACCOUNT WITH THE STATE TREASURER OR ANY COMMONWEALTH BANK OR POST AN APPEAL BOND TO THE HEARING BOARD WITHIN THIRTY (30) DAYS IN THE AMOUNT OF THE PROPOSED PENALTY, PROVIDED THAT SUCH BOND IS EXECUTED BY A SURETY LICENSED TO DO BUSINESS IN THE COMMONWEALTH AND IS SATISFACTORY TO THE DEPARTMENT. IF, THROUGH

1 ADMINISTRATIVE OR FINAL JUDICIAL REVIEW OF THE PROPOSED PENALTY,
2 IT IS DETERMINED THAT NO VIOLATION OCCURRED OR THAT THE AMOUNT
3 OF THE PENALTY SHALL BE REDUCED, THE HEARING BOARD SHALL, WITHIN
4 THIRTY (30) DAYS, REMIT THE APPROPRIATE AMOUNT TO THE PERSON
5 WITH ANY INTEREST ACCUMULATED BY THE ESCROW DEPOSIT. FAILURE TO
6 FORWARD THE MONEY OR THE APPEAL BOND AT THE TIME OF THE APPEAL
7 SHALL RESULT IN A WAIVER OF ALL LEGAL RIGHTS TO CONTEST THE
8 VIOLATION OR THE AMOUNT OF THE CIVIL PENALTY UNLESS THE
9 APPELLANT ALLEGES FINANCIAL INABILITY TO PREPAY THE PENALTY OR
10 TO POST THE APPEAL BOND. THE HEARING BOARD SHALL CONDUCT A
11 HEARING TO CONSIDER THE APPELLANT'S ALLEGED INABILITY TO PAY
12 WITHIN THIRTY (30) DAYS OF THE DATE OF THE APPEAL. THE HEARING
13 BOARD MAY WAIVE THE REQUIREMENT TO PREPAY THE CIVIL PENALTY OR
14 TO POST AN APPEAL BOND IF THE APPELLANT DEMONSTRATES AND THE
15 HEARING BOARD FINDS THAT THE APPELLANT IS FINANCIALLY UNABLE TO
16 PAY. THE HEARING BOARD SHALL ISSUE AN ORDER WITHIN THIRTY (30)
17 DAYS OF THE DATE OF THE HEARING TO CONSIDER THE APPELLANT'S
18 ALLEGED INABILITY TO PAY. THE AMOUNT ASSESSED AFTER
19 ADMINISTRATIVE HEARING OR AFTER WAIVER OF ADMINISTRATIVE HEARING
20 SHALL BE PAYABLE TO THE COMMONWEALTH AND SHALL BE COLLECTIBLE IN
21 ANY MANNER PROVIDED BY LAW FOR THE COLLECTION OF DEBTS,
22 INCLUDING THE COLLECTION OF INTEREST AT THE RATE ESTABLISHED IN
23 SUBSECTION (C) OF SECTION 6.3, WHICH SHALL RUN FROM THE DATE OF
24 ASSESSMENT OF THE PENALTY. IF ANY PERSON LIABLE TO PAY ANY SUCH
25 PENALTY NEGLECTS OR REFUSES TO PAY THE SAME AFTER DEMAND, THE
26 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE,
27 SHALL CONSTITUTE A DEBT OF SUCH PERSON, AS MAY BE APPROPRIATE,
28 TO THE CLEAN AIR FUND. THE DEBT SHALL CONSTITUTE A LIEN ON ALL
29 PROPERTY OWNED BY SAID PERSON WHEN A NOTICE OF LIEN
30 INCORPORATING A DESCRIPTION OF THE PROPERTY OF THE PERSON

1 SUBJECT TO THE ACTION IS DULY FILED WITH THE PROTHONOTARY OF THE
2 COURT OF COMMON PLEAS WHERE THE PROPERTY IS LOCATED. THE
3 PROTHONOTARY SHALL PROMPTLY ENTER UPON THE CIVIL JUDGMENT OR
4 ORDER DOCKET, AT NO COST TO THE DEPARTMENT, THE NAME AND ADDRESS
5 OF THE PERSON, AS MAY BE APPROPRIATE, AND THE AMOUNT OF THE LIEN
6 AS SET FORTH IN THE NOTICE OF LIEN. UPON ENTRY BY THE
7 PROTHONOTARY, THE LIEN SHALL ATTACH TO THE REVENUES AND ALL REAL
8 AND PERSONAL PROPERTY OF THE PERSON, WHETHER OR NOT THE PERSON
9 IS SOLVENT. THE NOTICE OF LIEN, FILED PURSUANT TO THIS
10 SUBSECTION, WHICH AFFECTS THE PROPERTY OF THE PERSON SHALL
11 CREATE A LIEN WITH PRIORITY OVER ALL SUBSEQUENT CLAIMS OR LIENS
12 WHICH ARE FILED AGAINST THE PERSON, BUT IT SHALL NOT AFFECT ANY
13 VALID LIEN, RIGHT OR INTEREST IN THE PROPERTY FILED IN
14 ACCORDANCE WITH ESTABLISHED PROCEDURE PRIOR TO THE FILING OF A
15 NOTICE OF LIEN UNDER THIS SUBSECTION.

