AIR POLLUTION CONTROL ACT - OMNIBUS AMENDMENTS
Act of Jul. 9, 1992, P.L. 460, No. 95 Cl. 35
Session of 1992
No. 1992-95

SB 1650

AN ACT

Amending the act of January 8, 1960 (1959 P.L.2119, No.787), entitled, as amended, "An act to provide for the better protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement, reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; imposing certain powers and duties on the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; establishing procedures for the protection of health and public safety during emergency conditions; creating a stationary air contamination source permit system; providing additional remedies for abating air pollution; reserving powers to local political subdivisions, and defining the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; imposing penalties for violation of this act; and providing for the power to enjoin violations of this act; and conferring upon persons aggrieved certain rights and remedies," adding and amending certain definitions; further providing for the powers and duties of the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; further providing for plans and permits; providing for certain fees and civil penalties, for acid control, for hazardous air pollutants and for control of volatile organic compounds from gasoline-dispensing facilities; further providing for certain procedures; providing for compliance; establishing the Compliance Advisory Panel and providing for its powers and duties; further providing for enforcement, for criminal and civil penalties and for the abatement and restraint of violations; and making editorial changes.

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

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 strategies

via a process which involves public review and opportunity for comment.

(2) The public should be involved in developing and committing the Commonwealth to the adoption of particular pollution control strategies through review of State implementation plans required to be submitted by the Clean Air Act.

(3) The department should have adequate staff and technical resources needed to comply with the Clean Air Act. The department shall be required to explore the role private industry can play in developing and implementing the clean air programs as a mechanism to insure the Commonwealth meets Clean Air Act deadlines.

(4) States should not be penalized for missing Clean Air Act deadlines when the delay is the result of the Federal Government not finalizing guidance to states on implementing the act. The Commonwealth and other states must be given a reasonable opportunity to meet Clean Air Act deadlines.

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

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

[(1) "Department." Department of Environmental Resources of the Commonwealth of Pennsylvania.

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

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

(3) "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, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

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

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

"Air pollution." The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or 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.

"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 "EQB." 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) is owned or operated by a person that employs one hundred (100) or fewer individuals;

(2) is a small business as defined in the Small Business Act (Public Law 85-536, 15 U.S.C. § 78a et seq.);

(3) is not a major stationary source;

(4) does not emit fifty (50) tons per year of any regulated pollutant; and

(5) emits less than seventy-five (75) tons per year of all regulated pollutants.

"State implementation plan." The plan or plan revision that a state is authorized and required to submit under section 110 of the Clean Air Act (Public Law 95-95 as amended, 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.

[(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-compliance with [any rule or regulation which may have been adopted and promulgated by the board hereunder.] **this act, any rule or regulation promulgated under this act or any plan approval, permit or order of the department.** In connection with such inspection or investigation, samples of air, air contaminants, fuel, process material or other matter may be taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination.

[(2)] **(3)** Have access to, and require the production of, books [and], papers **and records, including, but not limited to, computerized information in a format as the department may reasonably prescribe** pertinent to any matter under investigation.

[(2.1)] **(4)** Require the owner or operator of any air contamination source to establish and maintain such records and make such reports and furnish such information, **including computerized information in a format** as the department may reasonably prescribe.

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

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

[(3)] **(7)** Enter upon any property on which an air contamination source may be located and make such tests upon the source as are necessary to determine whether the air contaminants being emitted from such air contamination source are being emitted at a rate in excess of a rate provided for by [board rule or regulation] **this act, any rule or regulations promulgated under this act or any plan approval, permit or order of the department** or otherwise causing air pollution. Whenever the department determines that a source test is necessary, it shall give reasonable written **or oral** notice to the person owning, operating, or otherwise in control of such source, that [it] **the department** will conduct a test on such source. Thereafter, the person to whom such notice is given shall provide such reasonably safe access to the testing area, and such sampling [holes] **ports**, facilities, electrical power and water as the department shall specify in its notice.

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

[(4.1)] **(9) (i)** Issue orders to any person owning or operating an air contamination source, or owning or possessing land on which such source is located, if such source is introducing or is likely to introduce air contaminants into the outdoor atmosphere in excess of any [board rule or regulation, or any permit requirement] **rate provided for by this act, any rule or regulation promulgated under this act or any plan approval or permit** applicable to such source, or at such a level so as to cause air pollution. Any such order may require the cessation of any operation or activity which is introducing air contaminants into the outdoor atmosphere so as to cause air pollution, the reduction of emissions from such air contamination source, modification or repair of such source or air pollution control device or equipment or certain operating and maintenance procedures with respect to such source or air pollution control device or equipment, institution of a **reasonable** process change, installation of air pollution control devices or equipment, or any or all of said requirements as the department deems necessary. Such orders may specify a time for compliance, require submission of a proposed plan for compliance, and require submission of periodic reports concerning compliance. If a time for compliance is given, the department may, in its discretion, require the posting of a bond in the amount of twice the money to be expended in reaching compliance.

(ii) All department orders shall be in writing, contain therein a statement of the reasons for their issuance, and be served either personally or by certified mail. Within thirty (30) days after service of any such order the person to whom the order is issued or any other person aggrieved by such order may file with the hearing board an appeal setting forth with particularity the grounds relied upon. 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.

[(5)] **(10)** Institute, in a court of competent jurisdiction, proceedings to compel compliance with [any] **this act, any rule or regulation promulgated under this act or any 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 any new air pollution and air contamination, recognizing varying requirements for the different areas of the Commonwealth, and to submit a comprehensive plan to the board for its consideration and approval.

