

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1650 Session of  
1992

INTRODUCED BY MUSTO, BRIGHTBILL, MELLOW, LOEPER, JUBELIRER,  
BODACK, CORMAN, WENGER, STAPLETON, LINCOLN, O'PAKE, STEWART,  
SALVATORE, HOLL, RHOADES, LEMMOND, LAVALLE, PETERSON,  
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MADIGAN, SHUMAKER, SHAFFER, HART, SCANLON, LEWIS, FUMO,  
LYNCH, BELAN, STOUT, TILGHMAN AND PECORA, MARCH 25, 1992

SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, AS  
AMENDED, MARCH 31, 1992

## AN ACT

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

1 penalties and for the abatement and restraint of violations;  
2 and making editorial changes.

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

5 Section 1. Section 2 of the act of January 8, 1960 (1959  
6 P.L.2119, No.787), known as the Air Pollution Control Act,  
7 amended June 12, 1968 (P.L.163, No.92), is amended to read:

8 Section 2. Declaration of Policy.--(a) It is hereby  
9 declared to be the policy of the Commonwealth of Pennsylvania to  
10 protect the air resources of the Commonwealth to the degree  
11 necessary for the (i) protection of public health, safety and  
12 well-being of its citizens; (ii) prevention of injury to plant  
13 and animal life and to property; (iii) protection of the comfort  
14 and convenience of the public and the protection of the  
15 recreational resources of the Commonwealth; [and] (iv)  
16 development, attraction and expansion of industry, commerce and  
17 agriculture[.]; and (v) implementation of the requirements of  
18 the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7401 et seq.)  
19 in the Commonwealth.

20 (b) It is further declared that:

21 (1) Positions taken by individuals representing the  
22 Commonwealth on interstate pollution transport commissions  
23 established under the Clean Air Act which commit the  
24 Commonwealth to propose or adopt certain pollution control  
25 strategies shall be developed with the benefit of public review  
26 and comment.

27 (2) The public shall be involved in developing and  
28 committing the Commonwealth to the adoption of particular  
29 pollution control strategies through review of State  
30 Implementation Plan revisions and plans required to be submitted

1 by the Clean Air Act.

2 (3) The department shall have the staff and technical  
3 resources needed to comply with the Clean Air Act and shall be  
4 required to develop a special budget demonstrating its resource  
5 needs. The department shall be required to explore the role  
6 private industry can play in developing and implementing the  
7 clean air programs as a mechanism to insure the Commonwealth  
8 meets Clean Air Act deadlines.

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

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

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

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

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

24 (2.1) "Hearing board." The Environmental Hearing Board  
25 established in the department by the act of December 3, 1970  
26 (P.L.834).

27 (3) "Person." Any individual, public or private corporation  
28 for profit or not for profit, association, partnership, firm,  
29 trust, estate, department, board, bureau or agency of the  
30 Commonwealth, political subdivision, municipality, district,

1 authority or any other legal entity whatsoever which is  
2 recognized by law as the subject of rights and duties.

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

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

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

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

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

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

29 (10) "Approved air pollution control agency." An air  
30 pollution control agency of any political subdivision of the

Commonwealth which has been granted approval by the board.]

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

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

"Air contamination." The presence in the outdoor atmosphere of an air contaminant which contributes to a 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 an air contaminant.

"Air pollution." The presence in the outdoor atmosphere of a 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 a political subdivision of the Commonwealth which has been granted approval by the board.

"Board." The Environmental Quality Board.

"Clean Air Act." Public Law 95-95, 42 U.S.C. § 7401 et seq. The term includes only those provisions which direct a state to take actions or authorize a state to administer a provision of

1 the act.

2 "Department." The Department of Environmental Resources of  
3 the Commonwealth.

4 "Environmental Protection Agency" or "EPA." The United  
5 States Environmental Protection Agency or the Administrator of  
6 the United States Environmental Protection Agency.

7 "Hearing board." The Environmental Hearing Board.

8 "Person." An individual, public or private corporation for  
9 profit or not for profit, association, partnership, firm, trust,  
10 estate, department, board, bureau or agency of the Commonwealth  
11 or the Federal government, political subdivision, municipality,  
12 district, authority or any other legal entity whatsoever which  
13 is recognized by law as the subject of rights and duties. In a  
14 provision of this act prescribing a fine, imprisonment or  
15 penalty, or a combination of the foregoing, the term shall also  
16 include the officers and directors of any corporation or other  
17 legal entity having officers and directors.

18 "Plan approval." The written approval from the Department of  
19 Environmental Resources which authorizes a person to construct,  
20 assemble, install or modify a stationary air contamination  
21 source, install thereon any air pollution control equipment or a  
22 device or reactivate an air contamination source after the  
23 source has been out of operation or production for a period of  
24 two years or more.

25 "Region." A geographical subdivision of the Commonwealth  
26 whose boundaries shall be determined by the Environmental  
27 Quality Board.

28 "Small business stationary source." A stationary source  
29 that:

30 (1) is owned or operated by a person that employs one

1 hundred (100) or fewer individuals;

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

4 (3) is not a major stationary source;

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

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

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

13 "Stationary air contamination source." An air contamination  
14 source other than that which, when operated, moves in a given  
15 direction under its own power.

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

19 Section 4. Powers and Duties of the Department of  
20 Environmental Resources.--The department shall have power and  
21 its duty shall be to--

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

26 [(1)] (2) Enter any building, property, premises or place  
27 and inspect any air contamination source for the purpose of  
28 investigating an actual or a suspected source of air pollution  
29 or for the purpose of ascertaining the compliance or non-  
30 compliance with [any rule or regulation which may have been

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

10 [(2)] (3) Have access to, and require the production of,  
11 books [and], papers and records, including, but not limited to,  
12 existing computerized records pertinent to any matter under  
13 investigation.

14 [(2.1)] (4) Require the owner or operator of any air  
15 contamination source to establish and maintain such records and  
16 make such reports and furnish such information as the department  
17 may reasonably prescribe.

18 [(2.2)] (5) Require the owner or operator of any air  
19 contamination source to install, use and maintain such air  
20 contaminant monitoring equipment or methods as the department  
21 may reasonably prescribe.

22 [(2.3)] (6) Require the owner or operator of any air  
23 contamination source to sample the emissions thereof in  
24 accordance with such methods and procedures and at such  
25 locations and intervals of time as the department may reasonably  
26 prescribe and to provide the department with the results  
27 thereof.

28 [(3)] (7) Enter upon any property on which an air  
29 contamination source may be located and make such tests upon the  
30 source as are necessary to determine whether the air



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

15     ~~[(4)]~~ (8) Receive, initiate and investigate complaints,  
16 institute and conduct surveys and testing programs, conduct  
17 general atmospheric sampling programs, make observations of  
18 conditions which may or do cause air pollution, make tests or  
19 other determinations at air contamination sources, and assess  
20 the degree of abatement required.

21     ~~[(4.1)]~~ (9) (i) Issue orders to any person owning or  
22 operating an air contamination source, or owning or possessing  
23 land on which such source is located, if such source is  
24 introducing or is likely to introduce air contaminants into the  
25 outdoor atmosphere in excess of any [board rule or regulation,  
26 or any permit requirement] rate provided for by this act, the  
27 Clean Air Act, a rule or regulation promulgated under either  
28 this act or the Clean Air Act, a plan approval or permit  
29 applicable to such source, or at such a level so as to cause air  
30 pollution. Any such order may require the cessation of any

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

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

26 [(5)] (10) Institute, in a court of competent jurisdiction  
27 proceedings to compel compliance with [any] this act, the Clean  
28 Air Act, a rule or regulation promulgated under either this act  
29 or the Clean Air Act, plan approval, permit or order of the  
30 department from which there has been no appeal or which has been

1 sustained on appeal.

2 [(6)] (11) Act as the agent for the board in holding public  
3 hearings when so directed by the board.

4 [(7)] (12) Institute prosecutions under this act.

5 [(8)] (13) Recommend the minimum job qualifications of  
6 personnel employed by county and municipal air pollution control  
7 agencies hereafter created.

8 [(9)] (14) Require the submission of, and consider for  
9 approval, plans and specifications of air pollution control  
10 equipment, devices or process changes, and inspect such  
11 installations or modifications to insure compliance with the  
12 plans which have been approved.

13 [(10)] (15) Conduct or cause to be conducted studies and  
14 research with respect to air contaminants, their nature, causes  
15 and effects, and with respect to the control, prevention,  
16 abatement and reduction of air pollution and air contamination.

17 [(10.1)] (16) Evaluate motor vehicle emission control  
18 programs, including vehicle emission standards, clean  
19 alternative fuels, oxygenated fuels, reformulated fuels, vehicle  
20 miles of travel, congestion levels, transportation control  
21 measures and other transportation control strategies with  
22 respect to their effect upon air pollution and determine the  
23 need for modifications of such programs.

24 [(11)] (17) Determine by means of field studies and sampling  
25 the degree of air pollution existing in any part of the  
26 Commonwealth.

27 [(12)] (18) Prepare and develop a general comprehensive plan  
28 for the control and abatement of existing air pollution and air  
29 contamination and for the abatement, control and prevention of  
30 any new air pollution and air contamination, recognizing varying

1 requirements for the different areas of the Commonwealth, and to  
2 submit a comprehensive plan to the board for its consideration  
3 and approval.

4     [(13)] (19) Encourage the formulation and execution of plans  
5 in conjunction with air pollution control agencies or civil  
6 associations of counties, cities, boroughs, towns and townships  
7 of the Commonwealth wherein any sources of air pollution or air  
8 contamination may be located, and enlist the cooperation of  
9 those who may be in control of such sources for the control,  
10 prevention and abatement of such air pollution and air  
11 contamination.

