

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 1650 Session of  
1992

INTRODUCED BY MUSTO, BRIGHTBILL, MELLOW, LOEPER, JUBELIRER,  
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LYNCH, BELAN, STOUT, TILGHMAN AND PECORA, MARCH 25, 1992

AS AMENDED ON THIRD CONSIDERATION, JUNE 16, 1992

## AN ACT

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

1 civil penalties and for the abatement and restraint of  
2 violations; 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 provisions of the  
18 Clean Air Act in the Commonwealth.

19 (b) It is further declared that:

20 (1) Interstate pollution transport commissions established  
21 under the Clean Air Act should develop pollution control  
22 strategies via a process which involves public review and  
23 opportunity for comment.

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

29 (3) The department should have adequate staff and technical  
30 resources needed to comply with the Clean Air Act. The

1 department shall be required to explore the role private  
2 industry can play in developing and implementing the clean air  
3 programs as a mechanism to insure the Commonwealth meets Clean  
4 Air Act deadlines.

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

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

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

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

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

20 (2.1) "Hearing board." The Environmental Hearing Board  
21 established in the department by the act of December 3, 1970  
22 (P.L.834).

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

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

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

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

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

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

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

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

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

30       "Air contaminant." Smoke, dust, fume, gas, odor, mist,

1 radioactive substance, vapor, pollen or any combination thereof.

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

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

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

21 "Approved air pollution control agency." An air pollution  
22 control agency of any political subdivision of the Commonwealth  
23 which has been granted approval by the Environmental Quality  
24 Board.

25 "Board" or "EQB." The Environmental Quality Board.

26 "Clean Air Act." Public Law 95-95 as amended, 42 U.S.C. §  
27 7401 et seq.

28 "Department." The Department of Environmental Resources of  
29 the Commonwealth.

30 "Environmental Protection Agency" or "EPA." The United

States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency.

"Gasoline dispensing facility." A facility from which gasoline is transferred to motor vehicle fuel tanks.

"Hearing board." The Environmental Hearing Board.

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

"Plan approval." The written approval from the Department of Environmental Resources which authorizes a person to construct, assemble, install or modify any stationary air contamination source or install thereon any air pollution control equipment or device.

"Region." Any geographical subdivision of the Commonwealth whose boundaries shall be determined by the Environmental Quality Board.

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

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

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

(3) is not a major stationary source;

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

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

1     "State implementation plan." The plan or plan revision that  
2     a state is authorized and required to submit under section 110  
3     of the Clean Air Act (Public Law 95-95 as amended, 42 U.S.C. §  
4     7410) to provide for attainment of the national ambient air  
5     quality standards.

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

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

12    Section 4. Powers and Duties of the Department of  
13    Environmental Resources.--The department shall have power and  
14    its duty shall be to--

15    (1) Implement the provisions of the Clean Air Act in the  
16    Commonwealth.

17    ~~[(1)]~~ (2) Enter any building, property, premises or place  
18    and inspect any air contamination source for the purpose of  
19    investigating an actual or a suspected source of air pollution  
20    or for the purpose of ascertaining the compliance or non-  
21    compliance with [any rule or regulation which may have been  
22    adopted and promulgated by the board hereunder.] this act, any  
23    rule or regulation promulgated under this act or any plan  
24    approval, permit or order of the department. In connection with  
25    such inspection or investigation, samples of air, air  
26    contaminants, fuel, process material or other matter may be  
27    taken for analysis, a duplicate of the analytical report shall  
28    be furnished promptly to the person who is suspected of causing  
29    such air pollution or air contamination.

30    ~~[(2)]~~ (3) Have access to, and require the production of,

1 books [and], papers and records, including, but not limited to,  
2 computerized information in a format as the department may  
3 reasonably prescribe pertinent to any matter under  
4 investigation.