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

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

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

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

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

[(18)] **(24)** Cooperate with the appropriate agencies of the United States or of other states or any interstate agencies with respect to the control, prevention, abatement and reduction of air pollution, and where appropriate formulate interstate air pollution control compacts or agreements for the submission thereof to the General Assembly.

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

(26) Develop and submit to the Environmental Protection Agency a procedure to implement and enforce the regulations which the Environmental Protection Agency adopts under section 183(e) of the Clean Air Act to reduce emissions from consumer and commercial products, provided the department will receive credits for the reductions attributed to the Federal consumer and commercial products regulations under section 182 of the Clean Air Act regulations, and the department has the resources to implement and enforce the program.

[(20)] **(27)** Do any and all other acts and things not inconsistent with any provision of this act, which it may deem necessary or proper for the effective enforcement of this act and the rules or regulations [which have been] promulgated [thereunder] **under this act.**

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

Section 4.1. Agricultural Regulations Prohibited.--[The] **Except as may be required by the Clean Air Act or the regulations promulgated under the Clean Air Act, the** Environmental Quality Board shall not have the power nor the authority to adopt rules and regulations relating to air contaminants and air pollution arising from the production of agricultural commodities in their

unmanufactured state but **this prohibition** shall not include the use of materials produced or manufactured off the premises of the farm operation.

Section 5. The act is amended by adding sections to read:

Section 4.2. Permissible Actions.--(a) In implementing the requirements of section 109 of the Clean Air Act, the board may adopt, by regulation, only those control measures or other requirements which are reasonably required, in accordance with the Clean Air Act deadlines, to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements, unless otherwise specifically authorized or required by this act or specifically required by the Clean Air Act.

(b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the Clean Air Act unless authorized or required by this act or specifically required by the Clean Air Act. This requirement shall not apply if the board determines that it is reasonably necessary for a control measure or other requirement to exceed minimum Clean Air Act requirements in order for the Commonwealth:

(1) To achieve or maintain ambient air quality standards;

(2) To satisfy related Clean Air Act requirements as they specifically relate to the Commonwealth;

(3) To prevent an assessment or imposition of Clean Air Act sanctions; or

(4) To comply with a final decree of a Federal court.

(c) The board may not by regulation adopt an ambient air quality standard for a specific pollutant which is more stringent than the air quality standard which the EPA has adopted for the specific pollutant pursuant to section 109 of the Clean Air Act.

(d) In any challenge to the enforcement of regulations adopted to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements, the person challenging the regulation shall have the burden to demonstrate that the control measure or other requirement or the stringency of the control measure or requirement is not reasonably required to achieve or maintain the standard or to satisfy related Clean Air Act requirements.

(e) No person may file a preenforcement review challenge under this section based in any manner upon the standards set forth in subsection (b) of this section.

(f) This section shall not apply to rules and regulations approved as a final rulemaking by the board prior to the effective date of this section or to any ambient air quality standards adopted by the board where no such standard has been adopted by the EPA.

(g) This section shall not be construed to weaken or otherwise affect site-specific standards or other requirements for individual sources or facilities in place prior to the effective date of this section.

Section 4.3. Evaluation.--Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the Clean Air Act. The evaluation shall include:

(1) A determination of whether the limitation imposed in section 4.2 has hindered in any way the Commonwealth's efforts to comply with the Clean Air Act and a recommendation on whether that provision should be changed.

(2) The specific steps taken to implement the Clean Air Act and progress made toward meeting the emission reductions required by the act and recommendations on any additional steps which must be taken.

(3) An evaluation of the funding available to implement the Clean Air Act programs and whether that funding is sufficient or inadequate and recommendations on where adjustments should be made.

(4) An analysis of the costs imposed on mobile and stationary air contamination sources to implement the requirements of the Clean Air Act, including on individuals and companies. The analysis of costs shall also consider the benefits of compliance with the Clean Air Act requirements and the public health, environmental and economic costs to the Commonwealth for failing to meet the requirements, including the impact of sanctions.

(5) An evaluation, in consultation with the Department of Commerce and the Office of Small Business Ombudsman, of the adequacy of measures taken by the Commonwealth to assist small businesses in complying with the Clean Air Act.

(6) A summary of the activities undertaken by the Citizens Advisory Council and the air technical advisory committee under section 7.6.

(7) An evaluation of the effectiveness of the Northeast Ozone Transport Commission in meeting the mandates of the Clean Air Act and recommendations on any changes that could make the commission more effective.

(8) An assessment of the impact of missing Federal deadlines identified under section 7.12 has had or will have on the State implementation of the Clean Air Act programs.

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 regulation, may exempt from the requirements of this section.] **nor where construction, assembly, installation or modification is specifically authorized by the rules or regulations of the department to be conducted without written approval.** All applications for approval shall be made in writing and shall be on such forms and contain such information as the department shall prescribe and shall have appended thereto detailed plans and specifications related to the proposed installation.

(b) **(1)** No person shall operate any stationary air contamination source [which is subject to the provisions of subsection (a) of this section] unless the department shall have

issued to such person a permit to operate such source **under the provisions of this section** in response to a written application for a permit submitted on forms and containing such information as the department may prescribe[.] **or where construction, assembly, installation modification is specifically authorized by the rules or regulations of the department to be conducted without written approval. The department shall provide public notice and the right to comment on all permits prior to issuance or denial and may hold public hearings concerning any permit.**

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

(3) A stationary air contamination source operating lawfully without a permit for which fees required by section 6.3 of this act or the regulations promulgated under this act have been paid 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, 1996, 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 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 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.] **The board shall by regulation establish a permit shield for permits issued under the authority delegated to the Commonwealth by the EPA under Title V of the Clean Air Act. The program shall be consistent with the requirements of section 504(f) of the Clean Air Act and the regulations promulgated thereunder. 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 issued for a five (5) year term unless a shorter term is required to comply with the Clean Air Act and regulations promulgated thereunder or the permittee requests a shorter term, 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 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. The hearing board may require that the department take action on an application without additional delay.