16 SECTION 9.2. DISPOSITION OF FEES, FINES AND CIVIL
17 PENALTIES.--(A) ALL FINES, CIVIL PENALTIES AND FEES COLLECTED
18 UNDER THIS ACT SHALL BE PAID INTO THE TREASURY OF THE
19 COMMONWEALTH IN A SPECIAL FUND KNOWN AS THE ["]CLEAN AIR
20 FUND, ["] HEREBY ESTABLISHED, WHICH, ALONG WITH INTEREST EARNED,
21 SHALL BE ADMINISTERED BY THE DEPARTMENT FOR USE IN THE
22 ELIMINATION OF AIR POLLUTION. THE DEPARTMENT MAY ESTABLISH SUCH
23 SEPARATE ACCOUNTS AS MAY BE NECESSARY OR APPROPRIATE TO
24 IMPLEMENT THE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT.
25 THE BOARD SHALL ADOPT RULES AND REGULATIONS FOR THE MANAGEMENT
26 AND USE OF THE MONEY IN THE FUND.

27 (B) THE CLEAN AIR FUND MAY BE SUPPLEMENTED BY APPROPRIATIONS
28 FROM THE GENERAL ASSEMBLY, THE FEDERAL, STATE OR LOCAL
29 GOVERNMENT OR ANY PRIVATE SOURCE.

30 (C) THE CLEAN AIR FUND SHALL NOT BE SUBJECT TO 42 PA.C.S.

CH. 37 SUBCH. C (RELATING TO JUDICIAL COMPUTER SYSTEM).

(D) BEGINNING APRIL 1, 1994, AND ANNUALLY THEREAFTER, THE DEPARTMENT SHALL PREPARE A COMPREHENSIVE AUDIT OF THE CLEAN AIR FUND WHICH INCLUDES, BUT IS NOT LIMITED TO, ALL EXPENDITURES, ALL COLLECTIONS AND ALL MONEYS OWED THE COMMONWEALTH FOR DEPOSIT INTO THE CLEAN AIR FUND. COPIES OF THIS ANNUAL AUDIT SHALL BE SUBMITTED TO THE FOLLOWING:

(1) IN THE SENATE, THE STANDING COMMITTEES ON:

(I) APPROPRIATIONS;

(II) ENVIRONMENTAL RESOURCES AND ENERGY; AND

(III) COMMUNITY AND ECONOMIC DEVELOPMENT.

(2) IN THE HOUSE OF REPRESENTATIVES, THE STANDING COMMITTEES ON:

(I) APPROPRIATIONS;

(II) CONSERVATION; AND

(III) BUSINESS AND COMMERCE.

SECTION 11. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

SECTION 9.3. CONTINUING VIOLATIONS.--EACH DAY OF CONTINUED VIOLATION AND EACH VIOLATION OF ANY PROVISION OF THIS ACT, ANY RULE OR REGULATION ADOPTED UNDER THIS ACT OR ANY ORDER OF THE DEPARTMENT OR ANY CONDITION OR TERM OF ANY PLAN APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT SHALL CONSTITUTE A SEPARATE OFFENSE AND VIOLATION.

SECTION 12. SECTION 10 OF THE ACT IS REPEALED.

SECTION 13. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

SECTION 10.1. ENFORCEMENT ORDERS.--(A) THE DEPARTMENT MAY ISSUE SUCH ORDERS AS ARE NECESSARY TO AID IN THE ENFORCEMENT OF THE PROVISIONS OF THIS ACT. THESE ORDERS SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, ORDERS MODIFYING, SUSPENDING, TERMINATING OR REVOKING ANY PLAN APPROVALS OR PERMITS, ORDERS

1 REQUIRING PERSONS TO CEASE UNLAWFUL ACTIVITIES OR CEASE
2 OPERATION OF A FACILITY OR AIR CONTAMINATION SOURCE WHICH, IN
3 THE COURSE OF ITS OPERATION, IS IN VIOLATION OF ANY PROVISION OF
4 THIS ACT, ANY RULE OR REGULATION PROMULGATED UNDER THIS ACT OR
5 PLAN APPROVAL OR PERMIT, ORDER TO TAKE CORRECTIVE ACTION OR TO
6 ABATE A PUBLIC NUISANCE, OR AN ORDER REQUIRING THE TESTING,
7 SAMPLING OR MONITORING OF ANY AIR CONTAMINATION SOURCE OR ORDERS
8 REQUIRING PRODUCTION OF INFORMATION. SUCH AN ORDER MAY BE ISSUED
9 IF THE DEPARTMENT FINDS THAT ANY CONDITION EXISTING IN OR ON THE
10 FACILITY OR SOURCE INVOLVED IS CAUSING OR CONTRIBUTING TO OR IS
11 CREATING A DANGER OF AIR POLLUTION OR IF IT FINDS THAT THE
12 PERMITTEE OR ANY PERSON IS IN VIOLATION OF ANY PROVISION OF THIS
13 ACT OR OF ANY RULE, REGULATION OR ORDER OF THE DEPARTMENT.

14 (B) THE DEPARTMENT MAY, IN ITS ORDER, REQUIRE COMPLIANCE
15 WITH SUCH CONDITIONS AS ARE NECESSARY TO PREVENT OR ABATE AIR
16 POLLUTION OR EFFECT THE PURPOSES OF THIS ACT.

17 (C) AN ORDER ISSUED UNDER THIS SECTION SHALL TAKE EFFECT
18 UPON NOTICE, UNLESS THE ORDER SPECIFIES OTHERWISE. AN APPEAL TO
19 THE HEARING BOARD OF THE DEPARTMENT'S ORDER SHALL NOT ACT AS A
20 SUPERSEDEAS: PROVIDED, HOWEVER, THAT, UPON APPLICATION AND FOR
21 CAUSE SHOWN, THE HEARING BOARD MAY ISSUE SUCH A SUPERSEDEAS
22 UNDER RULES ESTABLISHED BY THE HEARING BOARD.