12     [(14)] (20) Encourage voluntary efforts and cooperation by  
13 all persons concerned in controlling, preventing, abating and  
14 reducing air pollution and air contamination.

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

21     [(16)] (22) Develop and conduct in cooperation with local  
22 communities demonstration programs relating to air contaminants,  
23 air pollution and air contamination and the control, prevention,  
24 abatement and reduction of air pollution and air contamination.

25     [(17)] (23) Provide advisory technical consultative services  
26 to local communities for the control, prevention, abatement and  
27 reduction of air pollution and air contamination.

28     [(18)] (24) Cooperate with the appropriate agencies of the  
29 United States or of other states or any interstate agencies with  
30 respect to the control, prevention, abatement and reduction of

1 air pollution, and where appropriate formulate interstate air  
2 pollution control compacts or agreements for the submission  
3 thereof to the General Assembly.

4 [(19)] (25) Serve as the agency of the Commonwealth for the  
5 receipt of moneys from the Federal government or other public or  
6 private agencies, and expend such moneys for studies and  
7 research with respect to air contaminants, air pollution and the  
8 control, prevention, abatement and reduction of air pollution.

9 (26) Establish and implement a Small Business Stationary  
10 Source Technical and Environmental Compliance Assistance  
11 Program.

12 [(20)] (27) Do any and all other acts and things not  
13 inconsistent with any provision of this act, which it may deem  
14 necessary or proper for the effective enforcement of this act,  
15 the Clean Air Act, and the rules or regulations [which have  
16 been] promulgated [thereunder] under either this act or the  
17 Clean Air Act.

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

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

29 Section 5. The act is amended by adding ~~a section~~ SECTIONS  
30 to read:

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1     Section 4.2. Permissible Actions.--In implementing the  
2 requirements of the Clean Air Act, the department and  
3 Environmental Quality Board may take only those actions directly  
4 required to obtain the administrator's approval and to implement  
5 the Federal operating permit program and other requirements of  
6 the Clean Air Act. Such actions shall be no more stringent than  
7 the requirements of the Clean Air Act, unless specifically  
8 authorized in this act. This section shall not apply to rules  
9 and regulations adopted as final prior to the effective date of  
10 this act. This section shall not be construed to weaken  
11 standards in place prior to the effective date of this act for  
12 emissions from sources of air pollution.

13     SECTION 4.3 EVALUATION.--BEGINNING FIVE YEARS AFTER THE  
14 EFFECTIVE DATE OF THIS ACT AND EVERY FIVE YEARS THEREAFTER, THE  
15 DEPARTMENT SHALL CONDUCT AND SUBMIT TO THE GENERAL ASSEMBLY AN  
16 EVALUATION OF THE EFFECTIVENESS OF THE PROGRAMS ADOPTED TO  
17 IMPLEMENT THE CLEAN AIR ACT. THE EVALUATION SHALL INCLUDE:

18     (1) A DETERMINATION OF WHETHER THE LIMITATION IMPOSED IN  
19 SECTION 4.2 WITH RESPECT TO AIR CONTAMINATION SOURCES REGULATED  
20 BY THE CLEAN AIR ACT HAS HINDERED IN ANY WAY THE COMMONWEALTH'S  
21 EFFORTS TO COMPLY WITH THE CLEAN AIR ACT AND A RECOMMENDATION ON  
22 WHETHER THAT PROVISION SHOULD BE CHANGED.

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

27     (3) AN EVALUATION OF THE FUNDING AVAILABLE TO IMPLEMENT THE  
28 CLEAN AIR ACT PROGRAMS AND WHETHER THAT FUNDING IS SUFFICIENT OR  
29 INADEQUATE AND RECOMMENDATIONS ON WHERE ADJUSTMENTS SHOULD BE  
30 MADE.

1     (4) AN ANALYSIS OF THE COSTS IMPOSED ON MOBILE AND  
2     STATIONERY AIR CONTAMINATION SOURCES TO IMPLEMENT THE  
3     REQUIREMENTS OF THE CLEAN AIR ACT, INCLUDING ON INDIVIDUALS AND  
4     COMPANIES.

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

9     (6) A SUMMARY OF THE ACTIVITIES UNDERTAKEN BY THE CITIZENS  
10    ADVISORY COUNCIL AND THE CLEAN AIR TECHNICAL ADVISORY COMMITTEE  
11    UNDER SECTION 7.6.

12    (7) AN EVALUATION OF THE EFFECTIVENESS OF THE NORTHEAST  
13    OZONE TRANSPORT COMMISSION IN MEETING THE MANDATES OF THE CLEAN  
14    AIR ACT AND RECOMMENDATIONS ON ANY CHANGES THAT COULD MAKE THE  
15    COMMISSION MORE EFFECTIVE.

16    (8) AN ASSESSMENT OF THE IMPACT OF ANY DELAYS CAUSED BY  
17    MISSING DEADLINES UNDER SECTION 7.13 HAS HAD OR WILL HAVE ON THE  
18    STATE IMPLEMENTATION OF THE CLEAN AIR ACT PROGRAMS.

19    Section 6. Sections 5 and 6 of the act, amended October 26,  
20    1972 (P.L.989, No.245), are amended to read:

21    Section 5. Environmental Quality Board.--The board shall  
22    have the power and its duty shall be to--

23    (1) Adopt rules and regulations, for the prevention,  
24    control, reduction and abatement of air pollution, applicable  
25    throughout the Commonwealth or to such parts or regions or  
26    subregions thereof specifically designated in such regulation  
27    which shall be applicable to all air contamination sources  
28    regardless of whether such source is required to be under permit  
29    by this act. Such rules and regulations may establish maximum  
30    allowable emission rates of air contaminants from such sources,

1 prohibit or regulate the combustion of certain fuels, prohibit  
2 or regulate open burning, prohibit or regulate any process or  
3 source or class of processes or sources, require the  
4 installation of specified control devices or equipment, or  
5 designate the control efficiency of air pollution control  
6 devices or equipment required in specific processes or sources  
7 or classes of processes or sources. Such rules and regulations  
8 shall be adopted pursuant to the provisions of the act of July  
9 31, 1968 (P.L.769), known as the "Commonwealth Documents Law,"  
10 upon such notice and after such public hearings as the board  
11 deems appropriate. In exercising its authority to adopt rules  
12 and regulations, the board may, and to the extent deemed  
13 desirable by it shall, consult with a council of technical  
14 advisers, properly qualified by education or experience in air  
15 pollution matters, appointed by the board and to serve at the  
16 pleasure of the board, to consist of such number of advisers as  
17 the board may appoint, but such technical advisers shall receive  
18 no compensation, other than their actual and necessary expenses,  
19 for their services to the board.

20 (2) Establish and publish maximum quantities of air  
21 contaminants that may be permitted under various conditions at  
22 the point of use from any air contaminant source in various  
23 areas of the Commonwealth so as to control air pollution.

24 (3) By [the] rule or regulation, classify air contaminant  
25 sources, according to levels and types of emissions and other  
26 characteristics which relate to air pollution. Classifications  
27 made pursuant to this subsection shall apply to the entire  
28 Commonwealth or any part thereof. Any person who owns or  
29 operates an air contaminant source of any class to which the  
30 rules and regulations of the board under this subsection apply,



1 shall make reports containing information as may be required by  
2 the board concerning location, size and height of air  
3 contaminant outlets, processes employed, fuels used and the  
4 nature and time periods or duration of emissions, and such other  
5 information as is relevant to air pollution and available or  
6 reasonably capable of being assembled.

7 (4) Recommend to the Secretary of Transportation performance  
8 or specification standards, or both, for emission control  
9 systems and devices on motor vehicles.

10 (5) Adopt rules and regulations for the protection of public  
11 health and safety for periods when the accumulation of air  
12 contaminants in any area is attaining or has attained levels  
13 which, if sustained or exceeded, could lead to an acute threat  
14 to the health of the public. Such rules and regulations shall  
15 contain appropriate procedures to protect public health and  
16 safety during such periods.

17 (6) Adopt rules and regulations for the approval and the  
18 recision and suspension of approval of local air pollution  
19 control agencies.

20 (7) Adopt rules and regulations designed to reduce emissions  
21 from motor vehicles, including vehicle emission standards, clean  
22 alternative fuels, oxygenated fuels, reformulated fuels, vehicle  
23 miles of travel, transportation control measures and other  
24 transportation control strategies. Such rules and regulations  
25 shall be developed in consultation with the Department of  
26 Transportation.

27 (8) Adopt rules and regulations to implement the  
28 requirements imposed on the Commonwealth by the Clean Air Act,  
29 provided that the regulations shall be fully consistent with the  
30 Clean Air Act and equivalent to regulations promulgated by EPA

1 including such operational flexibility as is authorized by the  
2 Clean Air Act.

3       Section 6. Environmental Hearing Board.--The hearing board  
4 shall have the power and its duty shall be to hear and determine  
5 all appeals from orders issued by and appealable actions of the  
6 department as defined in the act of July 13, 1988 (P.L.530,  
7 No.94), known as the "Environmental Hearing Board Act," in  
8 accordance with the provisions of this act. Any and all action  
9 taken by the hearing board with reference to any such appeal  
10 shall be in the form of an adjudication, and all such action  
11 shall be subject to the provisions of [the act of June 4, 1945  
12 (P.L.1388), known as the "Administrative Agency Law."] 2 Pa.C.S.  
13 (relating to administrative law and procedure).