(b.3) The board shall by regulation establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications. The department shall approve or disapprove a complete application, consistent with the procedures established by the board for consideration of such applications, within eighteen (18) months after the date of receipt of the complete application except that the department shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the Title V permit program established to implement the requirements of the Clean Air Act. The schedule shall

assure that at least one-third of such permits shall be acted upon by the department annually over a period not to exceed three (3) years after such effective date. Failure of the department to issue or deny a permit by a deadline established by this subsection shall be an appealable action as described in section 10.2 of this act. The hearing board may require that the department take action on an application without additional delay.

(b.4) (1) During the term of a permit, a permittee may reactivate any source under the permit that has been out of operation or production for a period of one year or more, provided that the permittee has submitted a reactivation plan to and received written approval from the department. The reactivation plan shall describe the measures that will be taken to ensure the source will be reactivated in compliance with all applicable permit requirements. A reactivation plan may be submitted to and approved by the department at any time during the term of a permit. The department shall take action on the reactivation plan within thirty (30) days unless the department determines that additional time is needed based on the size or complexity of the reactivated source.

(2) A reactivation plan may also be submitted to and approved by the department as part of the plan approval or permit application process. An owner or operator who has an approved reactivation plan shall notify the department prior to the reactivation of the source.

(b.5) The board shall adopt the regulations required by subsections (b.1), (b.3) and (i) as part of the regulatory package to implement the operating permit program required by Title V of the Clean Air 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 a report required by a plan approval or operating permit 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 verification of compliance, including source testing or alternative means to verify compliance. 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.]

(f) 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. The department shall take action on a notification within thirty (30) days.

(g) 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. The department shall take action on a request within thirty (30) days.

(h) The department shall establish comprehensive plan approval and operating permit programs which meet the requirements of this act and the Clean Air Act.

(i) The board shall by regulation establish 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 emissions, provided that the facility provides the administrator and the department with written notification at least seven (7) days in advance of the proposed changes, unless the board provides in its regulations a different time frame for emergencies.

(j) The department shall make available to the public any permit application, compliance plan, permit and monitoring or compliance report required by this act.

(k) The department shall require revisions to any permit to incorporate applicable standards and regulations promulgated under the Clean Air Act after the issuance of such permit. Such revisions

shall occur as expeditiously as practicable, but not later than eighteen (18) months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term or if less than three (3) years remain on the permit. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this act regarding renewals.

Section 8. Section 6.2(a) 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) This section authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the Clean Air Act.

(b) An annual interim air emission fee of fourteen dollars ($14.00) per ton on emissions of sulfur dioxide, nitrogen oxides, particulate matter of ten (10) microns or less and volatile organic compounds is hereby established to cover the reasonable direct and indirect costs of developing and administering the air pollution control operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman to be collected during fiscal year 1992-1993 covering actual emissions occurring in calendar year 1991, fiscal year 1993-94 covering actual emissions occurring in calendar year 1992 and fiscal year 1994-1995 covering actual emissions occurring during calendar year 1993. The interim fee shall not apply to air emissions of less than one hundred (100) tons for any of the listed pollutants, provided that when emissions exceed one hundred (100) tons the entire amount of all air emissions for any of the listed pollutants up to five thousand five hundred (5,500) tons shall be chargeable emissions for interim fee purposes.

(c) The board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the Clean Air Act to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the Clean Air Act, other related requirements of the Clean Air Act and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman to be collected starting in fiscal year 1995-1996 covering air emissions occurring

during calendar year 1994. In no case shall the amount of the permanent fee be more than that which is necessary to comply with section 502(b) of the Clean Air Act. The permanent fee shall not apply to emissions of more than four thousand (4,000) tons for any regulated pollutant. In the event a final regulation containing the permanent annual air emission fee is not effective by July 1, 1995, the permanent annual air emission fee for sources subject to the Title V operating permit program shall be the adjusted minimum dollar amount set under section 502(b) of the Clean Air Act until such time as the final regulation is effective.

(d) Unless precluded by the Clean Air Act, the board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors.

(e) Until alternative fees are established by the board under subsection (c) of this section, stationary air contamination sources shall pay the following interim fees:

(1) Two hundred dollars ($200.00) for the processing of an application for an operating permit.

(2) Two hundred dollars ($200.00) for annual operating permit administration fee.

(f) No emissions fee established under subsection (b), (c) or (j) of this section shall be payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility.

(g) Any fees imposed under this section in areas with approved local air pollution control programs shall be deposited in a restricted account established by the governing body authorizing the local program for use by that program to implement the provisions of this act for which they are responsible. The governing body shall annually submit to the department an audit of the account in order to insure the funds were properly spent.

(h) (1) Unless the board establishes a different payment schedule by regulation, each facility subject to the emission fees established in subsections (b) and (c) of this section 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 emission from the preceding year, whichever occurs first.

(2) An air contamination source that fails to pay the fees within the time frame established by this act or by regulation shall pay a penalty of fifty per centum (50%) 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.

(i) The permanent air emission fee imposed under subsection (c) shall be increased in each year after implementation of the fee by regulation by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this subsection:

(1) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close

of the twelve (12) month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(j) The board may by regulation establish the following categories of fees not related to Title V of the Clean Air Act. Until such regulations are adopted, stationary air contamination sources shall pay the following 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) Two hundred dollars ($200.00) for annual operating permit administration fee.

In regard to fees established under this subsection, individual sources required to be regulated by Title V of the Clean Air Act shall only be subject to plan approval fees authorized in this subsection.