5 [(2.1)] (4) Require the owner or operator of any air  
6 contamination source to establish and maintain such records and  
7 make such reports and furnish such information, including  
8 computerized information in a format as the department may  
9 reasonably prescribe.

10 [(2.2)] (5) Require the owner or operator of any air  
11 contamination source to install, use and maintain such air  
12 contaminant monitoring equipment or methods as the department  
13 may reasonably prescribe.

14 [(2.3)] (6) Require the owner or operator of any air  
15 contamination source to sample the emissions thereof in  
16 accordance with such methods and procedures and at such  
17 locations and intervals of time as the department may reasonably  
18 prescribe and to provide the department with the results  
19 thereof.

20 [(3)] (7) Enter upon any property on which an air  
21 contamination source may be located and make such tests upon the  
22 source as are necessary to determine whether the air  
23 contaminants being emitted from such air contamination source  
24 are being emitted at a rate in excess of a rate provided for by  
25 [board rule or regulation] this act, any rule or regulations  
26 promulgated under this act or any plan approval, permit or order  
27 of the department or otherwise causing air pollution. Whenever  
28 the department determines that a source test is necessary, it  
29 shall give reasonable written or oral notice to the person  
30 owning, operating, or otherwise in control of such source, that



1 [it] the department will conduct a test on such source.  
2 Thereafter, the person to whom such notice is given shall  
3 provide such reasonably safe access to the testing area, and  
4 such sampling [holes] ports, facilities, electrical power and  
5 water as the department shall specify in its notice.

6 [(4)] (8) Receive, initiate and investigate complaints,  
7 institute and conduct surveys and testing programs, conduct  
8 general atmospheric sampling programs, make observations of  
9 conditions which may or do cause air pollution, make tests or  
10 other determinations at air contamination sources, and assess  
11 the degree of abatement required.

12 [(4.1)] (9) (i) Issue orders to any person owning or  
13 operating an air contamination source, or owning or possessing  
14 land on which such source is located, if such source is  
15 introducing or is likely to introduce air contaminants into the  
16 outdoor atmosphere in excess of any [board rule or regulation,  
17 or any permit requirement] rate provided for by this act, any  
18 rule or regulation promulgated under this act or any plan  
19 approval or permit applicable to such source, or at such a level  
20 so as to cause air pollution. Any such order may require the  
21 cessation of any operation or activity which is introducing air  
22 contaminants into the outdoor atmosphere so as to cause air  
23 pollution, the reduction of emissions from such air  
24 contamination source, modification or repair of such source or  
25 air pollution control device or equipment or certain operating  
26 and maintenance procedures with respect to such source or air  
27 pollution control device or equipment, institution of a  
28 reasonable process change, installation of air pollution control  
29 devices or equipment, or any or all of said requirements as the  
30 department deems necessary. Such orders may specify a time for

1 compliance, require submission of a proposed plan for  
2 compliance, and require submission of periodic reports  
3 concerning compliance. If a time for compliance is given, the  
4 department may, in its discretion, require the posting of a bond  
5 in the amount of twice the money to be expended in reaching  
6 compliance.

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

17 ~~[(5)]~~ (10) Institute, in a court of competent jurisdiction  
18 proceedings to compel compliance with [any] this act, any rule  
19 or regulation promulgated under this act or any plan approval,  
20 permit or order of the department [from which there has been no  
21 appeal or which has been sustained on appeal].

22 ~~[(6)]~~ (11) Act as the agent for the board in holding public  
23 hearings when so directed by the board.

24 ~~[(7)]~~ (12) Institute prosecutions under this act.

25 ~~[(8)]~~ (13) Recommend the minimum job qualifications of  
26 personnel employed by county and municipal air pollution control  
27 agencies hereafter created.

28 ~~[(9)]~~ (14) Require the submission of, and consider for  
29 approval, plans and specifications of air pollution control  
30 equipment, devices or process changes, and inspect such

1 installations or modifications to insure compliance with the  
2 plans which have been approved.