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

17       Section 6.1. Plan Approvals and Permits.--(a) [On or after  
18 July 1, 1972, no] No person shall construct, assemble, install  
19 or modify any stationary air contamination source, or install  
20 thereon any air pollution control equipment or device or  
21 reactivate any air contamination source after said source has  
22 been out of operation or production for a period of [one year or  
23 more] two years or more unless such person has applied to and  
24 received [from the department] written plan approval [so to do]  
25 from the department to do so: Provided, however, That no such  
26 written approval shall be necessary with respect to normal  
27 routine maintenance operations, nor to any such source,  
28 equipment or device used solely for the supplying of heat or hot  
29 water to one structure intended as a one-family or two-family  
30 dwelling, [or with respect to any other class of units as the

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

10 (b) (1) No person shall operate any stationary air  
11 contamination source [which is subject to the provisions of  
12 subsection (a) of this section], INCLUDING ANY STATIONARY AIR <—  
13 CONTAMINATION SOURCE required by Title V of the Clean Air Act to  
14 have a permit after the dates specified in Title V, unless the  
15 department shall have issued to such person a permit to operate  
16 such source under the provisions of this section in response to  
17 a written application for a permit submitted on forms and  
18 containing such information as the department may prescribe. The  
19 department shall provide public notice and the right to comment  
20 on all permits prior to issuance or denial and may hold public  
21 hearings concerning any permit. Upon request of an applicant,  
22 the department may include all air contamination sources at a  
23 facility in one facility permit.

24 (2) [No] A permit shall be issued after the effective date  
25 of this act to any applicant [unless it appears that, with  
26 respect to the source,] for a stationary air contamination  
27 source requiring construction, assembly, installation,  
28 modification or reactivation, where the requirements of  
29 subsection (a) of this section have been met and [that] there  
30 has been performed upon such source a test operation or

1 evaluation which shall satisfy the department that the air  
2 contamination source will not discharge into the outdoor  
3 atmosphere any air contaminants at a rate in excess of that  
4 permitted by applicable regulation of the board, or in violation  
5 of a performance or emission standard or other requirement  
6 established by the Environmental Protection Agency or the  
7 department for such source, and which will not cause air  
8 pollution.

9 (3) A stationary air contamination source operating lawfully  
10 without a permit for which fees required by section 6.3 of this  
11 act or the regulations promulgated under this act have been paid  
12 is authorized to continue to operate without a permit until one  
13 hundred twenty (120) days after the department provides notice  
14 to the source that a permit is required or until November 1,  
15 1995, whichever occurs first. If the applicant submits a  
16 complete permit application within the time frames in this  
17 subsection, and the department fails to issue a permit through  
18 no fault of the applicant, the source may continue to operate if  
19 the fees required by section 6.3 of this act or the regulations  
20 promulgated under this act have been paid and the source is  
21 operated in conformance with this act, the Clean Air Act and  
22 final regulations promulgated under both this act and the Clean  
23 Air Act. For a performance or emission standard or other  
24 requirement established by the Environmental Protection Agency  
25 or the department for the source subsequent to the effective  
26 date of this section but prior to the permit issuance date, the  
27 permit may contain a compliance schedule authorizing the source  
28 to operate out of compliance and requiring the source to achieve  
29 compliance.

30 (4) For repermitting of a stationary air contamination

1 source which is operating under a valid permit on the effective  
2 date of this section or which has received a permit under the  
3 provisions of clauses (2) and (3) of this subsection and which  
4 is required to meet performance or emission standards or other  
5 requirements established subsequent to the issuance of the  
6 existing permit, the new permit may contain a compliance  
7 schedule authorizing the source to operate out of compliance and  
8 requiring the source to achieve compliance as soon as possible  
9 but no later than the time required by this act, the Clean Air  
10 Act or the regulations promulgated under either this act or the  
11 Clean Air Act.

12     (b.1) [Permits] A permit or plan approval issued hereunder  
13 may contain such terms and conditions as the department deems  
14 necessary to assure the proper operation of the source in  
15 compliance with applicable provisions of this act and final  
16 regulations promulgated under this act. [Each permittee, on or  
17 before the anniversary date set forth in his permit, shall  
18 submit to the department an annual report containing such  
19 information as the department shall prescribe relative to the  
20 operation and maintenance of the installation under permit.

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

30     (d) The department may refuse to grant approval for any

1 stationary air contamination source subject to the provisions of  
2 subsection (a) of this section or to issue a permit to operate  
3 such source if it appears, from the data available to the  
4 department, that the proposed source, or proposed changes in  
5 such source, are likely either to cause air pollution or to  
6 violate any board rule or regulation applicable to such source,  
7 or if, in the design of such source, no provision is made for  
8 adequate facilities to conduct source testing. The department  
9 may also refuse to issue a permit to any person who has  
10 constructed, installed or modified any air contamination source,  
11 or installed any air pollution control equipment or device on  
12 such source contrary to the plans and specifications approved by  
13 the department.] Each permit issued under this act shall provide  
14 that compliance with the permit shall be considered compliance  
15 with other applicable provisions of this act or regulations  
16 promulgated under this act, as provided in section 504(f) of the  
17 Clean Air Act. Each permittee, on a schedule established by the  
18 department, shall submit reports to the department containing  
19 such information as the department may prescribe relative to the  
20 operation and maintenance of the source.

21 (b.2) A permit issued or reissued under subsection (b) of  
22 this section shall be for a fixed term of five (5) years. A  
23 permit may be terminated, modified, suspended or revoked and  
24 reissued for cause. The terms and conditions of an expired  
25 permit are automatically continued pending the issuance of a new  
26 permit where the permittee has submitted a timely and complete  
27 application for a new permit and paid the fees required by  
28 section 6.3 of this act or the regulations promulgated under  
29 this act and the department is unable, through no fault of the  
30 permittee, to issue or deny a new permit before the expiration

1 date of the previous permit. For the purposes of this section,  
2 the department shall inform a plan approval or permit applicant  
3 within thirty (30) days of filing of the application whether the  
4 application is complete. Upon failure to notify the applicant,  
5 the application shall be considered complete. Upon determination  
6 that a plan approval or permit application is complete, the  
7 department shall have up to one hundred twenty (120) days to  
8 take action on the application. Failure to take action by the  
9 deadline shall mean the application is deemed approved. Failure  
10 of the department to issue or deny a new permit prior to the  
11 expiration date of the previous permit shall be an appealable  
12 action as described in section 10.2 of this act.

13 (c) A plan approval or permit issued under this act may be  
14 terminated, modified, suspended or revoked and reissued if the  
15 permittee constructs or operates the source subject to the plan  
16 approval or permit in such a manner as to be in violation of  
17 this act, the Clean Air Act, the regulations promulgated under  
18 either this act or the Clean Air Act, a plan approval or permit  
19 or in such a manner as to cause air pollution, if the permittee  
20 fails to properly or adequately maintain or repair any air  
21 pollution control device or equipment attached to or otherwise  
22 made a part of the source or if the EPA determines that the  
23 permit is not in compliance with the requirements of the Clean  
24 Air Act or the regulations promulgated under the Clean Air Act.

25 (d) The department may refuse to grant plan approval for any  
26 stationary air contamination source subject to the provisions of  
27 subsection (a) of this section or to issue a permit to any  
28 source that the department determines is likely to cause air  
29 pollution or to violate this act, the Clean Air Act or the  
30 regulations promulgated under either this act or the Clean Air

1 Act applicable to such source, or if, in the design of such  
2 source, no provision is made for adequate facilities to conduct  
3 source testing. The department may also refuse to issue a permit  
4 or may for cause terminate or revoke and reissue any permit to  
5 any person if the Environmental Protection Agency determines  
6 that the permit is not in compliance with the requirements of  
7 the Clean Air Act or the regulations promulgated under the Clean  
8 Air Act or if the applicant has constructed, installed, modified  
9 or operated any air contamination source or installed any air  
10 pollution control equipment or device on such source contrary to  
11 the plans and specifications approved by the department.

12 (e) Whenever the department shall refuse to grant an  
13 approval or to issue or reissue a permit hereunder or terminate,  
14 modify, suspend or revoke a plan approval or permit already  
15 issued, such action shall be in the form of a written notice to  
16 the person affected thereby informing him of the action taken by  
17 the department and setting forth, in such notice, a full and  
18 complete statement of the reasons for such action. Such notice  
19 shall be served upon the person affected, either personally or  
20 by certified mail, and the action set forth in the notice shall  
21 be final and not subject to review unless, within thirty (30)  
22 days of the service of such notice, any person affected thereby  
23 shall appeal to the hearing board, setting forth with  
24 particularity the grounds relied upon. The hearing board shall  
25 hear the appeal pursuant to the provisions of the rules and  
26 regulations relating to practice and procedure before the  
27 hearing board, and thereafter, shall issue an adjudication  
28 affirming, modifying or overruling the action of the department.

29 [(f) The board may, by rule, require the payment of a  
30 reasonable fee, not to exceed two hundred dollars (\$200.00), for



1 the processing of any application for plan approval or for an  
2 operating permit under the provisions of this section.]

3 (g) The department shall, by regulation, establish a general  
4 plan approval and a general permit program. After the program is  
5 established, the department may grant general plan approval or a  
6 general permit for any category of stationary air contamination  
7 source if the department determines that the sources in the  
8 category are similar in nature, and can be adequately regulated  
9 using standardized specifications and conditions. An applicant  
10 proposing to use a general plan approval or general permit shall  
11 notify the department and receive written approval prior to the  
12 proposed use. The department shall have up to thirty (30) days  
13 to take action on a notification. Failure to take action by the  
14 deadline shall mean the general plan approval or general permit  
15 is deemed approved.