(k) No administrative action shall prevent the deposit of the fees established pursuant to this section in the Clean Air Fund established in section 9.2 during the fiscal year in which they are collected. The fees shall only be used for the purposes authorized in this section and section 9.2 and shall not be transferred or diverted to any other purpose by administrative action.

(l) Any fees, penalties and interest owed the Commonwealth for delinquent payment collected under this section shall be deposited in the Clean Air Fund.

(m) As used in this section, the term "regulated pollutant" shall mean a volatile organic compound, each pollutant regulated under sections 111 and 112 of the Clean Air Act and 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 (VOC's), 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.

(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 (80%) 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 subsections (h) and (i) of section 6.3.

(c) For areas with a total population under two hundred thousand (200,000) which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provisions of this act shall apply if the area can demonstrate, consistent with guidance issued by the Environmental Protection Agency, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under the Clean Air Act.

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. The Environmental Quality Board may not establish a more stringent performance or emission standard for hazardous air pollutant emissions from existing sources, except as provided in subsection (d). This section shall not apply to rules and regulations adopted as final prior to the effective date of this act and shall not be construed to weaken standards for individual sources or facilities in effect prior to the effective date of this act. The board may establish performance or emission standards for sources or categories of sources which are not included on the list of source categories established under section 112(c) of the Clean Air Act. For purposes of this section, the term "performance standard" includes design, equipment, work practice or operational standards or any combination thereof.

(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, pursuant to a schedule established pursuant to section 112(c) 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. The department shall have the authority to make the determinations required by section 112(g)(2) of the Clean Air Act regarding the construction, reconstruction and modification of sources. Any person challenging the performance or emission standards established by the department shall have the burden to demonstrate 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. 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) The department is authorized to require that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using the best available technology.

(d) (1) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the department may impose health risk-based emission standards or operating practice requirements. In developing such health risk-based emission standards or operating practice requirements, the department shall provide an explanation and rationale for such standards or requirements and provide for public review and comments on plan approvals, operating permits, guidelines and regulations which contain health risk-based emission standards or operating practice requirements. Standards or requirements adopted pursuant to this subsection shall be developed using an analysis which, among other factors, considers, where appropriate for a source or source category, the criteria set forth in section 112(f)(1) of the Clean Air Act in assessing the proposed risk to the public health, welfare and the environment from the source.

(2) In the case of coke oven batteries, the department may not impose health risk-based emission standards more stringent than Federal requirements until eight (8) years after promulgation of maximum achievable control technology (MACT) standards and not until the year 2020 for coke oven batteries which satisfy the requirements of section 112(i)(8)(A) of the Clean Air Act.

(3) Notwithstanding the limitation in clause (2), where the operation of a coke oven battery would result in serious, substantial and demonstrable harm to public health, welfare and the environment, the department may impose health risk-based emission standards by regulation which utilize proven, commercially available and economically available methods of technology.

(i) The department shall not impose health risk-based emission standards until after January 1, 1998, for those coke oven batteries which satisfy the applicable MACT or lowest achievable emission rate (LAER) standards.

(ii) After January 1, 1998, the department shall only impose health risk-based emission standards adopted pursuant to section 112(f) of the Clean Air Act, and, if no such emission standards are adopted pursuant to section 112(f) of the Clean Air Act, the department may adopt such emission standards, provided that such standards are consistent with the criteria and the factors set forth in clause (1) and section 112(f) of the Clean Air Act and until such time as health risk-based standards are enacted by the Federal Government pursuant to section 112(f) of the Clean Air Act.

(e) The department shall have the authority to require, in the plan approval and operating permit, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(f) Nothing in this section shall preclude the department from taking an emergency action where there is an immediate or potential threat to public health, welfare and the environment from an air pollutant, including a hazardous air pollutant.

(g) The early emissions reduction program authorized under section 112(i)(5) of the Clean Air Act is incorporated by reference in the department's permitting program.

Section 6.7. Control of Volatile Organic Compounds from Gasoline-Dispensing Facilities.--(a) After the date specified in subsection (b) or (c) of this section, no owner or operator of a gasoline-dispensing facility subject to this section may transfer or allow the transfer of gasoline into a motor vehicle fuel tank unless the dispensing facility is equipped with a department approved and properly operating Stage II vapor recovery or vapor collection system. Unless a higher percent reduction is required by EPA under section 182 of the Clean Air Act, approval by the department of a Stage II vapor collection system will be based on a determination that the system will collect at least ninety per centum (90%) by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling and the captured vapors are returned to a vapor tight holding system or vapor control system.

(b) (1) This subsection applies to gasoline-dispensing facilities located in areas classified as moderate, serious or 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 (2) year period immediately preceding the effective date of this section, shall achieve compliance not later than one (1) year from the effective date of this section.

(4) All other affected facilities shall achieve compliance not later than two (2) 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, include 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 (2) years and shall be made available for inspection by the department.

(f) In the event an area is reclassified from attainment or marginal nonattainment to serious, severe or moderate nonattainment under section 181 of the Clean Air Act, gasoline-dispensing facilities located in the reclassified area shall be subject to the requirements of subsection (b)(1). For purposes of establishing an effective date for the reclassified area, that date shall be the date of publication of final notice of reclassification in the Federal Register.

(g) If at any time prior to November 15, 1993, the United States Environmental Protection Agency promulgates a requirement for alternative automobile refueling emissions control systems identified in section 7521 of the Clean Air Act, the requirements of this section shall not apply to gasoline-dispensing facilities located in areas classified as moderate ozone nonattainment areas under section 181 of the Clean Air Act, including the counties of Allegheny, Armstrong, Beaver, Berks, Butler, Fayette, Washington and Westmoreland.