3       [(10)] (15) Conduct or cause to be conducted studies and  
4 research with respect to air contaminants, their nature, causes  
5 and effects, and with respect to the control, prevention,  
6 abatement and reduction of air pollution and air contamination.

7       [(10.1)] (16) Evaluate motor vehicle emission control  
8 programs, including vehicle emission standards, clean  
9 alternative fuels, oxygenated fuels, reformulated fuels, vehicle  
10 miles of travel, congestion levels, transportation control  
11 measures and other transportation control strategies with  
12 respect to their effect upon air pollution and determine the  
13 need for modifications of such programs.

14       [(11)] (17) Determine by means of field studies and sampling  
15 the degree of air pollution existing in any part of the  
16 Commonwealth.

17       [(12)] (18) Prepare and develop a general comprehensive plan  
18 for the control and abatement of existing air pollution and air  
19 contamination and for the abatement, control and prevention of  
20 any new air pollution and air contamination, recognizing varying  
21 requirements for the different areas of the Commonwealth, and to  
22 submit a comprehensive plan to the board for its consideration  
23 and approval.

24       [(13)] (19) Encourage the formulation and execution of plans  
25 in conjunction with air pollution control agencies or civil  
26 associations of counties, cities, boroughs, towns and townships  
27 of the Commonwealth wherein any sources of air pollution or air  
28 contamination may be located, and enlist the cooperation of  
29 those who may be in control of such sources for the control,  
30 prevention and abatement of such air pollution and air

1 contamination.

2       [(14)] (20) Encourage voluntary efforts and cooperation by  
3 all persons concerned in controlling, preventing, abating and  
4 reducing air pollution and air contamination.

5       [(15)] (21) Conduct and supervise educational programs with  
6 respect to the control, prevention, abatement and reduction of  
7 air pollution and air contamination, including the preparation  
8 and distribution of information relating to the means of  
9 controlling and preventing such air pollution and air  
10 contamination.

11       [(16)] (22) Develop and conduct in cooperation with local  
12 communities demonstration programs relating to air contaminants,  
13 air pollution and air contamination and the control, prevention,  
14 abatement and reduction of air pollution and air contamination.

15       [(17)] (23) Provide advisory technical consultative services  
16 to local communities for the control, prevention, abatement and  
17 reduction of air pollution and air contamination.

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

24       [(19)] (25) Serve as the agency of the Commonwealth for the  
25 receipt of moneys from the Federal government or other public or  
26 private agencies, and expend such moneys for studies and  
27 research with respect to air contaminants, air pollution and the  
28 control, prevention, abatement and reduction of air pollution.

29       (26) Develop and submit to the Environmental Protection  
30 Agency a procedure to implement and enforce the regulations

1 which the Environmental Protection Agency adopts under of  
2 section 183(e) of the Clean Air Act to reduce emissions from  
3 consumer and commercial products, provided the department will  
4 receive credits for the reductions attributed to the Federal  
5 consumer and commercial products regulations under section 182  
6 of the Clean Air Act regulations, and the department has the  
7 resources to implement and enforce the program.

8       [(20)] (27) Do any and all other acts and things not  
9 inconsistent with any provision of this act, which it may deem  
10 necessary or proper for the effective enforcement of this act  
11 and the rules or regulations [which have been] promulgated  
12 [thereunder] under this act.

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

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

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

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

requirements, unless otherwise specifically authorized or required by this act or specifically required by the Clean Air Act.

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

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

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

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

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

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

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

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

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

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

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

19    (1) A determination of whether the limitation imposed in  
20    section 4.2 has hindered in any way the Commonwealth's efforts  
21    to comply with the Clean Air Act and a recommendation on whether  
22    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     stationary air contamination sources to implement the  
3     requirements of the Clean Air Act, including on individuals and  
4     companies. The analysis of costs shall also consider the  
5     benefits of compliance with the Clean Air Act requirements and  
6     the public health, environmental and economic costs to the  
7     Commonwealth for failing to meet the requirements, including the  
8     impact of sanctions.