16 (h) The department may, by regulation, establish a plan  
17 approval and permit program for stationary sources operated at  
18 multiple temporary locations. After the program is established,  
19 the department may grant a plan approval or issue a single  
20 permit to a stationary air contamination source that may be  
21 operated at multiple temporary locations. Such approval or  
22 permit shall require the owner or operator to notify the  
23 department and municipality where the operation shall take place  
24 ten (10) days in advance of each change in location and may  
25 require a separate permit fee for operations at each location.  
26 The department shall take action on a request within ten (10)  
27 days or the request is deemed approved.

28 (i) The department shall establish comprehensive plan  
29 approval and operating permit programs which, at a minimum, meet  
30 the requirements of the Clean Air Act, while minimizing costs

1 and fees and providing all such operational flexibility as  
2 authorized by the Clean Air Act.

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

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

15 \* \* \*

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

17 Section 6.3. Fees.--(a) The board is authorized to  
18 establish annual air emission fees for air contaminant sources  
19 within this Commonwealth. The fees shall be sufficient to cover  
20 the indirect and direct costs of administering the air pollution  
21 control plan approval and permitting program required by Title V  
22 of the Clean Air Act and the indirect and direct costs of  
23 administering the Small Business Stationary Source Technical and  
24 Environmental Compliance Assistance Program, Compliance Advisory  
25 Committee and Office of Small Business Ombudsman, subject to the  
26 criteria in subsection (f) of this section.

27 (b) The board shall establish, by regulation, annual interim  
28 air emission fees covering emissions of sulfur dioxide, nitrogen  
29 oxides, particulate matter of ten (10) microns or less and  
30 volatile organic compounds. In determining the amount each

1 facility is to pay, the facility is not required to include any  
2 amount of a contaminant listed in this section emitted by the  
3 facility in quantities less than one hundred (100) tons per year  
4 or greater than four thousand (4,000) tons per year. The revenue  
5 generated by the interim emission fee proposal shall equal no  
6 more than fifty per centum of the estimated cost of implementing  
7 the Title V program. The fees shall be based on a funding plan  
8 submitted by the department under subsection (f) of this section  
9 and shall be due on emissions occurring in the calendar year  
10 immediately preceding the effective date of regulations  
11 establishing the emission fees. In no case shall the interim fee  
12 be more than seventeen dollars (\$17.00) per ton of pollutant  
13 emitted.

14 (c) The board shall establish, by regulation, annual air  
15 emission fees as required for regulated pollutants by section  
16 502(b) of the Clean Air Act for sources emitting less than four  
17 thousand (4,000) tons of regulated pollutants per year. In no  
18 case shall the fees be more than twenty-five dollars (\$25.00)  
19 per ton of regulated pollutant emitted. The fee amounts shall be  
20 based on the funding plan submitted by the department under  
21 subsection (f) of this section and shall be due on emissions  
22 occurring in calendar year 1995 and thereafter.

23 (d) The board shall establish emission fees which consider  
24 the size of the air contamination source, the resources  
25 necessary to process the application for plan approval or an  
26 operating permit, the complexity of the plan approval or  
27 operating permit, the quantity and type of emissions from the  
28 sources, the amount of fees charged in neighboring states, the  
29 importance of not placing existing or prospective sources in  
30 this Commonwealth at a competitive disadvantage and other

1 relevant factors.

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

5 (1) Five hundred dollars (\$500.00) for the processing of an  
6 application for plan approval.

7 (2) Five hundred dollars (\$500.00) for the processing of an  
8 application for an operating permit.

9 (f) Within thirty (30) days of the effective date of this  
10 section the department shall submit a budget to the  
11 Appropriation Committee of the Senate and the Appropriation  
12 Committee of the House of Representatives and to the  
13 Environmental Resources and Energy Committee of the Senate and  
14 the Conservation Committee of the House of Representatives  
15 outlining the need for funding to implement the permitting  
16 provisions of Title V of the Clean Air Act for ten (10) years  
17 after the effective date of this section. The plan shall  
18 include:

19 (1) Estimates of the number of field staff needed, including  
20 their classifications, location by region and estimated workload  
21 and cost.

22 (2) Estimates of the cost of reviewing plan approvals and  
23 operating permits under the requirements of the Clean Air Act,  
24 including an estimate of the number and types of sources which  
25 will be required to have plan approvals and permits.

26 (3) Estimates of the cost of developing and operating the  
27 Small Business Stationary Source Technical and Environmental  
28 Compliance Assistance Program established under this act,  
29 including the Compliance Advisory Committee and Office of Small  
30 Business Ombudsman.

1     (4) Estimates of the amount of Federal funds available to  
2 offset the cost of implementing the Clean Air Act and a  
3 description of the efforts made by the department to secure  
4 those funds.

5     (5) Estimates of funds which may be available from private  
6 or other sources to conduct special projects needed to implement  
7 the Clean Air Act.

8     (6) A comparison of how other states with similar numbers of  
9 air contamination sources are funding the plan approval and  
10 operating permit program required by the Clean Air Act.

11     (7) An evaluation of potential opportunities for contracting  
12 with consultants to undertake program development, permit review  
13 and other tasks required by the Clean Air Act in order to speed  
14 their completion. This evaluation shall be conducted in  
15 consultation with the Pennsylvania Society of Professional  
16 Engineers.

17     (8) The department shall also make the following  
18 recommendations:

19     (i) An interim fee proposal to cover the expected expenses  
20 resulting from the review of plan approvals and operating  
21 permits and the development and operation of the Small Business  
22 Stationary Source Technical and Environmental Compliance  
23 Assistance Program, Compliance Advisory Committee and Office of  
24 Small Business Ombudsman, prior to the imposition of air  
25 emission fees required by Title V of the Clean Air Act, as  
26 required by subsection (b) of this section.

27     (ii) A fee proposal covering stationary sources as required  
28 by subsection (c) of this section.

29     (9) The board shall annually audit the air pollution control  
30 program to assure compliance with the funding plan.

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

9     (h) An air contamination source that fails to pay the fees  
10 within the time frame established by regulation shall pay a  
11 penalty of fifty per centum of the fee amount, plus interest on  
12 the fee amount computed in accordance with section 6621(a)(2) of  
13 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
14 § 1 et seq.) from the date the fee was required to be paid. In  
15 addition, such source may have its permit terminated or  
16 suspended. The fee, penalty and interest may be collected  
17 following the process for assessment and collection of a civil  
18 penalty contained in section 9.1 of the act.

19     (i) Any fees, penalties and interest owed the Commonwealth  
20 for delinquent payment collected under this section shall be  
21 deposited in a special account in the Clean Air Fund and shall  
22 be utilized to cover a portion of the reasonable direct and  
23 indirect costs of the plan approval and permit programs required  
24 by Title V of the Clean Air Act and a portion of the reasonable  
25 direct and indirect costs of administering the Small Business  
26 Stationary Source Technical and Environmental Compliance  
27 Assistance Program, Compliance Advisory Committee and Office of  
28 Small Business Ombudsman. The fee established under subsection  
29 (a) of this section to cover the cost of the permitting program  
30 under Title V of the Clean Air Act shall generate sufficient

funds to cover all reasonable direct and indirect costs required to develop and administer the Title V operating permit program and all reasonable direct and indirect costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman and shall only be expended for these purposes.

(j) The fees under this section 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 clause:

(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.

Section 6.4. Fee for Certain Ozone Areas.--(a) If an area identified in a State Implementation Plan or any revision as a severe or extreme ozone nonattainment area has failed to meet the national primary ambient air quality standard for ozone by the applicable attainment date, each major source of volatile organic compounds (VOCs), as defined in the Clean Air Act and the regulations promulgated under the Clean Air Act, located in the area shall, except with respect to emissions during any year treated as an extension year under section 181(a)(5) of the Clean Air Act, pay a fee to the department as a penalty for such

failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. This fee shall be assessed and collected following the process for collection and assessment of a civil penalty contained in section 9.1 of the act.

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

(2) (i) For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the administrator may provide, as the lower of the amount of actual VOC emissions (referred to as actuals) or VOC emissions allowed under the permit applicable to the source or, if no 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 in 1991 in accordance with



1 section 6.3(j).

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

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

10 (c) The owner or operator or the designated representative  
11 of each source affected under section 405 of the Clean Air Act  
12 shall submit a permit application and compliance plan for the  
13 affected source to the department no later than January 1, 1996.  
14 In the case of affected sources for which application and plans  
15 are timely received, the permit application and the compliance  
16 plan, including amendments, shall be binding on the owner or  
17 operator or the designated representative of the owners or  
18 operators and shall be enforceable as a permit for purposes of  
19 this section until a permit is issued by the department. A  
20 permit issued by the department shall require the source to  
21 achieve compliance as soon as possible but no later than the  
22 date required by this act, the Clean Air Act or the regulations  
23 promulgated under either this act or the Clean Air Act for the  
24 source.

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

1 by the administrator.

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

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

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

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

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

12 Section 6.6. Hazardous Air Pollutants.--(a) The Work  
13 Practice Standards of section 112(h) of the Clean Air Act and  
14 the regulations establishing performance or emission standards  
15 promulgated under section 112 of the Clean Air Act are  
16 incorporated by reference into the department's permitting  
17 program. After the effective date of the performance or emission  
18 standard, new, reconstructed, modified and existing sources  
19 shall comply with the performance or emission standards pursuant  
20 to the compliance schedule established under section 112 of the  
21 Clean Air Act and the regulations promulgated under the Clean  
22 Air Act.