23 (D) THE AUTHORITY OF THE DEPARTMENT TO ISSUE AN ORDER UNDER
24 THIS SECTION IS IN ADDITION TO ANY REMEDY OR PENALTY WHICH MAY
25 BE IMPOSED PURSUANT TO THIS ACT. THE FAILURE TO COMPLY WITH ANY
26 SUCH ORDER IS HEREBY DECLARED TO BE A PUBLIC NUISANCE.

27 SECTION 10.2. APPEALABLE ACTIONS.--ANY PERSON AGGRIEVED BY
28 AN ORDER OR OTHER ADMINISTRATIVE ACTION OF THE DEPARTMENT ISSUED
29 PURSUANT TO THIS ACT OR ANY PERSON WHO PARTICIPATED IN THE
30 PUBLIC COMMENT PROCESS FOR A PLAN APPROVAL OR PERMIT SHALL HAVE

1 THE RIGHT, WITHIN THIRTY (30) DAYS FROM ACTUAL OR CONSTRUCTIVE
2 NOTICE OF THE ACTION, TO APPEAL THE ACTION TO THE HEARING BOARD
3 IN ACCORDANCE WITH THE ACT OF JULY 13, 1988 (P.L.530, NO.94),
4 KNOWN AS THE ENVIRONMENTAL HEARING BOARD ACT, AND 2 PA.C.S. CH.
5 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF COMMONWEALTH
6 AGENCIES).

7 SECTION 10.3. LIMITATION ON ACTION.--THE PROVISIONS OF ANY
8 OTHER STATUTE TO THE CONTRARY NOTWITHSTANDING, ACTIONS FOR CIVIL
9 OR CRIMINAL PENALTIES UNDER THIS ACT MAY BE COMMENCED AT ANY
10 TIME WITHIN A PERIOD OF SEVEN (7) YEARS FROM THE DATE THE
11 OFFENSE IS DISCOVERED.

12 SECTION 14. SECTIONS 11, 12, 12.1, 13, 13.1 AND 13.2 OF THE
13 ACT, AMENDED OR ADDED OCTOBER 26, 1972 (P.L.989, NO.245), ARE
14 AMENDED TO READ:

15 SECTION 11. POWERS RESERVED TO THE DEPARTMENT UNDER EXISTING
16 LAWS.--NOTHING IN THIS ACT SHALL LIMIT IN ANY WAY WHATEVER THE
17 POWERS CONFERRED UPON THE DEPARTMENT UNDER LAWS OTHER THAN THIS
18 ACT, IT BEING EXPRESSLY PROVIDED THAT ALL SUCH POWERS ARE
19 PRESERVED TO THE DEPARTMENT AND MAY BE FREELY EXERCISED BY IT.
20 [THE DEPARTMENT SHALL HAVE THE RIGHT UPON APPROVAL OF THE
21 ATTORNEY GENERAL, TO PETITION A COURT OF COMPETENT JURISDICTION
22 TO ORDER THE ABATEMENT OF ANY NUISANCE OR CONDITION DETRIMENTAL
23 TO HEALTH. FOR THAT PURPOSE NO] THE DEPARTMENT SHALL NOT HAVE
24 THE POWER TO RESTRICT OR DENY ANY PERMIT APPLICATION OR
25 OTHERWISE LAWFUL ACTIVITY REGARDING THE ACT OF JUNE 22, 1937
26 (P.L.1987, NO.394), KNOWN AS "THE CLEAN STREAMS LAW," OR THE ACT
27 OF JANUARY 24, 1966 (1965 P.L.1535, NO.537), KNOWN AS THE
28 "PENNSYLVANIA SEWAGE FACILITIES ACT," BASED UPON THE POWERS
29 GRANTED TO THE DEPARTMENT UNDER THIS ACT. NO COURT EXERCISING
30 GENERAL EQUITABLE JURISDICTION SHALL BE DEPRIVED OF SUCH

1 JURISDICTION EVEN THOUGH [SUCH] A NUISANCE OR CONDITION
2 DETRIMENTAL TO HEALTH IS SUBJECT TO REGULATION OR OTHER ACTION
3 BY THE BOARD UNDER THIS ACT.

4 SECTION 12. POWERS RESERVED TO POLITICAL SUBDIVISIONS.--(A)
5 NOTHING IN THIS ACT SHALL PREVENT COUNTIES, CITIES, TOWNS,
6 TOWNSHIPS OR BOROUGHES FROM ENACTING ORDINANCES WITH RESPECT TO
7 AIR POLLUTION WHICH WILL NOT BE LESS STRINGENT THAN THE
8 PROVISIONS OF THIS ACT, THE CLEAN AIR ACT OR THE RULES AND
9 REGULATIONS PROMULGATED [PURSUANT TO ITS PROVISIONS.] UNDER
10 EITHER THIS ACT OR THE CLEAN AIR ACT. THIS ACT SHALL NOT BE
11 CONSTRUED TO REPEAL EXISTING ORDINANCES, RESOLUTIONS OR
12 REGULATIONS OF THE AFOREMENTIONED POLITICAL SUBDIVISIONS
13 EXISTING AT THE TIME OF THE EFFECTIVE DATE OF THIS ACT, EXCEPT
14 AS THEY MAY BE LESS STRINGENT THAN THE PROVISIONS OF THIS
15 ACT[.], THE CLEAN AIR ACT OR THE RULES OR REGULATIONS ADOPTED
16 UNDER EITHER THIS ACT OR THE CLEAN AIR ACT.