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

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

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

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

23    SECTION 4.4. PROHIBITED POWERS OF STATE ENTITIES.--NO STATE     <—  
24    AGENCY, BOARD OR COMMISSION SHALL RESTRICT OR DENY ANY PERMIT  
25    APPLICATION OR OTHERWISE LAWFUL ACTIVITY BASED UPON ANY  
26    TRANSPORTATION CONTROL MEASURE OR STRATEGY.

27    Section 6. Sections 5 and 6 of the act, amended October 26,  
28    1972 (P.L.989, No.245), are amended to read:

29    Section 5. Environmental Quality Board.--(A) The board     <—  
30    shall have the power and its duty shall be to--



1       (1) Adopt rules and regulations, for the prevention,  
2 control, reduction and abatement of air pollution, applicable  
3 throughout the Commonwealth or to such parts or regions or  
4 subregions thereof specifically designated in such regulation  
5 which shall be applicable to all air contamination sources  
6 regardless of whether such source is required to be under permit  
7 by this act. Such rules and regulations may establish maximum  
8 allowable emission rates of air contaminants from such sources,  
9 prohibit or regulate the combustion of certain fuels, prohibit  
10 or regulate open burning, prohibit or regulate any process or  
11 source or class of processes or sources, require the  
12 installation of specified control devices or equipment, or  
13 designate the control efficiency of air pollution control  
14 devices or equipment required in specific processes or sources  
15 or classes of processes or sources. Such rules and regulations  
16 shall be adopted pursuant to the provisions of the act of July  
17 31, 1968 (P.L.769), known as the "Commonwealth Documents Law,"  
18 upon such notice and after such public hearings as the board  
19 deems appropriate. In exercising its authority to adopt rules  
20 and regulations, the board may, and to the extent deemed  
21 desirable by it shall, consult with a council of technical  
22 advisers, properly qualified by education or experience in air  
23 pollution matters, appointed by the board and to serve at the  
24 pleasure of the board, to consist of such number of advisers as  
25 the board may appoint, but such technical advisers shall receive  
26 no compensation, other than their actual and necessary expenses,  
27 for their services to the board.

28       (2) Establish and publish maximum quantities of air  
29 contaminants that may be permitted under various conditions at  
30 the point of use from any air contaminant source in various

1 areas of the Commonwealth so as to control air pollution.

2 (3) By [the] rule or regulation, classify air contaminant  
3 sources, according to levels and types of emissions and other  
4 characteristics which relate to air pollution. Classifications  
5 made pursuant to this subsection shall apply to the entire  
6 Commonwealth or any part thereof. Any person who owns or  
7 operates an air contaminant source of any class to which the  
8 rules and regulations of the board under this subsection apply,  
9 shall make reports containing information as may be required by  
10 the board concerning location, size and height of air  
11 contaminant outlets, processes employed, fuels used and the  
12 nature and time periods or duration of emissions, and such other  
13 information as is relevant to air pollution and available or  
14 reasonably capable of being assembled.

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

18 (5) Adopt rules and regulations for the protection of public  
19 health and safety for periods when the accumulation of air  
20 contaminants in any area is attaining or has attained levels  
21 which, if sustained or exceeded, could lead to an acute threat  
22 to the health of the public. Such rules and regulations shall  
23 contain appropriate procedures to protect public health and  
24 safety during such periods.

25 (6) Adopt rules and regulations for the approval and the  
26 recision and suspension of approval of local air pollution  
27 control agencies.