23 (b) In the event the administrator has not promulgated a  
24 standard to control the emissions of hazardous air pollutants  
25 for a category or subcategory of major sources under section 112  
26 of the Clean Air Act by the dates established pursuant thereto,  
27 the department in issuing any permit under Title V of the Clean  
28 Air Act shall have the authority to establish a performance or  
29 emission standard on a case-by-case basis for individual major  
30 sources or a category of major sources. A person challenging the

1 performance or emission standards established by the department  
2 shall have the burden to demonstrate by the preponderance of the  
3 evidence that the performance or emission standard does not meet  
4 the requirements of section 112 of the Clean Air Act. The  
5 department shall incorporate the standard to control the  
6 emissions of hazardous air pollutants into the Title V operating  
7 permit of any major source within the category or subcategory  
8 and shall require compliance with the schedule established by  
9 section 112 of the Clean Air Act. The performance or emission  
10 standard established on a case-by-case basis by the department  
11 shall be equivalent to the limitation that would apply to the  
12 source if a performance or emission standard had been  
13 promulgated in a timely manner by the administrator under  
14 section 112 of the Clean Air Act.

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

20 Section 7.1. Compliance Review.--(a) The department shall  
21 not issue, reissue or modify any plan approval or permit  
22 pursuant to this act or amend any plan approval or permit issued  
23 under this act and may suspend, terminate or revoke any permit  
24 or plan approval previously issued under this act if it finds  
25 that the applicant or permittee or a partner, parent or  
26 subsidiary cooperation of the applicant or permittee is in  
27 violation of this act, or the rules and regulations promulgated  
28 under this act, any plan approval, permit or order of the  
29 department, as indicated by the department's compliance docket,  
30 unless the violation is being corrected to the satisfaction of

1 the department.

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

11 Section 7.2. Permit Compliance Schedules.--In addition to  
12 the other enforcement provisions of this act, the department may  
13 issue a permit under section 6.1(b)(3) and (4) of this act to a  
14 source that is out of compliance with this act, the Clean Air  
15 Act or the regulations promulgated under either this act or the  
16 Clean Air Act. A permit must contain an enforceable schedule  
17 requiring the source to attain compliance. The compliance  
18 schedule may contain interim milestone dates for completing any  
19 phase of the required work, as well as a final compliance date.  
20 If the permittee fails to achieve compliance by the final  
21 compliance date, the permit shall terminate. The permit shall be  
22 part of an overall resolution of the outstanding noncompliance  
23 and shall include the payment of an appropriate civil penalty  
24 for past violations and shall contain such other terms and  
25 conditions as the department deems appropriate. A permit may  
26 incorporate by reference a compliance schedule contained within  
27 a consent order and agreement, including all provisions related  
28 to implementation or enforcement of the compliance schedule or  
29 consent order and agreement.

30 Section 7.3. Responsibilities of Owners and Operators.--(a)

1 Whenever the department finds that air pollution or danger of  
2 air pollution is or may be resulting from an air contamination  
3 source in the Commonwealth, the department may order the owner,  
4 operator, landowner or occupier to take action in a manner  
5 satisfactory to the department to bring the source into  
6 compliance.

7 (b) The department may order the owner, operator, landowner  
8 or occupier to allow access to the land by the department or a  
9 third party to take such action.

10 (c) The department may recover its costs where it directly  
11 or through third parties as authorized under subsection (b) of  
12 this section took actions to bring a source into compliance. The  
13 department may collect the amount in the same manner as civil  
14 penalties are assessed and collected following the process for  
15 assessment and collection of a civil penalty contained in  
16 section 9.1 of the act.

17 Section 7.4. Interstate Transport Commissions.--(a) A  
18 person appointed by the Governor or appointed to serve as his  
19 designee on any interstate transport commission formed under  
20 section 176(A) or 184 of the Clean Air Act shall be confirmed by  
21 the Senate.

22 (b) A person representing the Commonwealth on any interstate  
23 transport commission formed under the Clean Air Act shall not  
24 commit the Commonwealth to proposing or adopting any pollution  
25 control measure unless the suggested control measure has been  
26 subject to public review, such as under section 184(c) of the  
27 Clean Air Act, or is part of an approved plan or State  
28 Implementation Plan submitted to the Environmental Protection  
29 Agency by the Commonwealth.

30 Section 7.5. Public Review of Plans.--(a) A plan, program

or State Implementation Plan revision 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 board shall authorize a comment period of no less than sixty (60) days and may, at its discretion, hold public informational meetings or public hearings as part of the comment period.

(b) Notice of the proposed plan, program or State Implementation Plan revision or submission shall be published in the Pennsylvania Bulletin and at least six (6) newspapers of general circulation throughout the Commonwealth.

(c) A plan or revision subject to this section shall include the following provisions:

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

(2) An analysis of the alternative control strategies considered 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 of any plan or State Implementation Plan revision required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures, the

1 department shall submit a final plan or revision to the board  
2 for its review together with a document which responds to all  
3 comments made during the public comment period. No plan, program  
4 or State Implementation Plan revision committing the  
5 Commonwealth to adopt air pollution control measures or  
6 procedures may be submitted to the Environmental Protection  
7 Agency without the approval of the board.

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

12 Section 7.6. Advice to Department.--(a) The department  
13 shall consult with the Citizens Advisory Council established  
14 under section 448 of the act of April 9, 1929 (P.L.177, No.175),  
15 known as "The Administrative Code of 1929," as appropriate in  
16 the development and consideration of plans, guidance and  
17 regulations needed for the implementation of the Clean Air Act.  
18 Nothing in this section shall limit the council's ability to  
19 consider, study and review department policies and other  
20 activities related to Clean Air Act implementation as provided  
21 under section 1922-A of "The Administrative Code of 1929."

22 (b) (1) A Clean Air Technical Advisory Committee shall be  
23 appointed by the Secretary of Environmental Resources within  
24 thirty (30) days after the effective date of this act. The  
25 committee shall consist of eleven (11) members with technical  
26 backgrounds in the control of air pollution from stationary or  
27 mobile sources. The members shall serve for terms fixed by the  
28 Secretary of Environmental Resources. The Secretary of  
29 Environmental Resources, the Secretary of Transportation and the  
30 chairman of the Pennsylvania Public Utility Commission, or their

1 designees, shall serve as ex-officio members of the committee.

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

7 (3) The committee shall meet at the call of the Secretary of  
8 Environmental Resources, but not less than semi-annually, to  
9 carry out its duties. The committee shall select a chairman and  
10 such other officers as it deems appropriate.

11 (c) Members of the Citizens Advisory Council and the Clean  
12 Air Technical Advisory Committee shall serve without  
13 compensation other than reimbursement for reasonable and  
14 necessary expenses in accordance with Commonwealth policy.

15 (d) All actions by the Citizens Advisory Council and the  
16 Clean Air Technical Advisory Committee to provide advice under  
17 this section shall be by majority of those present. A quorum  
18 shall consist of a majority of the appointed members.

19 Section 7.7. Economic Impact Report.--(a) For each proposed  
20 rulemaking, final-form rulemaking, plan, State Implementation  
21 Plan revision or program submitted by the department or other  
22 agency to the board under this act and the Clean Air Act, the  
23 Department of Commerce shall prepare a report which contains a  
24 detailed analysis of the economic impact of such rulemaking,  
25 plan, revision or program.

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

27 (1) An analysis of the economic impact of the selected  
28 control strategies on the regulated community, local governments  
29 and consumers.

30 (2) Consideration of testimony received by the board during



1 the public comment period and information received under  
2 subsections (c) and (d) of this section relating to compliance  
3 costs.

4 (3) Economic data on comparable regulatory programs or plans  
5 administered by other states.

6 (4) An analysis of the economic impact of alternative  
7 control strategies.

8 (5) All other information the Department of Commerce  
9 considers necessary for the board's review.

10 (c) In preparing the report, the Department of Commerce  
11 shall consult with the Office of Small Business Ombudsman  
12 established by section 7.10 of this act. The Office of Small  
13 Business Ombudsman shall be given a reasonable opportunity to  
14 review the report prior to its submission to the board and to  
15 submit written comments, provide additional information on  
16 compliance costs, and offer recommendations on the rulemaking,  
17 plan, revision or program. Such comments and recommendations  
18 shall be included as appendices to the report.

19 (d) The Department of Commerce is authorized to hold such  
20 hearings and meetings, conduct such research, and solicit such  
21 comments as are considered necessary to prepare the report.

22 (e) The Department of Commerce shall submit the report to  
23 the board upon consideration of the proposed rulemaking, final-  
24 form rulemaking, plan, State Implementation Plan revision, or  
25 program. The department shall not submit a proposed rulemaking,  
26 final-form rulemaking, plan, State Implementation Plan revision,  
27 or program to the board under this act and the Clean Air Act  
28 unless it is accompanied by the report required by this section.

29 Section 7.8. Small Business Compliance Assistance Program.--

30 (a) The department shall develop and implement a Small Business

1 Stationary Source Technical and Environmental Compliance

2 Assistance Program which shall include the following:

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

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

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

18 (4) Adequate mechanisms to assure that small business  
19 stationary sources receive notice of their rights under this act  
20 and the Clean Air Act in such manner and form as to assure  
21 reasonably adequate time for such sources to evaluate compliance  
22 methods and any relevant or applicable proposed or final  
23 rulemaking plan, state implementation plan revision, or program  
24 issued under this act and the Clean Air Act.

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

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

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

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

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

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

22     (i) Development of small business stationary source guidance  
23 manuals indicating the categories of small businesses subject to  
24 the requirements of this act and the Clean Air Act, specific  
25 compliance requirements and options, a schedule of compliance  
26 deadlines and other pertinent information.

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

30     (9) Procedures for assuring the confidentiality of

1 information received from small business stationary sources.

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

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

12 (c) The department shall consult with the Compliance  
13 Advisory Committee established in section 7.9 and the Office of  
14 Small Business Ombudsman established in section 7.10 in  
15 developing the Small Business Stationary Source Technical and  
16 Environmental Compliance Assistance Program.