17 (B) THE ADMINISTRATIVE PROCEDURES FOR THE ABATEMENT,
18 REDUCTION, PREVENTION AND CONTROL OF AIR POLLUTION SET FORTH IN
19 THIS ACT SHALL NOT APPLY TO ANY [POLITICAL SUBDIVISION OF THE
20 COMMONWEALTH WHICH HAS AN APPROVED AIR POLLUTION CONTROL
21 AGENCY.] COUNTY OF THE FIRST OR SECOND CLASS OF THE COMMONWEALTH
22 WHICH HAS AND IMPLEMENTS AN AIR POLLUTION CONTROL PROGRAM THAT,
23 AT A MINIMUM, MEETS THE REQUIREMENTS OF THIS ACT, THE CLEAN AIR
24 ACT AND THE RULES AND REGULATIONS PROMULGATED UNDER BOTH THIS
25 ACT AND THE CLEAN AIR ACT AND HAS BEEN APPROVED BY THE
26 DEPARTMENT.

27 (C) (1) WHENEVER, EITHER UPON COMPLAINT MADE TO OR
28 INITIATED BY THE DEPARTMENT, THE DEPARTMENT FINDS THAT ANY
29 PERSON IS IN VIOLATION OF AIR POLLUTION CONTROL STANDARDS, OR
30 RULES AND REGULATIONS PROMULGATED PURSUANT TO THE GRANT OF

1 AUTHORITY MADE IN SUBSECTION (B), THE DEPARTMENT SHALL GIVE
2 NOTIFICATION OF THAT FACT TO THAT PERSON AND TO THE AIR
3 POLLUTION CONTROL AGENCY OF THE [POLITICAL SUBDIVISION] COUNTY
4 INVOLVED.

5 (2) IF SUCH VIOLATION CONTINUES TO EXIST AFTER SAID
6 NOTIFICATION HAS BEEN GIVEN, THE DEPARTMENT MAY TAKE ANY
7 ABATEMENT ACTION PROVIDED FOR UNDER THE TERMS OF THIS ACT.

8 (D) WHENEVER THE DEPARTMENT FINDS THAT VIOLATIONS OF [THE
9 AIR POLLUTION CONTROL STANDARDS, OR RULES AND REGULATIONS
10 PROMULGATED PURSUANT TO THE GRANT OF AUTHORITY UNDER SUBSECTION
11 (B)] THIS ACT OR THE RULES AND REGULATIONS PROMULGATED UNDER
12 THIS ACT ARE SO WIDESPREAD THAT SUCH VIOLATIONS APPEAR TO RESULT
13 FROM A FAILURE OF THE LOCAL COUNTY CONTROL AGENCY INVOLVED TO
14 ENFORCE THOSE [STANDARDS, OR RULES AND REGULATIONS,]
15 REQUIREMENTS, THE DEPARTMENT MAY ASSUME THE AUTHORITY TO ENFORCE
16 [THOSE STANDARDS, AND RULES AND REGULATIONS.] THIS ACT IN THAT
17 COUNTY.

18 (E) THE DEPARTMENT SHALL HAVE THE POWER TO REFUSE APPROVAL,
19 OR TO SUSPEND OR RESCIND APPROVAL, ONCE GIVEN, TO ANY COUNTY AIR
20 POLLUTION CONTROL AGENCY IF THE DEPARTMENT FINDS THAT SUCH
21 COUNTY AGENCY IS UNABLE OR UNWILLING [SO] TO CONDUCT AN AIR
22 POLLUTION CONTROL PROGRAM [AS] TO ABATE OR REDUCE AIR POLLUTION
23 PROBLEMS WITHIN ITS JURISDICTION IN [AN EFFECTIVE MANNER.]
24 ACCORDANCE WITH THE REQUIREMENTS OF THIS ACT, THE CLEAN AIR ACT
25 OR THE RULES AND REGULATIONS PROMULGATED UNDER BOTH THIS ACT AND
26 THE CLEAN AIR ACT.

27 (F) WHENEVER THE DEPARTMENT TAKES ACTION UNDER THE
28 PROVISIONS OF SUBSECTIONS (D) OR (E) OF THIS SECTION, IT SHALL
29 GIVE WRITTEN NOTIFICATION TO THE AIR POLLUTION CONTROL AGENCY OF
30 THE [POLITICAL SUBDIVISION] COUNTY INVOLVED AND SUCH

1 NOTIFICATION SHALL BE [SUBJECT TO THE APPEAL PROVISIONS OF
2 CLAUSE (4.1) OF SECTION 4 OF THIS ACT.] AN APPEALABLE ACTION.