28 (7) Adopt rules and regulations designed to reduce emissions  
29 from motor vehicles, including centrally clean-fueled fleets,  
30 clean alternative fuels, oxygenated fuels, reformulated fuels,

vehicle miles of travel, transportation control measures and other transportation control strategies. Such rules and regulations shall be developed in consultation with the Department of Transportation. The board shall not adopt regulations mandating the sale or use of any set of specifications for motor fuel prescribed by the State of California under 42 U.S.C. § 7545(c)(4)(B) unless the set of specifications is required under the Clean Air Act or the regulations promulgated thereunder.

(8) Adopt rules and regulations to implement the provisions of the Clean Air Act. The rules and regulations adopted to implement the provisions of the Clean Air Act shall be consistent with the requirements of the Clean Air Act and the regulations adopted thereunder.

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

(10) Adopt rules and regulations establishing provisions to allow changes within a permitted facility or one operating pursuant to clause (3) of subsection (b) of section 6.1 without requiring a permit revision, if the changes are not modifications under any provision of 42 U.S.C. Ch. 85 Subch. I (relating to programs and activities), and the changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the department and the administrator with written notification in advance of the proposed changes which shall be a minimum of seven (7) days, unless the board provides in its regulations a different time frame for emergencies.

1     (11) In its discretion, by regulation require revisions to  
2 permits for major sources to incorporate applicable standards  
3 and regulations promulgated pursuant to the Clean Air Act and  
4 adopted by the board after the issuance of such permit as  
5 required by section 502(b)(9) of the Clean Air Act.

6     (12) In its discretion, by regulation adopt rules containing  
7 reasonable procedures consistent with the need for expeditious  
8 action by the department on plan approvals and operating permit  
9 applications to make available to the public any plan approval  
10 or operating permit application, compliance plan, plan approval,  
11 operating permit and monitoring or compliance report as required  
12 by section 502(b)(8) of the Clean Air Act.

13     (13) Adopt by regulation procedures to consider variances  
14 from the limits on the volatile organic compound content of  
15 extreme performance coatings and paints which are required to be  
16 used by the Federal Aviation Administration, the United States  
17 Department of Defense or to meet military and aviation  
18 specifications, if such variances are authorized by the Clean  
19 Air Act.

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

<—

21     (1) ADOPT ANY REGULATION RESTRICTING OR DENYING ANY PERMIT  
22 APPLICATION OR OTHERWISE LAWFUL ACTIVITY BASED UPON ANY  
23 TRANSPORTATION CONTROL MEASURES OR TRANSPORTATION CONTROL  
24 STRATEGIES.

25     (2) ADOPT ANY REGULATION RESTRICTING ANY MUNICIPALITY'S  
26 POWERS REGARDING LAND DEVELOPMENT, SUBDIVISION APPROVAL, ZONING  
27 CHANGE, BUILDING PERMIT OR ANY OTHER DEVELOPMENT ACTIVITY  
28 BECAUSE OF THE RULES OR REGULATIONS ADOPTED UNDER THIS ACT.

29     Section 6. Environmental Hearing Board.--The hearing board  
30 shall have the power and its duty shall be to hear and determine

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

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

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

1 applications for approval shall be made in writing and shall be  
2 on such forms and contain such information as the department  
3 shall prescribe and shall have appended thereto detailed plans  
4 and specifications related to the proposed installation.

5 (b) (1) No person shall operate any stationary air  
6 contamination source [which is subject to the provisions of  
7 subsection (a) of this section] unless the department shall have  
8 issued to such person a permit to operate such source under the  
9 provisions of this section in response to a written application  
10 for a permit submitted on forms and containing such information  
11 as the department may prescribe[.] or where construction,  
12 assembly, installation modification is specifically authorized  
13 by the rules or regulations of the department to be conducted  
14 without written approval. The department shall provide public  
15 notice and the right to comment on all permits prior to issuance  
16 or denial and may hold public hearings concerning any permit.

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

1 pollution.