(h) The department shall implement the functional testing and certification requirements specified in EPA's Stage II enforcement and technical guidance documents developed under section 182 of

the Clean Air Act to meet the Clean Air Act requirements for areas classified as moderate, serious, severe or extreme ozone nonattainment.

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 general 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.

(c) In performing the compliance review required under this section, the department shall only consider violations arising under this act that occurred or are occurring in Pennsylvania.

(d) A permittee or applicant may appeal any violation arising under this act which the department places on the compliance docket.

Section 7.2. Permit Compliance Schedules.--In addition to the other enforcement provisions of this act, the department may issue a permit under clauses (3) and (4) of subsection (b) of section 6.1 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 may 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 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 established under this section shall run concurrently with the commission's public comment period established under section 184(c)(1) of the Clean Air Act.

(b) Control strategies approved by an interstate transport commission and by the Commonwealth's representatives and set forth in resolutions or memoranda of understanding shall be considered commitments by the executive to pursue subsequent legislative, regulatory or other administrative actions to implement the control strategies.

(c) The Commonwealth strongly recommends that an interstate transport commission adopt formal procedures which allow for an open public review and comment period prior to the adoption of resolutions or consideration of memoranda of understanding or other actions which recommend that states adopt control strategies. The Commonwealth's representatives shall take actions consistent with this recommendation.

(d) The General Assembly of Pennsylvania finds that the interstate transport of pollutants from the State of Ohio contributes significantly to the violation of national ambient air quality standards by the Commonwealth. Therefore, as set forth in section 176A of the Clean Air Act, the Governor, on behalf of the Commonwealth, may petition the Federal EPA Administrator to include the State of Ohio in any interstate transport commission to which Pennsylvania is a member state.

Section 7.5. Public Review of State Implementation Plans.--(a) A State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures shall be the subject of a public comment period. The public comment period shall be no less than sixty (60) days, and the department may, at its discretion, hold public informational meetings or public hearings as part of the comment period.

(b) Notice of a proposed State implementation plan shall be published in the Pennsylvania Bulletin and in sufficient newspapers having general circulation in the area covered by the State implementation plan. If the State implementation plan covers the entire State, notice shall be published in at least six (6) newspapers of general circulation throughout the Commonwealth.

(c) A State implementation plan subject to this section shall include the following provisions:

(1) Statements clearly indicating the specific provisions of the Clean Air Act with which the State implementation plan is intended to comply.

(2) An analysis of the alternative control strategies considered if applicable in arriving at the recommended control strategies and the reasons the department or other agency selected the final strategy.

(3) An analysis of the economic impact of the alternative control strategies and the selected strategies on the regulated community and local governments.

(4) An analysis of the staff and technical resources needed by the department or other agency to implement the control strategy.

(d) After the public comment period and prior to the submission to EPA of any State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures, the department shall submit a final State implementation plan to the board for its review together with a

document which responds to all comments made during the public comment period.

(e) These provisions shall also apply in the case of State implementation plans required by the Clean Air Act which are developed by State agencies other than the department which commit the Commonwealth to the adoption of air pollution control measures or procedures.

(f) Subsections (c) and (d) of this section shall not apply to State implementation plans or portions thereof comprised of permit, emission offset or reasonably available control technology requirements for individual sources; consent orders; and agreements or regulations.

(g) The requirements of this section shall not apply to state implementation plans submitted by a local air pollution control agency.

Section 7.6. Advice to Department.--(a) The department shall consult with the Citizens Advisory Council established under section 448 of the act of April 9, 1929 (P.L.177, No.175) , known as "The Administrative Code of 1929," as appropriate, in the consideration of State implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. Nothing in this section shall limit the council's ability to consider, study and review department policies and other activities related to the Clean Air Act implementation as provided under section 1922-A of "The Administrative Code of 1929." This section shall not apply to State implementation plans or portions thereof comprised of permit, emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations. The requirements of this section shall not apply to State implementation plans submitted by a local air pollution control agency.

(b) (1) The Secretary of Environmental Resources, within thirty (30) days after the effective date of this act, shall designate an air technical advisory committee. The committee shall include at least eleven (11) members with technical backgrounds in the control of air pollution from stationary or mobile sources.

(2) The committee, at the request of the department, may be utilized to provide technical advice on department policies, guidance and regulations needed to implement the Clean Air Act. The committee may also request to review a department policy, guidance or regulation needed to implement the Clean Air Act.

Section 7.7. Small Business Compliance Assistance Program.--(a) The department shall develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which shall include the following:

(1) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further comply with this act and the Clean Air Act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes and products and methods of operation that help reduce air pollution.

(3) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

(4) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this act and the Clean Air Act in such manner and form as to assure reasonably adequate

time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rulemaking plan, State implementation plan revision or program issued under this act and the Clean Air Act.

(5) Adequate mechanisms for informing small business stationary sources of their obligations under this act and the Clean Air Act, including mechanisms for referring these sources to qualified auditors or, at the department's option, for providing audits of the operations of such sources to determine compliance with this act.

(6) Procedures for consideration of requests from a small business stationary source for modification of:

(i) any work practice or technological method of compliance; or

(ii) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date based on the technological and financial capability of any small business stationary sources. No modification may be granted unless it is in compliance with the applicable requirements of this act and the Clean Air Act, including the requirements of the applicable implementation plan. Where applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(7) Procedures for soliciting input from and exchanging information with the Office of Small Business Ombudsman regarding compliance requirements for small business stationary sources.

(8) Adequate mechanisms for the collection and dissemination of information to small business stationary sources, including, but not limited to:

(i) Developing of small business stationary sources guidance manuals indicating the categories of small businesses subject to the requirements of this act and the Clean Air Act, specific compliance requirements and options, a schedule of compliance deadlines and other pertinent information.