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

21 (e) The department is authorized to expend funds from the  
22 Clean Air Fund to support the development and implementation of  
23 the Small Business Stationary Source Technical and Environmental  
24 Compliance Assistance Program, Office of Small Business  
25 Ombudsman and Compliance Advisory Committee.

26 (f) Upon petition by a source, the department may, after  
27 notice and opportunity for public comment, include as a small  
28 business stationary source for purposes of this act any  
29 stationary source which does not meet the definition of "small  
30 business stationary source" in section 3 of this act but which

1 does not emit more than one hundred (100) tons per year of all  
2 regulated pollutants.

3 (g) The department, in consultation with the administrator  
4 and the Administrator of the Small Business Administration, and  
5 after providing notice and opportunity for public hearing, may  
6 exclude from the definition of "small business stationary  
7 source" in section 3 of this act any category or subcategory of  
8 sources that the department determines to have sufficient  
9 technical and financial capabilities to meet the requirements of  
10 this act and the Clean Air Act without the application of this  
11 section.

12 (h) The department may reduce any fee required under this  
13 act and the Clean Air Act to take into account the financial  
14 resources of small business stationary sources.

15 Section 7.9. Compliance Advisory Committee.--(a) There is  
16 hereby established a Compliance Advisory Committee which shall  
17 perform all of the following:

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

21 (2) Render advisory opinions concerning the effectiveness of  
22 the Small Business Stationary Source Technical and Environmental  
23 Compliance Assistance Program, difficulties encountered and  
24 degree and severity of enforcement.

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

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

30 (5) Have the Small Business Stationary Source Technical and

1 Environmental Compliance Assistance Program serve as the  
2 secretariat for the development and dissemination of such  
3 reports and advisory opinions.

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

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

10 (b) The committee shall consist of eleven (11) members as  
11 follows:

12 (1) Four (4) members appointed by the Governor, three (3) of  
13 whom shall not be owners or representatives of owners of small  
14 business stationary sources.

15 (2) Four (4) members, each of whom shall be an owner or the  
16 representative of an owner of a small business stationary  
17 source. Of these four (4) members, one shall be appointed by  
18 each of the following:

19 (i) The Majority Leader of the Senate.

20 (ii) The Minority Leader of the Senate.

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

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

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

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

26 (5) The Executive Director of the Office of Small Business  
27 Ombudsman or his designee.

28 (c) The terms of appointed members shall be for four (4)  
29 years. Vacancies shall be filled by the original appointing  
30 member for the remainder of the unexpired term. Initial terms of

1 appointed members shall be as follows:

2 (1) Of the members appointed by the Governor under  
3 subsection (c)(1):

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

5 (ii) Two (2) members shall be appointed for four (4) years.

6 (2) Of the members appointed under subsection (c)(2):

7 (i) The Majority Leader of the Senate shall appoint one  
8 member for four (4) years.

9 (ii) The Minority Leader of the Senate shall appoint one  
10 member for two (2) years.

11 (iii) The Majority Leader of the House of Representatives  
12 shall appoint one member for three (3) years.

13 (iv) The Minority Leader of the House of Representatives  
14 shall appoint one member for one (1) year.

15 (d) The department shall consult with the advisory committee  
16 in the formulation, drafting and presentation of all  
17 rulemakings, plans, plan revisions and programs under this act  
18 and the Clean Air Act which affect small business stationary  
19 sources. The advisory committee shall be given a reasonable  
20 opportunity to review and comment on all rulemakings, plans,  
21 plan revisions and programs under this act and the Clean Air Act  
22 which affect small business stationary sources prior to their  
23 submission to the board for consideration. The written report of  
24 the committee shall be presented to the board with any  
25 submission. The chairman of the committee shall be invited to  
26 participate in the presentation before the board of all  
27 rulemakings, plans, plan revisions and programs under this act  
28 and the Clean Air Act which affect small business stationary  
29 sources. Nothing in this act shall preclude any member of the  
30 committee from filing a petition for rulemaking with the board

1 in accordance with procedures established by the board.

2 Section 7.10. Small Business Ombudsman.--(a) There is  
3 hereby established an Office of Small Business Ombudsman within  
4 the Department of Commerce for the purpose of serving as the  
5 primary point of contact for small businesses on issues relating  
6 to compliance with this act and the Clean Air Act.

7 (b) The Office of Small Business Ombudsman shall perform all  
8 of the following:

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

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

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

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

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

26 (6) Review and comment on economic impact reports under  
27 section 7.7 of this act.

28 (7) Serve on the Compliance Advisory Committee established  
29 by section 7.9 of this act.

30 (8) Conduct independent evaluations of all aspects of the



Small Business Stationary Source Technical and Environmental  
Compliance Assistance Program.

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

(10) 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 lay person.

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

(12) 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 this Commonwealth.

(c) The Office of Small Business Ombudsman shall have an  
executive director, who shall possess a background in small  
business and knowledge of environmental compliance issues  
affecting the operation of small businesses. The executive  
director shall have the power to employ such staff as is  
considered necessary to carry out the work of the office.

Section 7.11. Transportation Management Associations.--(a)  
The department, in consultation with the Department of  
Transportation, may designate transportation management  
associations to serve specific regions of this Commonwealth to  
deliver services to employers required by the Clean Air Act to  
reduce employe vehicle trips and encourage the use of

1 carpooling, vanpooling and public transportation to reduce air  
2 pollution.

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

11 (c) The department is authorized to expend funds from the  
12 Clean Air Fund to support the activities of local transportation  
13 management associations.

14 Section 7.12. Notice of Sanctions.--(a) Whenever the  
15 Commonwealth is notified that it has missed a deadline for  
16 taking an action for which it was responsible under the Clean  
17 Air Act, the department shall within two (2) working days of the  
18 receipt of notice notify the Environmental Resources and Energy  
19 Committee of the Senate and the Conservation Committee of the  
20 House of Representatives.

21 (b) Whenever the Commonwealth is notified that it may be  
22 subject to discretionary or mandatory sanctions under section  
23 179 of the Clean Air Act, the department shall within two (2)  
24 working days of the receipt of this notice notify the  
25 Environmental Resources and Energy Committee of the Senate and  
26 the Conservation Committee of the House of Representatives.

27 Section 7.13. Missed Federal Deadlines.--(a) The department  
28 shall maintain a report which tracks the compliance of the  
29 Environmental Protection Agency with deadlines in the Clean Air  
30 Act for developing regulations or guidance on which states must

1 rely to comply with deadlines in the Clean Air Act. The  
2 department shall submit the report to the Environmental  
3 Resources and Energy Committee of the Senate and the  
4 Conservation Committee of the House of Representatives every six  
5 (6) months beginning thirty (30) days after the effective date  
6 of this act.

7 (b) Whenever the Environmental Protection Agency has missed  
8 a deadline outlined in subsection (a) by more than ninety (90)  
9 days and, in the opinion of the department, the Environmental  
10 Protection Agency has failed to provide it with timely guidance  
11 needed to comply with the act in a timely manner, the department  
12 shall bring a legal action against the Environmental Protection  
13 Agency in a court of competent jurisdiction seeking an  
14 injunction to restrain the Environmental Protection Agency from  
15 enforcing the applicable Clean Air Act deadline on the  
16 Commonwealth until and unless the Environmental Protection  
17 Agency develops the appropriate regulation or guidance which  
18 allows the Commonwealth a reasonable opportunity to comply with  
19 the Clean Air Act.

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

23 Section 8. Unlawful Conduct.--It shall be unlawful to fail  
24 to comply with [any rule or regulation of the board], or to  
25 cause or assist in the violation of, any of the provisions of  
26 this act, the Clean Air Act or the rules and regulations adopted  
27 under either this act or the Clean Air Act; or to fail to comply  
28 with any order, plan approval or operating permit of the  
29 department[, to violate or to assist in the violation of any of  
30 the provisions of this act or rules and regulations adopted

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

18 [Section 9. Penalties.--(a) Summary offense. Any person as  
19 herein defined, except a department, board, bureau or agency of  
20 the Commonwealth, engaging in unlawful conduct as set forth in  
21 section 8 of this act, shall, for each offense, upon conviction  
22 thereof in a summary proceeding before a district justice,  
23 magistrate, alderman or justice of the peace, be sentenced to  
24 pay the costs of prosecution and a fine of not less than one  
25 hundred dollars (\$100.00) nor more than one thousand dollars  
26 (\$1,000.00), and, in default thereof, to undergo imprisonment of  
27 not less than ten (10) days nor more than thirty (30) days.

28 (b) Misdemeanors. Any person as herein defined, except a  
29 department, board, bureau or agency of the Commonwealth, who,  
30 within two years after being convicted of a summary offense

1 pursuant to subsection (a) of this section, engages in similar  
2 unlawful conduct, shall be guilty of a misdemeanor and, upon  
3 conviction thereof, shall, for each separate offense, be subject  
4 to a fine of not less than five hundred dollars (\$500.00) nor  
5 more than five thousand dollars (\$5,000.00), or to imprisonment  
6 for a period of not more than one year for each separate offense  
7 hereunder, or both. For the purposes of this subsection, similar  
8 unlawful conduct shall mean a violation of the same order of the  
9 department, or a violation of the same provision of any rule or  
10 regulation of the department by the same organizational unit of  
11 the defendant.