3 (G) IRRESPECTIVE OF SUBSECTION (B) ABOVE, AND IN ORDER THAT
4 THE CIVIL AND CRIMINAL PENALTIES AND EQUITABLE REMEDIES FOR AIR
5 POLLUTION VIOLATIONS SHALL BE UNIFORM [EXCEPT INSOFAR AS THEY
6 ARE INCONSISTENT WITH THE JURISDICTIONAL LIMITATIONS OF THE
7 MINOR JUDICIARY AND THE PHILADELPHIA MUNICIPAL COURT,]
8 THROUGHOUT THE COMMONWEALTH, THE PENALTIES AND REMEDIES SET
9 FORTH IN THIS ACT [IN SECTIONS 9, 9.1, 10 AND 11,] SHALL BE THE
10 PENALTIES AND REMEDIES AVAILABLE FOR ENFORCEMENT OF ANY
11 MUNICIPAL AIR POLLUTION ORDINANCES OR REGULATIONS, AND SHALL BE
12 AVAILABLE TO ANY MUNICIPALITY, PUBLIC OFFICIAL, OR OTHER PERSON
13 HAVING STANDING TO INITIATE PROCEEDINGS FOR THE ENFORCEMENT OF
14 SUCH MUNICIPAL ORDINANCES OR REGULATIONS, AND THE AMOUNTS OF THE
15 FINES OR CIVIL PENALTIES SET FORTH HEREIN SHALL BE THE AMOUNTS
16 OF THE FINES OR CIVIL PENALTIES ASSESSABLE AND TO BE LEVIED FOR
17 VIOLATIONS OF ANY MUNICIPAL ORDINANCES OR REGULATIONS. IT IS
18 HEREBY DECLARED TO BE THE PURPOSE OF THIS SECTION TO ENUNCIATE
19 FURTHER THAT THE PURPOSE OF THIS ACT IS TO PROVIDE ADDITIONAL
20 AND CUMULATIVE REMEDIES TO ABATE THE POLLUTION OF THE AIR OF
21 THIS COMMONWEALTH. ANY ACTION FOR THE ASSESSMENT OF CIVIL
22 PENALTIES BROUGHT FOR THE ENFORCEMENT OF A MUNICIPAL AIR
23 POLLUTION ORDINANCE OR REGULATION SHALL BE BROUGHT IN ACCORDANCE
24 WITH THE PROCEDURES SET FORTH IN SUCH ORDINANCE. WHERE ANY
25 MUNICIPAL ORDINANCE OR REGULATION DOES NOT PROVIDE A PROCEDURE
26 FOR THE ASSESSMENT OF CIVIL PENALTIES, THE PROVISIONS [OF
27 SUBSECTION (H) OF THIS SECTION] RELATED TO ASSESSMENT AND
28 COLLECTION OF CIVIL PENALTIES OF SECTION 9.1 SHALL APPLY.

29 [(H) ANY PERSON, AS HEREIN DEFINED, EXCEPT A DEPARTMENT,
30 BOARD, BUREAU, OR AGENCY OF THE COMMONWEALTH, ENGAGING IN

1 CONDUCT IN VIOLATION OF A MUNICIPAL AIR POLLUTION CONTROL
2 ORDINANCE, SHALL, FOR EACH OFFENSE, UPON CONVICTION THEREOF IN A
3 CIVIL PROCEEDING BEFORE A JUDGE OF THE MUNICIPAL COURT OF
4 PHILADELPHIA, DISTRICT JUSTICE, MAGISTRATE, ALDERMAN OR JUSTICE
5 OF THE PEACE BE SENTENCED TO PAY THE COST OF PROSECUTION AND A
6 CIVIL PENALTY OF NOT LESS THAN TWENTY-FIVE DOLLARS (\$25.00), NOR
7 MORE THAN FIVE HUNDRED DOLLARS (\$500.00), FOR EACH DAY OF
8 CONTINUED VIOLATION. SUCH A PENALTY MAY BE ASSESSED WHETHER OR
9 NOT THE VIOLATION WAS WILFUL. FAILURE TO PAY ANY SUCH PENALTY
10 WITHIN THE TIME PRESCRIBED BY LAW SHALL BE PUNISHABLE AS A CIVIL
11 CONTEMPT. NOTWITHSTANDING ANYTHING CONTAINED IN SECTION 9.2 OF
12 THIS ACT, ALL CIVIL PENALTIES AND FEES COLLECTED UNDER THIS
13 SUBSECTION SHALL BE PAID TO THE APPROPRIATE POLITICAL
14 SUBDIVISION, AS PROVIDED BY LAW, AND SHALL BE COLLECTIBLE IN ANY
15 MANNER PROVIDED BY LAW FOR THE COLLECTION OF DEBT. IF ANY PERSON
16 LIABLE TO PAY ANY SUCH PENALTY NEGLECTS OR REFUSES TO PAY THE
17 SAME AFTER DEMAND, THE AMOUNT, TOGETHER WITH INTEREST AND ANY
18 COSTS THAT MAY ACCRUE, SHALL BE A LIEN IN FAVOR OF THE
19 APPROPRIATE POLITICAL SUBDIVISION UPON THE PROPERTY, BOTH REAL
20 AND PERSONAL, OF SUCH PERSON, BUT ONLY AFTER THE SAME HAS BEEN
21 ENTERED AND DOCKETED OF RECORD BY THE PROTHONOTARY OF THE COUNTY
22 WHERE SUCH IS SITUATED: PROVIDED, THAT NOTHING CONTAINED IN THIS
23 SUBSECTION SHALL PRECLUDE ANY PUBLIC OFFICIAL FROM SEEKING, AT
24 LAW OR AT EQUITY OR BEFORE ANY APPROPRIATE ADMINISTRATIVE BODY,
25 THE ASSESSMENT OF CIVIL PENALTIES IN THE AMOUNT PROVIDED BY
26 SECTION 9.1 OF THIS ACT.]