(ii) Establishment of a toll-free telephone number dedicated to questions involving small business stationary source compliance.

(9) Procedures for assuring the confidentiality of information received from small business stationary sources.

(10) Procedures for conducting confidential, on-site consultations with small business stationary sources regarding applicability of compliance requirements.

(b) The department shall evaluate the feasibility of contracting with consultants to administer all or part of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The department shall submit a report to the Governor, the General Assembly, the Compliance Advisory Committee and the Office of Small Business Ombudsman summarizing the results of this evaluation and the department's recommendations.

(c) The department shall consult with the Compliance Advisory Committee established in section 7.8 and the Office of Small Business Ombudsman established in section 7.9 in developing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(d) The department shall provide a reasonable opportunity for public comment on the proposed Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(e) The department is authorized to expend funds from the Clean Air Fund collected pursuant to subsection (a), (b) or (c) 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 Compliance Assistance Program, difficulties encountered and degree and severity of enforcement.

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

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

(5) 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.

(6) Review and advise the department on rulemakings, State implementation plans and programs under this act and the Clean Air Act which affect small business stationary sources.

(7) Make recommendations for the development of programs to assist compliance for small business stationary sources, including technical and financial assistance programs.

(b) The committee shall consist of eleven 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 Ombudsman or his designee.

(c) The terms of appointed members shall be for four (4) years. Vacancies shall be filled by the original appointing member 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 clause (1) of subsection (b) of this section:

(i) Two members shall be appointed for two (2) years.

(ii) Two members shall be appointed for four (4) years.

(2) Of the members appointed under clause (2) of subsection (b) of this section:

(i) The majority leader of the Senate shall appoint one member for four (4) years.

(ii) The minority leader of the Senate shall appoint one member for two (2) years.

(iii) The majority leader of the House of Representatives shall appoint one member for three (3) years.

(iv) The minority leader of the House of Representatives shall appoint one member for one (1) year.

Section 7.9. Small Business Ombudsman.--(a) There is hereby established an Office of Small Business Ombudsman within the Department of Commerce for the purpose of serving as the primary point of contact for small business on issues relating to compliance with this act and the Clean Air Act.

(b) The Office of Small Business Ombudsman shall perform all functions necessary to implement the requirements of section 507(a)(3) of the Clean Air Act. The Office of Small Business Ombudsman shall perform all of the following functions to the extent they are consistent with the guidelines developed by the Environmental Protection Agency:

(1) Solicit input from small businesses regarding compliance with this act and the Clean Air Act and interact with organizations representing small businesses, including Small Business Development Centers, the Small Business Administration, industry and trade associations and other entities.

(2) Provide guidance and recommendations to the department on the development of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(3) Make recommendations to the department regarding the content and operation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(4) Collect and distribute information and materials on the requirements of this act and the Clean Air Act.

(5) Report to the Small Business Stationary Source Technical and Environmental Compliance Assistance Program on problems and difficulties experienced by small businesses in complying with this act and the Clean Air Act.

(6) Serve on the Compliance Advisory Committee established by section 7.8.

(7) Conduct independent evaluations of all aspects of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(8) Review and provide comments and recommendations to the Environmental Protection Agency and department regarding the development and implementation of regulations that impact small businesses.

(9) Arrange for and assist in the preparation of guidance documents by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program to ensure that the language is readily understandable by the layperson.

(10) Assist small businesses in locating sources of funding for compliance with the requirements of this act and the Clean Air Act.

(c) The Office of Small Business Ombudsman shall report annually to the Governor and General Assembly on the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program and other issues relating to the

impact of the Clean Air Act implementation on small businesses in the Commonwealth.

(d) For each proposed rulemaking significantly affecting small businesses, the Office of Small Business Ombudsman shall prepare a report which contains a detailed analysis of the economic impact of such proposed rulemaking on small businesses. The economic impact report shall be completed no later than ninety (90) days from the date that the board approves the proposed rulemaking and shall be submitted to the board for consideration prior to approval of the final rulemaking package, provided the report is available within the time period prescribed by this section. The department shall provide the ombudsman with a reasonable opportunity to revise the report to reflect any proposed substantial change in the rulemaking which affects the initial report.

(e) The report shall include, but not be limited to:

(1) An analysis of the economic impact of the selected control strategies on small business.

(2) Data on comparable regulatory programs or plans administered by other states.

(3) An assessment of the economic impact of alternative control strategies.

(4) All other information that the Office of Small Business Ombudsman considers necessary for the board's review.

Section 7.10. Transportation Management Associations.--(a) The department, in consultation with the Department of Transportation, may, after public notice and comment, designate one or more transportation management associations to serve specific regions of this Commonwealth to provide services to employers required by the Clean Air Act to reduce employe vehicle trips and encourage the use of carpooling, vanpooling and public transportation to reduce air pollution.

(b) For purposes of this section, transportation management associations shall consist of nonprofit corporations designated by the department to broker transportation services, including, but not limited to, public transportation, vanpools, carpools, bicycling and pedestrian modes, as well as strategies such as flextime, staggered work hours and compressed work weeks for corporations, employes, developers, individuals and other groups.

Section 7.11. Notice of Sanctions.--(a) Whenever the Commonwealth is notified that the Environmental Protection Agency has made a final or proposed finding on a State implementation plan submitted by the Commonwealth or a local air pollution control agency, the department shall notify, within ten (10) working days of receipt of the notice, the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives of the agency's findings.

(b) Whenever the Commonwealth is formally notified that it is subject to discretionary or mandatory sanctions under section 179 of the Clean Air Act, the department shall, within ten (10) working days of the receipt of this notice, notify the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives.