2     (3) A stationary air contamination source operating lawfully  
3 without a permit for which fees required by section 6.3 of this  
4 act or the regulations promulgated under this act have been paid  
5 is authorized to continue to operate without a permit until one  
6 hundred twenty (120) days after the department provides notice  
7 to the source that a permit is required or until November 1,  
8 1996, whichever occurs first. If the applicant submits a  
9 complete permit application within the time frames in this  
10 subsection, and the department fails to issue a permit through  
11 no fault of the applicant, the source may continue to operate if  
12 the fees required by section 6.3 or the regulations promulgated  
13 under this act have been paid and the source is operated in  
14 conformance with this act, the Clean Air Act and the regulations  
15 promulgated under both this act and the Clean Air Act. For any  
16 performance or emission standard or other requirement  
17 established by the Environmental Protection Agency or the  
18 department for the source subsequent to the effective date of  
19 this act but prior to the permit issuance date, the permit may  
20 contain a compliance schedule authorizing the source to operate  
21 out of compliance and requiring the source to achieve compliance  
22 as soon as possible but no later than the time required by this  
23 act, the Clean Air Act or the regulations promulgated under  
24 either this act or the Clean Air Act. For purposes of this  
25 subsection, a source is operating lawfully without a permit  
26 where it is a source for which no permit was previously required  
27 and the source is operating in compliance with applicable  
28 regulatory requirements.

29     (4) For repermitting of any stationary air contamination  
30 source which is operating under a valid permit on the effective

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

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

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

28 (d) The department may refuse to grant approval for any  
29 stationary air contamination source subject to the provisions of  
30 subsection (a) of this section or to issue a permit to operate



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

21 (b.2) A permit issued or reissued under subsection (b) of  
22 this section shall be issued for a five (5) year term unless a  
23 shorter term is required to comply with the Clean Air Act and  
24 regulations promulgated thereunder or the permittee requests a  
25 shorter term, except that a permit for acid deposition control  
26 shall be issued for a five (5) year term. A permit may be  
27 terminated, modified, suspended or revoked and reissued for  
28 cause. The terms and conditions of an expired permit are  
29 automatically continued pending the issuance of a new permit  
30 where the permittee has submitted a timely and complete

application for a new permit and paid the fees required by section 6.3 or the regulations promulgated under this act and the department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit. Failure of the department to issue or deny a new permit prior to the expiration date of the previous permit shall be an appealable action as described in section 10.2. The hearing board may require that the department take action on an application without additional delay.

(b.3) The board shall, by regulation, establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications. The department shall approve or disapprove a complete application, consistent with the procedures established by the board for consideration of such applications, within eighteen (18) months after the date of receipt of the complete application except that the department shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the Title V permit program established to implement the requirements of the Clean Air Act. The schedule shall assure that at least one-third of such permits shall be acted upon by the department annually over a period not to exceed three (3) years after such effective date. Failure of the department to issue or deny a permit by a deadline established by this subsection shall be an appealable action as described in section 10.2 of this act. The hearing board may require that the department take action on an application without additional delay.

(b.4) (1) During the term of a permit, a permittee may

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

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

18 (b.5) The board shall adopt the regulations required by  
19 subsections (b.1), (b.3) and (i) as part of the regulatory  
20 package to implement the operating permit program required by  
21 Title V of the Clean Air Act.

22 (c) A plan approval or permit issued hereunder may be  
23 terminated, modified, suspended or revoked and reissued if the  
24 permittee constructs or operates the source subject to the plan  
25 approval or permit in such a manner as to be in violation of  
26 this act, the Clean Air Act, the regulations promulgated under  
27 either this act or the Clean Air Act, a plan approval or permit  
28 or in such a manner as to cause air pollution, if the permittee  
29 fails to properly or adequately maintain or repair any air  
30 pollution control device or equipment attached to or otherwise

1 made a part of the source, if the permittee has failed to submit  
2 a report required by a plan approval or operating permit under  
3 this section or if the Environmental Protection Agency  
4 determines that the permit is not in compliance with the  
5 requirements of the Clean Air Act or the regulations promulgated  
6 under the Clean Air Act.