27 SECTION 12.1. CONSTRUCTION.--NOTHING IN THIS ACT SHALL BE
28 CONSTRUED AS ESTOPPING THE COMMONWEALTH, OR ANY DISTRICT
29 ATTORNEY OR SOLICITOR OF A MUNICIPALITY, FROM PROCEEDING IN
30 COURTS OF LAW OR EQUITY TO ABATE POLLUTIONS FORBIDDEN UNDER THIS

1 ACT, OR ABATE NUISANCES UNDER EXISTING LAW. IT IS HEREBY
2 DECLARED TO BE THE PURPOSE OF THIS ACT TO PROVIDE ADDITIONAL AND
3 CUMULATIVE REMEDIES TO ABATE THE POLLUTION OF THE AIR OF THIS
4 COMMONWEALTH, AND NOTHING CONTAINED IN THIS ACT SHALL IN ANY WAY
5 ABRIDGE OR ALTER RIGHTS OF ACTION OR REMEDIES NOW OR HEREAFTER
6 EXISTING IN EQUITY, OR UNDER THE COMMON LAW OR STATUTORY LAW,
7 CRIMINAL OR CIVIL, NOR SHALL ANY PROVISION OF THIS ACT, OR THE
8 GRANTING OF ANY PLAN APPROVAL OR PERMIT UNDER THIS ACT, OR ANY
9 ACT DONE BY VIRTUE OF THIS ACT, BE CONSTRUED AS ESTOPPING THE
10 COMMONWEALTH, PERSONS OR MUNICIPALITIES, IN THE EXERCISE OF
11 THEIR RIGHTS UNDER THE COMMON LAW OR DECISIONAL LAW OR IN
12 EQUITY, FROM PROCEEDING IN COURTS OF LAW OR EQUITY TO SUPPRESS
13 NUISANCES, OR TO ABATE ANY POLLUTION NOW OR HEREAFTER EXISTING,
14 OR ENFORCE COMMON LAW OR STATUTORY RIGHTS. NO COURTS OF THIS
15 COMMONWEALTH HAVING JURISDICTION TO ABATE PUBLIC OR PRIVATE
16 NUISANCE SHALL BE DEPRIVED OF SUCH JURISDICTION TO ABATE ANY
17 PRIVATE OR PUBLIC NUISANCE INSTITUTED BY ANY PERSON FOR THE
18 REASON THAT SUCH NUISANCE CONSTITUTES AIR POLLUTION.

19 [SECTION 13. PUBLIC NUISANCES.--A VIOLATION OF ANY ORDER OR
20 OF ANY PROVISION OF ANY RULE OR REGULATION PROMULGATED PURSUANT
21 TO A LOCAL AIR POLLUTION CODE OR TO A STATE AIR POLLUTION ACT,
22 WHICH LIMITS OR CONTROLS THE EMISSION OF ANY AIR CONTAMINANT
23 SHALL CONSTITUTE A PUBLIC NUISANCE AND SHALL BE ABATABLE IN THE
24 MANNER PROVIDED BY LAW.]

25 SECTION 13. PUBLIC NUISANCES.--A VIOLATION OF THIS ACT OR OF
26 ANY RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY ORDER,
27 PLAN APPROVAL OR PERMIT ISSUED BY THE DEPARTMENT UNDER THIS ACT
28 SHALL CONSTITUTE A PUBLIC NUISANCE. THE DEPARTMENT SHALL HAVE
29 THE AUTHORITY TO ORDER ANY PERSON CAUSING A PUBLIC NUISANCE TO
30 ABATE THE PUBLIC NUISANCE. IN ADDITION, THE DEPARTMENT OR ANY

1 COMMONWEALTH AGENCY WHICH UNDERTAKES TO ABATE A PUBLIC NUISANCE
2 MAY RECOVER THE EXPENSES OF ABATEMENT FOLLOWING THE PROCESS FOR
3 ASSESSMENT AND COLLECTION OF A CIVIL PENALTY CONTAINED IN
4 SECTION 9.1. WHENEVER THE NUISANCE IS MAINTAINED OR CONTINUED
5 CONTRARY TO THIS ACT OR ANY RULE OR REGULATION PROMULGATED UNDER
6 THIS ACT OR ANY ORDER, PLAN APPROVAL OR PERMIT, THE NUISANCE MAY
7 BE ABATABLE IN THE MANNER PROVIDED BY THIS ACT. ANY PERSON WHO
8 CAUSES THE PUBLIC NUISANCE SHALL BE LIABLE FOR THE COST OF
9 ABATEMENT.

10 SECTION 13.1. SEARCH WARRANTS.--WHENEVER AN AGENT OR EMPLOYE
11 OF THE DEPARTMENT, CHARGED WITH THE ENFORCEMENT OF THE
12 PROVISIONS OF THIS ACT, HAS BEEN REFUSED ACCESS TO PROPERTY, OR
13 HAS BEEN REFUSED THE RIGHT TO EXAMINE ANY AIR CONTAMINATION
14 SOURCE, OR AIR POLLUTION CONTROL EQUIPMENT OR DEVICE, OR IS
15 REFUSED ACCESS TO OR EXAMINATION OF BOOKS, PAPERS AND RECORDS
16 PERTINENT TO ANY MATTER UNDER INVESTIGATION, SUCH AGENT OR
17 EMPLOYE MAY APPLY FOR A SEARCH WARRANT TO ANY COMMONWEALTH
18 OFFICIAL AUTHORIZED BY THE LAWS OF THE COMMONWEALTH TO ISSUE THE
19 SAME TO ENABLE HIM TO HAVE ACCESS [AND], EXAMINE AND SEIZE SUCH
20 PROPERTY, AIR CONTAMINATION SOURCE, AIR POLLUTION CONTROL
21 EQUIPMENT OR DEVICE, OR BOOKS, PAPERS AND RECORDS, AS THE CASE
22 MAY BE. IT SHALL BE SUFFICIENT PROBABLE CAUSE TO ISSUE A SEARCH
23 WARRANT THAT THE INSPECTION IS NECESSARY TO PROPERLY ENFORCE THE
24 PROVISIONS OF THIS ACT.