Section 7.12. Missed Federal Deadlines.--Whenever the Environmental Protection Agency has missed a deadline for developing regulations or guidance on which states must rely to comply with deadlines in the Clean Air Act by more than ninety (90) days and, in the opinion of the department, the Environmental Protection Agency has failed to provide it with timely guidance needed to comply with the act in a timely manner, the department may bring a legal action against the Environmental Protection Agency in a court of competent jurisdiction seeking an injunction to restrain the Environmental Protection Agency from enforcing the applicable Clean Air Act deadline on the Commonwealth until and unless the

Environmental Protection Agency develops the appropriate regulation or guidance which allows the Commonwealth a reasonable opportunity to comply with the Clean Air Act.

Section 7.13. Air Quality Improvement Fund.--(a) The Governor is hereby authorized to transfer three million dollars ($3,000,000), or as much thereof as may be necessary, from the Hazardous Sites Cleanup Fund, as established in section 602.3 of the act of March 4, 1971 (P.L.6, No.2) , known as the "Tax Reform Code of 1971," to a separate account in the State Treasury to be known as the Air Quality Improvement Fund, which shall be a special fund administered by the Department of Commerce. All transferred funds from the Hazardous Sites Cleanup Fund shall be repaid to that fund from repayments of assistance and other funds in the Air Quality Improvement Fund within ten (10) years in the following manner: in the fifth (5) year after the date of enactment, all repayments in the Air Quality Improvement Fund shall be transferred to the Hazardous Sites Cleanup Fund; in the succeeding years all repayments shall be transferred annually to the Hazardous Sites Cleanup Fund until the entire three million dollars ($3,000,000) has been repaid; and, if at the end of the ten (10) year period from the date of enactment the entire three million dollars ($3,000,000) has not be repaid, additional funds from the Air Quality Improvement Fund shall be transferred to the Hazardous Sites Cleanup Fund to provide the balance of the three million dollars ($3,000,000). The transfer of funds to the Air Quality Improvement Fund shall be made hereunder by warrant of the State Treasurer upon requisition of the Governor.

(b) In addition to the funds transferred in accordance with subsection (a), any funds as may be appropriated by the General Assembly, provided by private sources or secured from the Federal Government to aid small businesses, in accordance with the provisions of subsection (c) shall be deposited into the fund.

(c) All moneys in the Air Quality Improvement Fund are hereby appropriated, with the approval of the Governor, to the Department of Commerce and shall be used to provide assistance to Pennsylvania businesses to meet the requirements of this act. The funds shall be used by an eligible business to reduce or prevent air pollution through the purchase and installation of air pollution control equipment and facilities, the purchase and installation of equipment to make operational changes and to modify production practices. In no case shall the assistance exceed one hundred thousand dollars ($100,000) per applicant. The Department of Commerce shall require companies to repay the funds provided in accordance with terms the Department of Commerce shall determine, but in no case shall the repayment period be longer than ten (10) years from the date the funds were provided. All funds from the Hazardous Sites Cleanup Fund deposited into the Air Quality Improvement Fund shall be used to provide assistance to small businesses which own or operate stationary sources.

(d) All transfers, repayments, appropriations, contributions and deposits made to the fund shall be immediately credited in full to the fund and earnings on the money held in the fund shall also be credited to the fund.

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 or the rules and regulations adopted under this 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 nuisance; or to cause air pollution, soil or water pollution resulting from an air pollution incident; or to hinder, obstruct, prevent or interfere with the department or its personnel in their performance of any duty hereunder, including denying the department access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this act. The owner or operator of an air contamination source shall not allow pollution of the air, water or other natural resources of the Commonwealth resulting from the source. 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 act.**

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

(b) Misdemeanors. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, who, within two years after being convicted of a summary offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each separate offense, be subject 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, employes 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 Commonwealth or its uses, and other relevant factors. It shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debt. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person, but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The hearing board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.]

Section 9. Penalties.--(a) Any person who violates any provision of this act, any rule or regulation adopted under this act, any order of the department or any condition or term of any plan approval or permit issued pursuant to this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars ($100.00) nor more than two thousand five hundred dollars ($2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employes of the department authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this act, and the General Counsel is hereby authorized to prosecute these 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, 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 commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than one thousand dollars ($1,000.00) 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 or the regulations promulgated under this act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars ($2,500.00) 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 five

thousand dollars ($5,000.00) 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. 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 the evidence.

(4) All general defenses, affirmative defenses and bars to prosecution that may apply with respect to other State criminal offenses may apply under this clause and shall be determined by the courts according to the principles of common law. Concepts of justification and excuse applicable under this section may be developed according to those principles.

(5) 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) of this section, 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.

(e) For purposes of this section, the term "person" includes, in addition to the entities referred to in section 3, any responsible corporate officer.

(f) For purposes of the provisions of subsections (b) and (c) of this section and section 9.1, the term "operator," as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and wilful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair or monitoring of equipment and facilities and who often has supervisory and training duties, but who is not senior management personnel or a corporate officer. Except in the case of knowing and wilful violations, for purposes of clause (3) of subsection (b) of this section, the term "a person" shall not include an employe who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and wilful violations, for the purposes of clauses (1) and (2) of subsection (b) and subsection (c) of this section, the term "a person" shall not include an employe who is carrying out his normal activities and who is acting under orders from the employer.

(g) For purposes of this section, a person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

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 or any rule or regulation promulgated under this 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 ten thousand dollars ($10,000.00) per day for each violation which occurs in the 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 administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the hearing board shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The hearing board shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the appeal. The hearing board may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the hearing board finds that the appellant is financially unable to pay. The hearing board shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest at the rate established in subsection (c) of section 6.3, which shall run from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the Clean Air Fund. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The 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 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, 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 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, any rule or regulation promulgated under this act or 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.