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

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

23 Section 9.1. Civil Penalties.--In addition to proceeding  
24 under any other remedy available at law, or in equity, for a  
25 violation of a provision of this act, or a rule or regulation of  
26 the board, or an order of the department, the hearing board,  
27 after hearing, may assess a civil penalty upon a person for such  
28 violation. Such a penalty may be assessed whether or not the  
29 violation was wilful. The civil penalty so assessed shall not  
30 exceed ten thousand dollars (\$10,000.00), plus up to two

1 thousand five hundred dollars (\$2,500.00) for each day of  
2 continued violation. In determining the amount of the civil  
3 penalty, the hearing board shall consider the wilfulness of the  
4 violation, damage or injury to the outdoor atmosphere of the  
5 Commonwealth or its uses, and other relevant factors. It shall  
6 be payable to the Commonwealth of Pennsylvania and shall be  
7 collectible in any manner provided at law for the collection of  
8 debt. If any person liable to pay any such penalty neglects or  
9 refuses to pay the same after demand, the amount, together with  
10 interest and any costs that may accrue, shall be a lien in favor  
11 of the Commonwealth upon the property, both real and personal,  
12 of such person, but only after same has been entered and  
13 docketed of record by the prothonotary of the county where such  
14 is situated. The hearing board may, at any time, transmit to the  
15 prothonotaries of the respective counties certified copies of  
16 all such liens, and it shall be the duty of each prothonotary to  
17 enter and docket the same of record in his office, and to index  
18 the same as judgments are indexed, without requiring the payment  
19 of costs as a condition precedent to the entry thereof.]

20 Section 9. Penalties.--(a) A person who violates any  
21 provision of this act, the Clean Air Act, any rule or regulation  
22 adopted under either this act or the Clean Air Act, an order of  
23 the department or any condition or term of a plan approval or  
24 permit issued under this act commits a summary offense and  
25 shall, upon conviction, be sentenced to pay a fine of not less  
26 than five hundred dollars (\$500.00) nor more than five thousand  
27 dollars (\$5,000.00) for each separate offense, and, in default  
28 of the payment of such fine, may be sentenced to imprisonment  
29 for ninety (90) days for each separate offense. Employees of the  
30 department authorized to conduct inspections or investigations

1 are declared to be law enforcement officers authorized to issue  
2 or file citations for summary violations under this act, and the  
3 General Counsel is authorized to prosecute these offenses. For  
4 purposes of this subsection, a summary offense may be prosecuted  
5 before any district justice in the county where the offense  
6 occurred. There is no accelerated rehabilitative disposition  
7 authorized for a summary offense.

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

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

28 (3) A person who negligently releases into the ambient air  
29 any hazardous air pollutant listed under section 112 of the  
30 Clean Air Act or any extremely hazardous substance listed under

1 section 302(a)(2) of the Superfund Amendments and  
2 Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613)  
3 that is not listed in section 112 of the Clean Air Act and who  
4 at the time negligently places another person in imminent danger  
5 of death or serious bodily injury commits a misdemeanor of the  
6 third degree and shall, upon conviction, be sentenced to pay a  
7 fine of not less than ten thousand dollars (\$10,000.00) nor more  
8 than fifty thousand dollars (\$50,000.00) for each separate  
9 offense or to imprisonment for a period of not more than one (1)  
10 year for each separate offense, or both.

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



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

4       (i) the defendant is responsible only for actual awareness  
5 or actual belief possessed; and

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

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

16       (i) an occupation, a business or a profession; or

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

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

29       (5) For purposes of this subsection, the term "organization"  
30 means a legal entity, other than a government, established or

organized for any purpose; the term also includes a corporation, a company, an association, a firm, a partnership, a joint stock company, a foundation, an institution, a trust, a society, a union or any other association of persons.

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

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

(b) When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or if the person wishes to contest the amount of the penalty or the fact

1 of the violation to the extent not already established, the  
2 person shall forward the proposed amount of the penalty to the  
3 hearing board within the thirty (30) day period for placement in  
4 an escrow account with the State treasurer or any Commonwealth  
5 bank or post an appeal bond to the hearing board within thirty  
6 (30) days in the amount of the proposed penalty, provided that  
7 the bond is executed by a surety licensed to do business in the  
8 Commonwealth and is satisfactory to the department. If, through  
9 administrative or final judicial review of the proposed penalty,  
10 it is determined that no violation occurred or that the amount  
11 of the penalty shall be reduced, the hearing board shall, within  
12 thirty (30) days, remit the appropriate amount to the person  
13 with any interest accumulated by the escrow deposit. Failure to  
14 forward the money or the appeal bond at the time of the appeal  
15 shall result in a waiver of all legal rights to contest the  
16 violation or the amount of the civil penalty. The amount  
17 assessed after administrative hearing or after waiver of  
18 administrative hearing shall be payable to the Commonwealth and  
19 shall be collectible in any manner provided by law for the  
20 collection of debts, including the collection of interest at the  
21 rate established in section 6.3(c), which shall run from the  
22 date of assessment of the penalty. If any person liable to pay  
23 any such penalty neglects or refuses to pay the same after  
24 demand, the amount, together with interest and any costs that  
25 may accrue, shall constitute a debt of such person, as may be  
26 appropriate, to the Clean Air Fund. The debt shall constitute a  
27 lien on all property owned by that person when a notice of lien  
28 incorporating a description of the property of the person  
29 subject to the action is duly filed with the prothonotary of the  
30 court of common pleas where the property is located. The

1 prothonotary shall promptly enter upon the civil judgment or  
2 order docket, at no cost to the department, the name and address  
3 of the person, as may be appropriate, and the amount of the lien  
4 as set forth in the notice of lien. Upon entry by the  
5 prothonotary, the lien shall attach to the revenues and all real  
6 and personal property of the person, whether or not the person  
7 is solvent. The notice of lien, filed under this subsection,  
8 which affects the property of the person shall create a lien  
9 with priority over all subsequent claims or liens which are  
10 filed against the person, but it shall not affect any valid  
11 lien, right or interest in the property filed in accordance with  
12 established procedure prior to the filing of a notice of lien  
13 under this subsection.

14       Section 9.2. Disposition of Fees, Fines and Civil  
15 Penalties.--(a) All fines, civil penalties and fees collected  
16 under this act shall be paid into the Treasury of the  
17 Commonwealth in a special fund known as the ["Clean Air  
18 Fund,["] hereby established, which, along with interest earned,  
19 shall be administered by the department for use in the  
20 elimination of air pollution. Fees deposited into the fund shall  
21 be used as authorized in sections 6.3, 7.8 and 7.11 of this act.  
22 The department may establish such separate accounts as may be  
23 necessary or appropriate to implement the requirements of this  
24 act and the Clean Air Act. The board shall adopt rules and  
25 regulations for the management and use of the money in the fund.

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

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

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

2 Section 9.3. Continuing Violations.--Each day of continued  
3 violation and each violation of any provision of this act, the  
4 Clean Air Act, any rule or regulation adopted under either this  
5 act or the Clean Air Act, any order of the department or any  
6 condition or term of any plan approval or permit issued pursuant  
7 to this act shall constitute a separate offense and violation.

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

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

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

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

1     (c) An order issued under this section shall take effect  
2 upon notice, unless the order specifies otherwise. An appeal to  
3 the hearing board of the department's order shall not act as a  
4 supersedeas: Provided, however, That, upon application and for  
5 cause shown, the hearing board may issue such a supersedeas  
6 under rules established by the hearing board.

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

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

21     Section 10.3. Limitation on Action.--The provisions of any  
22 other statute to the contrary notwithstanding, actions for civil  
23 or criminal penalties under this act may be commenced at any  
24 time within a period of six (6) years from the date the offense  
25 is discovered.

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

29     Section 12. Powers Reserved to Political Subdivisions.--(a)  
30 Nothing in this act shall prevent counties, cities, towns, home

1 rule municipalities, townships or boroughs from enacting  
2 ordinances with respect to air pollution which [will not be less  
3 stringent than the provisions of this act] meet the requirements  
4 of this act, the Clean Air Act or the rules and regulations  
5 promulgated [pursuant to its provisions] under either this act  
6 or the Clean Air Act. This act shall not be construed to repeal  
7 existing ordinances, resolutions or regulations of the  
8 aforementioned political subdivisions existing at the time of  
9 the effective date of this act, except as they may be less  
10 stringent than the provisions of this act, the Clean Air Act or  
11 the rules or regulations adopted under either this act or the  
12 Clean Air Act.

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

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

30 (2) If such violation continues to exist after said

1 notification has been given, the department may take any  
2 abatement action provided for under the terms of this act.

3 (d) Whenever the department finds that violations of [the  
4 air pollution control standards, or rules and regulations  
5 promulgated pursuant to the grant of authority under subsection  
6 (b)] this act, the Clean Air Act or the rules and regulations  
7 promulgated under either this act or the Clean Air Act are so  
8 widespread that such violations appear to result from a failure  
9 of the local county control agency involved to enforce those  
10 [standards, or rules and regulations,] requirements, the  
11 department may assume the authority to enforce [those standards,  
12 and rules and regulations] this act in that county.

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

22 (f) Whenever the department takes action under the  
23 provisions of subsections (d) or (e) of this section, it shall  
24 give written notification to the air pollution control agency of  
25 the [political subdivision] county involved and such  
26 notification shall be [subject to the appeal provisions of  
27 clause (4.1) of section 4 of this act] an appealable action.