25 SECTION 13.2. CONFIDENTIAL INFORMATION.--ALL RECORDS,
26 REPORTS OR INFORMATION OBTAINED BY THE DEPARTMENT OR REFERRED TO
27 AT PUBLIC HEARINGS UNDER THE PROVISIONS OF THIS ACT SHALL BE
28 AVAILABLE TO THE PUBLIC, EXCEPT THAT UPON CAUSE SHOWN BY ANY
29 PERSON THAT THE RECORDS, REPORTS OR INFORMATION, OR A PARTICULAR
30 PORTION THEREOF, BUT NOT EMISSION DATA, TO WHICH THE DEPARTMENT

1 HAS ACCESS UNDER THE PROVISIONS OF THIS ACT, IF MADE PUBLIC,
2 WOULD DIVULGE PRODUCTION OR SALES FIGURES OR METHODS, PROCESSES
3 OR PRODUCTION UNIQUE TO SUCH PERSON OR WOULD OTHERWISE TEND TO
4 AFFECT ADVERSELY THE COMPETITIVE POSITION OF SUCH PERSON BY
5 REVEALING TRADE SECRETS, INCLUDING INTELLECTUAL PROPERTY RIGHTS,
6 THE DEPARTMENT SHALL CONSIDER SUCH RECORD, REPORT OR
7 INFORMATION, OR PARTICULAR PORTION THEREOF CONFIDENTIAL IN THE
8 ADMINISTRATION OF THIS ACT. THE DEPARTMENT SHALL IMPLEMENT THIS
9 SECTION CONSISTENT WITH SECTIONS 112(D) AND 114(C) OF THE CLEAN
10 AIR ACT. NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT DISCLOSURE
11 OF SUCH REPORT, RECORD OR INFORMATION TO FEDERAL, STATE OR LOCAL
12 REPRESENTATIVES AS NECESSARY FOR PURPOSES OF ADMINISTRATION OF
13 ANY FEDERAL, STATE OR LOCAL AIR POLLUTION CONTROL LAWS, OR WHEN
14 RELEVANT IN ANY PROCEEDING UNDER THIS ACT.

15 SECTION 15. SECTIONS 13.3, 13.4 AND 13.5 OF THE ACT ARE
16 REPEALED.

17 SECTION 16. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:

18 SECTION 13.6. SUITS TO ABATE NUISANCES AND RESTRAIN
19 VIOLATIONS.--(A) ANY ACTIVITY OR CONDITION DECLARED BY THIS ACT
20 TO BE A NUISANCE OR WHICH IS OTHERWISE IN VIOLATION OF THIS ACT
21 SHALL BE ABATABLE IN THE MANNER PROVIDED BY LAW OR EQUITY FOR
22 THE ABATEMENT OF PUBLIC NUISANCE. IN ADDITION, IN ORDER TO
23 RESTRAIN OR PREVENT ANY VIOLATION OF THIS ACT OR THE RULES AND
24 REGULATIONS PROMULGATED UNDER THIS ACT OR ANY PLAN APPROVAL OR
25 PERMIT OR ORDERS ISSUED BY THE DEPARTMENT, OR TO RESTRAIN THE
26 MAINTENANCE AND THREAT OF PUBLIC NUISANCE, SUITS MAY BE
27 INSTITUTED IN EQUITY OR AT LAW IN THE NAME OF THE COMMONWEALTH
28 UPON RELATION OF THE ATTORNEY GENERAL, THE GENERAL COUNSEL, THE
29 DISTRICT ATTORNEY OF ANY COUNTY OR THE SOLICITOR OF ANY
30 MUNICIPALITY AFFECTED, AFTER NOTICE HAS FIRST BEEN SERVED UPON

1 THE ATTORNEY GENERAL OF THE INTENTION OF THE GENERAL COUNSEL,
2 DISTRICT ATTORNEY OR SOLICITOR TO SO PROCEED. SUCH PROCEEDINGS
3 MAY BE PROSECUTED IN THE COMMONWEALTH COURT OR IN THE COURT OF
4 COMMON PLEAS OF THE COUNTY WHERE THE ACTIVITY HAS TAKEN PLACE,
5 THE CONDITION EXISTS OR THE PUBLIC IS AFFECTED, AND, TO THAT
6 END, JURISDICTION IS HEREBY CONFERRED IN LAW AND EQUITY UPON
7 SUCH COURTS. EXCEPT IN CASES OF EMERGENCY WHERE, IN THE OPINION
8 OF THE COURT, THE EXIGENCIES OF THE CASE REQUIRE IMMEDIATE
9 ABATEMENT OF THE NUISANCE, THE COURT MAY, IN ITS DECREE, FIX A
10 REASONABLE TIME DURING WHICH THE PERSON RESPONSIBLE FOR THE
11 NUISANCE MAY MAKE PROVISION FOR THE ABATEMENT OF THE SAME.