(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 seven (7) years from the date the offense is discovered.

Section 14. Sections 11, 12, 12.1, 13, 13.1 and 13.2 of the act, amended or added October 26, 1972 (P.L.989, No.245), are amended to read:

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

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

(b) The administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any [political subdivision of the Commonwealth which has an approved air pollution control agency.] **county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.**

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

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

(d) Whenever the department finds that violations of [the air pollution control standards, or rules and regulations promulgated pursuant to the grant of authority under subsection (b)] **this act or the rules and regulations promulgated under this act** are so widespread that such violations appear to result from a failure of the local **county** control agency involved to enforce those [standards, or rules and regulations,] **requirements**, the department may assume the authority to enforce [those standards, and rules and regulations.] **this act in that county.**

(e) The department shall have the power to refuse approval, or to suspend or rescind approval, once given, to any **county** air pollution control agency if the department finds that such **county** agency is unable or unwilling [so] to conduct an air pollution control program [as] to abate or reduce air pollution problems within its jurisdiction in [an effective manner.] **accordance with the requirements of this act, the Clean Air Act or the rules and regulations promulgated under both this act and the Clean Air Act.**

(f) Whenever the department takes action under the provisions of subsections (d) or (e) of this section, it shall give written

notification to the air pollution control agency of the [political subdivision] **county** involved and such notification shall be [subject to the appeal provisions of clause (4.1) of section 4 of this act.] **an appealable action.**

(g) Irrespective of subsection (b) above, and in order that the civil and criminal penalties and equitable remedies for air pollution violations shall be uniform [except insofar as they are inconsistent with the jurisdictional limitations of the minor judiciary and the Philadelphia Municipal Court,] throughout the Commonwealth, the penalties and remedies set forth in this act [in sections 9, 9.1, 10 and 11,] shall be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations, and the amounts of the fines or civil penalties set forth herein shall be the amounts of the fines or civil penalties assessable and to be levied for violations of any municipal ordinances or regulations. It is hereby declared to be the purpose of this section to enunciate further that the purpose of this act is to provide additional and cumulative remedies to abate the pollution of the air of this Commonwealth. Any action for the assessment of civil penalties brought for the enforcement of a municipal air pollution ordinance or regulation shall be brought in accordance with the procedures set forth in such ordinance. Where any municipal ordinance or regulation does not provide a procedure for the assessment of civil penalties, the provisions [of subsection (h) of this section] **related to assessment and collection of civil penalties of section 9.1** shall apply.

[(h) Any person, as herein defined, except a department, board, bureau, or agency of the Commonwealth, engaging in conduct in violation of a municipal air pollution control ordinance, shall, for each offense, upon conviction thereof in a civil proceeding before a judge of the Municipal Court of Philadelphia, district justice, magistrate, alderman or justice of the peace be sentenced to pay the cost of prosecution and a civil penalty of not less than twenty-five dollars ($25.00), nor more than five hundred dollars ($500.00), for each day of continued violation. Such a penalty may be assessed whether or not the violation was wilful. Failure to pay any such penalty within the time prescribed by law shall be punishable as a civil contempt. Notwithstanding anything contained in section 9.2 of this act, all civil penalties and fees collected under this subsection shall be paid to the appropriate political subdivision, as provided by law, and shall be collectible in any manner provided by law for the collection of debt. If any person liable to pay any such penalty neglects or refuses to pay the 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.]

(h) Nothing in this act shall affect the Municipal Planning Code unless required by the Clean Air 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 reason that such nuisance constitutes air pollution.

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

Section 13. Public Nuisances.--A violation of this act or of any rule or regulation promulgated under this act or any order, plan approval or permit issued by the department under this act shall constitute a public nuisance. The department shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, the department or any Commonwealth agency which undertakes to abate a public nuisance may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in section 9.1. Whenever the nuisance is maintained or continued contrary to this act or any rule or regulation promulgated under this act or any order, plan approval or permit, the nuisance may be abatable in the manner provided by this act. Any person who causes the public nuisance shall be liable for the cost of abatement.

Section 13.1. Search Warrants.--Whenever an agent or employe of the department, charged with the enforcement of the provisions of this act, has been refused access to property, or has been refused the right to examine any air contamination source, or air pollution control equipment or device, or is refused access to or examination of books, papers and records pertinent to any matter under investigation, such agent or employe 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 13.2. Confidential Information.--All records, reports or information obtained by the department or referred to at public hearings under the provisions of this act shall be available to the public, except that upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the department has access under the provisions of this act, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, **including intellectual property rights**, the department shall consider such record, report or information, or particular portion thereof confidential in the administration of this act. **The department**

shall implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act. Nothing herein shall be construed to prevent disclosure of such report, record or information to Federal, State or local representatives as necessary for purposes of administration of any Federal, State or local air pollution control laws, or when relevant in any proceeding under 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 a section 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 or the rules and regulations promulgated under this 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.

(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 or operator alleged to be causing or contributing to a violation of any provision of this act or any rule or regulation promulgated under this 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 penalties. The court shall use the factors and amounts contained in section 9.1 in awarding civil penalties under this subsection. Such penalties shall be paid into the Clean Air Fund established by section 9.2 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, any rule or regulation promulgated under this 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 as follows:

(1) Section 4.2 of the act shall take effect in 60 days.

(2) Section 6.7 of the act shall take effect November 15, 1992.

(3) The remainder of this act shall take effect immediately.

APPROVED--The 9th day of July, A. D. 1992.

ROBERT P. CASEY