28 (g) Irrespective of subsection (b) above, and in order that  
29 the civil and criminal penalties and equitable remedies for air  
30 pollution violations shall be uniform [except insofar as they



1 are inconsistent with the jurisdictional limitations of the  
2 minor judiciary and the Philadelphia Municipal Court,]  
3 throughout the Commonwealth, the penalties and remedies set  
4 forth in this act [in sections 9, 9.1, 10 and 11,] shall be the  
5 penalties and remedies available for enforcement of any  
6 municipal air pollution ordinances or regulations, and shall be  
7 available to any municipality, public official, or other person  
8 having standing to initiate proceedings for the enforcement of  
9 such municipal ordinances or regulations, and the amounts of the  
10 fines or civil penalties set forth herein shall be the amounts  
11 of the fines or civil penalties assessable and to be levied for  
12 violations of any municipal ordinances or regulations. It is  
13 hereby declared to be the purpose of this section to enunciate  
14 further that the purpose of this act is to provide additional  
15 and cumulative remedies to abate the pollution of the air of  
16 this Commonwealth. Any action for the assessment of civil  
17 penalties brought for the enforcement of a municipal air  
18 pollution ordinance or regulation shall be brought in accordance  
19 with the procedures set forth in such ordinance. Where any  
20 municipal ordinance or regulation does not provide a procedure  
21 for the assessment of civil penalties, the provisions [of  
22 subsection (h) of this section] related to assessment and  
23 collection of civil penalties of section 9.1 of this act shall  
24 apply.

25 [(h) Any person, as herein defined, except a department,  
26 board, bureau, or agency of the Commonwealth, engaging in  
27 conduct in violation of a municipal air pollution control  
28 ordinance, shall, for each offense, upon conviction thereof in a  
29 civil proceeding before a judge of the Municipal Court of  
30 Philadelphia, district justice, magistrate, alderman or justice

1 of the peace be sentenced to pay the cost of prosecution and a  
2 civil penalty of not less than twenty-five dollars (\$25.00), nor  
3 more than five hundred dollars (\$500.00), for each day of  
4 continued violation. Such a penalty may be assessed whether or  
5 not the violation was wilful. Failure to pay any such penalty  
6 within the time prescribed by law shall be punishable as a civil  
7 contempt. Notwithstanding anything contained in section 9.2 of  
8 this act, all civil penalties and fees collected under this  
9 subsection shall be paid to the appropriate political  
10 subdivision, as provided by law, and shall be collectible in any  
11 manner provided by law for the collection of debt. If any person  
12 liable to pay any such penalty neglects or refuses to pay the  
13 same after demand, the amount, together with interest and any  
14 costs that may accrue, shall be a lien in favor of the  
15 appropriate political subdivision upon the property, both real  
16 and personal, of such person, but only after the same has been  
17 entered and docketed of record by the prothonotary of the county  
18 where such is situated: Provided, That nothing contained in this  
19 subsection shall preclude any public official from seeking, at  
20 law or at equity or before any appropriate administrative body,  
21 the assessment of civil penalties in the amount provided by  
22 section 9.1 of this act.]

23       Section 12.1. Construction.--Nothing in this act shall be  
24 construed as estopping the Commonwealth, or any district  
25 attorney or solicitor of a municipality, from proceeding in  
26 courts of law or equity to abate pollutions forbidden under this  
27 act, or abate nuisances under existing law. It is hereby  
28 declared to be the purpose of this act to provide additional and  
29 cumulative remedies to abate the pollution of the air of this  
30 Commonwealth, and nothing contained in this act shall in any way

1 abridge or alter rights of action or remedies now or hereafter  
2 existing in equity, or under the common law or statutory law,  
3 criminal or civil, nor shall any provision of this act, or the  
4 granting of any plan approval or permit under this act, or any  
5 act done by virtue of this act, be construed as estopping the  
6 Commonwealth, persons or municipalities, in the exercise of  
7 their rights under the common law or decisional law or in  
8 equity, from proceeding in courts of law or equity to suppress  
9 nuisances, or to abate any pollution now or hereafter existing,  
10 or enforce common law or statutory rights. No courts of this  
11 Commonwealth having jurisdiction to abate public or private  
12 nuisance shall be deprived of such jurisdiction to abate any  
13 private or public nuisance instituted by any person for the  
14 reason that such nuisance constitutes air pollution.

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

21 Section 13. Public Nuisance.--A violation of this act, the  
22 Clean Air Act or of any rule or regulation promulgated under  
23 either this act or the Clean Air Act or any order, plan approval  
24 or permit issued by the department under this act shall  
25 constitute a public nuisance. The department shall have the  
26 authority to order a person causing a public nuisance to abate  
27 the public nuisance. In addition, the department or any  
28 Commonwealth agency which undertakes to abate a public nuisance  
29 may recover the expenses of abatement following the process for  
30 assessment and collection of a civil penalty contained in

1 section 9.1 of this act. Whenever the nuisance is maintained or  
2 continued contrary to this act, the Clean Air Act or any rule or  
3 regulation promulgated under either this act or the Clean Air  
4 Act, an order, plan approval or permit, the nuisance may be  
5 abatable in the manner provided by this act. A person who causes  
6 the public nuisance shall be liable for the cost of abatement.

7       Section 13.1. Search Warrants.--Whenever an agent or employe  
8 of the department, charged with the enforcement of the  
9 provisions of this act, has been refused access to property, or  
10 has been refused the right to examine any air contamination  
11 source, or air pollution control equipment or device, or is  
12 refused access to or examination of books, papers and records  
13 pertinent to any matter under investigation, such agent or  
14 employe may apply for a search warrant to any Commonwealth  
15 official authorized by the laws of the Commonwealth to issue the  
16 same to enable him to have access [and], examine and seize such  
17 property, air contamination source, air pollution control  
18 equipment or device, or books, papers and records, as the case  
19 may be. It shall be sufficient probable cause to issue a search  
20 warrant that the inspection is necessary to properly enforce the  
21 provisions of this act.

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

24       Section 16. The act is amended by adding a section to read:

25       Section 13.6. Suits to Abate Nuisance and Restrain  
26 Violations.--(a) Any activity or condition declared by this act  
27 to be a nuisance or which is otherwise in violation of this act  
28 shall be abatable in the manner provided by law or equity for  
29 the abatement of public nuisance. In addition, in order to  
30 restrain or prevent any violation of this act, the Clean Air Act

1 or the rules and regulations promulgated under either this act  
2 or the Clean Air Act or any plan approval or permit or orders  
3 issued by the department, or to restrain the maintenance and  
4 threat of public nuisance, suits may be instituted in equity or  
5 at law in the name of the Commonwealth upon relation of the  
6 Attorney General, the General Counsel, the district attorney of  
7 a county or the solicitor of a municipality affected, after  
8 notice has first been served upon the Attorney General of the  
9 intention of the General Counsel, district attorney or solicitor  
10 to proceed. Such proceedings may be prosecuted in the  
11 Commonwealth Court or in the court of common pleas of the county  
12 where the activity has taken place, the condition exists or the  
13 public is affected, and to that end jurisdiction is conferred in  
14 law and equity upon such courts. Except in cases of emergency  
15 where, in the opinion of the court, the exigencies of the case  
16 require immediate abatement of the nuisance, the court may in  
17 its decree fix a reasonable time during which the person  
18 responsible for the nuisance may make provision for the  
19 abatement of the same.

20 (b) In cases where the circumstances require or the public  
21 health is endangered, a mandatory preliminary injunction,  
22 special injunction or temporary restraining order may be issued  
23 upon the terms prescribed by the court, notice of the  
24 application having been given to the defendant in accordance  
25 with the rules of equity practice, and in that case the Attorney  
26 General, the General Counsel, the district attorney or the  
27 solicitor of a municipality shall not be required to give bond.  
28 In any such proceeding the court shall, upon motion of the  
29 Commonwealth, issue a prohibitory or mandatory preliminary  
30 injunction if it finds that the defendant is engaging in

1 unlawful conduct as defined by this act or is engaged in conduct  
2 which is causing immediate and irreparable harm to the public.  
3 In addition to an injunction, the court in such equity  
4 proceedings may levy civil penalties in the same manner as the  
5 department in accordance with section 9.1 of this act.

6 (c) Except as provided in subsection (d) of this section,  
7 any person having an interest which is or may be affected may  
8 commence a civil action to compel compliance with this act or  
9 any rule, regulation, final order or plan approval or permit  
10 issued pursuant to this act by any owner, operator, landowner or  
11 occupier alleged to be causing or contributing to a violation of  
12 any provision of this act, the Clean Air Act or any rule or  
13 regulation promulgated under either this act or the Clean Air  
14 Act or any plan approval, permit or order issued by the  
15 department. In addition to seeking to compel compliance, any  
16 person may request the court to award civil penalties. The court  
17 shall use the factors and amounts contained in section 9.1 of  
18 this act in awarding civil penalties under this subsection. Such  
19 penalties shall be paid into the Clean Air Fund established by  
20 section 9.2 of this act. Except where 42 Pa.C.S. (relating to  
21 judiciary and judicial procedure) requires otherwise, the courts  
22 of common pleas shall have jurisdiction of these actions. This  
23 action may not be commenced if the person or operator is in  
24 compliance with a permit issued under this act or with a  
25 schedule of compliance contained in a permit, consent order or  
26 other legally enforceable document or if the department has  
27 commenced and is diligently prosecuting a civil action in a  
28 Federal or State court or is in litigation before the hearing  
29 board regarding any order, plan approval or operating permit  
30 issued under this act, but, in any such action in a Federal or

1 State court or before the hearing board, any person having or  
2 representing an interest which is or may be adversely affected  
3 may intervene as a matter of right without posting bond.

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

8 (e) The sixty (60) day notice provisions of subsection (d)  
9 of this section to the contrary notwithstanding, any action  
10 under subsection (c) of this section may be initiated  
11 immediately upon written notification to the department in the  
12 case where the violation or condition complained of constitutes  
13 an imminent threat to the health or safety of the plaintiff or  
14 would immediately affect a legal interest of the plaintiff.

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

24 Section 17. This act shall take effect immediately.