12 (B) IN CASES WHERE THE CIRCUMSTANCES REQUIRE IT OR THE
13 PUBLIC HEALTH IS ENDANGERED, A MANDATORY PRELIMINARY INJUNCTION,
14 SPECIAL INJUNCTION OR TEMPORARY RESTRAINING ORDER MAY BE ISSUED
15 UPON THE TERMS PRESCRIBED BY THE COURT, NOTICE OF THE
16 APPLICATION THEREFOR HAVING BEEN GIVEN TO THE DEFENDANT IN
17 ACCORDANCE WITH THE RULES OF EQUITY PRACTICE, AND IN ANY SUCH
18 CASE THE ATTORNEY GENERAL, THE GENERAL COUNSEL, THE DISTRICT
19 ATTORNEY OR THE SOLICITOR OF ANY MUNICIPALITY SHALL NOT BE
20 REQUIRED TO GIVE BOND. IN ANY SUCH PROCEEDING THE COURT SHALL,
21 UPON MOTION OF THE COMMONWEALTH, ISSUE A PROHIBITORY OR
22 MANDATORY PRELIMINARY INJUNCTION IF IT FINDS THAT THE DEFENDANT
23 IS ENGAGING IN UNLAWFUL CONDUCT AS DEFINED BY THIS ACT OR IS
24 ENGAGED IN CONDUCT WHICH IS CAUSING IMMEDIATE AND IRREPARABLE
25 HARM TO THE PUBLIC. IN ADDITION TO AN INJUNCTION, THE COURT IN
26 SUCH EQUITY PROCEEDINGS MAY LEVY CIVIL PENALTIES IN THE SAME
27 MANNER AS THE DEPARTMENT IN ACCORDANCE WITH SECTION 9.1.

28 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
29 ANY PERSON MAY COMMENCE A CIVIL ACTION TO COMPEL COMPLIANCE WITH
30 THIS ACT OR ANY RULE, REGULATION, ORDER OR PLAN APPROVAL OR

1 PERMIT ISSUED PURSUANT TO THIS ACT BY ANY OWNER OR OPERATOR
2 ALLEGED TO BE CAUSING OR CONTRIBUTING TO A VIOLATION OF ANY
3 PROVISION OF THIS ACT OR ANY RULE OR REGULATION PROMULGATED
4 UNDER THIS ACT OR ANY PLAN APPROVAL, PERMIT OR ORDER ISSUED BY
5 THE DEPARTMENT. IN ADDITION TO SEEKING TO COMPEL COMPLIANCE, ANY
6 PERSON MAY REQUEST THE COURT TO AWARD CIVIL PENALTIES. THE COURT
7 SHALL USE THE FACTORS AND AMOUNTS CONTAINED IN SECTION 9.1 IN
8 AWARDING CIVIL PENALTIES UNDER THIS SUBSECTION. SUCH PENALTIES
9 SHALL BE PAID INTO THE CLEAN AIR FUND ESTABLISHED BY SECTION 9.2
10 OR BE USED TO PREVENT AIR POLLUTION IN THE COUNTY WHERE THE
11 VIOLATION OCCURRED. EXCEPT WHERE 42 PA.C.S. (RELATING TO
12 JUDICIARY AND JUDICIAL PROCEDURE) REQUIRES OTHERWISE, THE COURTS
13 OF COMMON PLEAS SHALL HAVE JURISDICTION OF SUCH ACTIONS. SUCH AN
14 ACTION MAY NOT BE COMMENCED IF THE DEPARTMENT HAS COMMENCED AND
15 IS DILIGENTLY PROSECUTING A CIVIL ACTION IN A FEDERAL OR STATE
16 COURT OR IS IN LITIGATION BEFORE THE HEARING BOARD TO REQUIRE
17 THE ALLEGED VIOLATOR TO COMPLY WITH THIS ACT, ANY RULE OR
18 REGULATION PROMULGATED UNDER THIS ACT OR ANY ORDER, PLAN
19 APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT, BUT, IN ANY SUCH
20 ACTION IN A FEDERAL OR STATE COURT OR BEFORE THE HEARING BOARD,
21 ANY PERSON HAVING OR REPRESENTING AN INTEREST WHICH IS OR MAY BE
22 ADVERSELY AFFECTED MAY INTERVENE AS A MATTER OF RIGHT WITHOUT
23 POSTING BOND.

24 (D) AN ACTION PURSUANT TO SUBSECTION (C) OF THIS SECTION MAY
25 NOT BE COMMENCED PRIOR TO SIXTY (60) DAYS AFTER THE PLAINTIFF
26 HAS GIVEN NOTICE, IN WRITING, OF THE VIOLATION TO THE DEPARTMENT
27 AND TO ANY ALLEGED VIOLATOR.

28 (E) THE SIXTY (60) DAY NOTICE PROVISIONS OF SUBSECTION (D)
29 OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, ANY ACTION
30 PURSUANT TO SUBSECTION (C) OF THIS SECTION MAY BE INITIATED

1 IMMEDIATELY UPON WRITTEN NOTIFICATION TO THE DEPARTMENT IN THE
2 CASE WHERE THE VIOLATION OR CONDITION COMPLAINED OF CONSTITUTES
3 AN IMMINENT THREAT TO THE HEALTH OR SAFETY OF THE PLAINTIFF OR
4 WOULD IMMEDIATELY AFFECT A LEGAL INTEREST OF THE PLAINTIFF.

5 (F) THE COURT, IN ISSUING ANY FINAL ORDER IN ANY ACTION
6 BROUGHT PURSUANT TO SUBSECTION (C) OF THIS SECTION, MAY AWARD
7 COSTS OF LITIGATION, INCLUDING ATTORNEY AND EXPERT WITNESS FEES,
8 TO ANY PARTY WHENEVER THE COURT DETERMINES SUCH AN AWARD IS
9 APPROPRIATE. EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS
10 SECTION, THE COURT MAY, IF A TEMPORARY RESTRAINING ORDER OR
11 PRELIMINARY INJUNCTION IS SOUGHT, REQUIRE THE FILING OF A BOND
12 OR EQUIVALENT SECURITY IN ACCORDANCE WITH THE PENNSYLVANIA RULES
13 OF CIVIL PROCEDURE.

14 SECTION 17. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

- 15 (1) SECTION 4.2 OF THE ACT SHALL TAKE EFFECT IN 60 DAYS.
16 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT
17 IMMEDIATELY.