7     (d) The department may refuse to grant plan approval for any  
8 stationary air contamination source subject to the provisions of  
9 subsection (a) of this section or to issue a permit to any  
10 source that the department determines is likely to cause air  
11 pollution or to violate this act, the Clean Air Act or the  
12 regulations promulgated under either this act or the Clean Air  
13 Act applicable to such source, or if, in the design of such  
14 source, no provision is made for adequate verification of  
15 compliance, including source testing or alternative means to  
16 verify compliance. The department may also refuse to issue a  
17 permit or may for cause terminate or revoke and reissue any  
18 permit to any person if the Environmental Protection Agency  
19 determines that the permit is not in compliance with the  
20 requirements of the Clean Air Act or the regulations promulgated  
21 under the Clean Air Act or if the applicant has constructed,  
22 installed, modified or operated any air contamination source or  
23 installed any air pollution control equipment or device on such  
24 source contrary to the plans and specifications approved by the  
25 department.

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

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

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

17 (f) The department may, by regulation, establish a general  
18 plan approval and a general permit program. After the program is  
19 established, the department may grant general plan approval or a  
20 general permit for any category of stationary air contamination  
21 source if the department determines that the sources in such  
22 category are similar in nature, and can be adequately regulated  
23 using standardized specifications and conditions. Any applicant  
24 proposing to use a general plan approval or general permit shall  
25 notify the department and receive written approval prior to the  
26 proposed use. The department shall take action on a notification  
27 within thirty (30) days.

28 (g) The department may, by regulation, establish a plan  
29 approval and permit program for stationary sources operated at  
30 multiple temporary locations. After the program is established,

1 the department may grant a plan approval or issue a single  
2 permit to any stationary air contamination source that may be  
3 operated at multiple temporary locations. Such approval or  
4 permit shall require the owner or operator to notify the  
5 department and municipality where the operation shall take place  
6 in advance of each change in location and may require a separate  
7 application and permit or approval fee for operations at each  
8 location. Any applicant proposing to use the plan approval or  
9 permit authorized by this subsection shall notify the department  
10 and receive written approval prior to the proposed use. The  
11 department shall take action on a request within thirty (30)  
12 days.

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

16 (i) The board shall by regulation establish provisions to  
17 allow changes within a permitted facility or one operating  
18 pursuant to clause (3) of subsection (b) of section 6.1 without  
19 requiring a permit revision, if the changes are not  
20 modifications under any provision of 42 U.S.C. Ch. 85 Subch. I  
21 (relating to programs and activities) and the changes do not  
22 exceed the emissions allowable under the permit whether  
23 expressed therein as a rate of emissions or in terms of total  
24 emissions: Provided, That the facility provides the  
25 administrator and the department with written notification at  
26 least seven (7) days in advance of the proposed changes, unless  
27 the board provides in its regulations a different time frame for  
28 emergencies.

29 (j) The department shall make available to the public any  
30 permit application, compliance plan, permit and monitoring or

1 compliance report required by this act.

2     (k) The department shall require revisions to any permit to  
3 incorporate applicable standards and regulations promulgated  
4 under the Clean Air Act after the issuance of such permit. Such  
5 revisions shall occur as expeditiously as practicable, but not  
6 later than eighteen (18) months after the promulgation of such  
7 standards and regulations. No such revision shall be required if  
8 the effective date of the standards or regulations is a date  
9 after the expiration of the permit term or if less than three  
10 (3) years remain on the permit. Such permit revision shall be  
11 treated as a permit renewal if it complies with the requirements  
12 of this act regarding renewals.

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

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

25     \* \* \*

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

27     Section 6.3. Fees.--(a) This section authorizes the  
28 establishment of fees sufficient to cover the indirect and  
29 direct costs of administering the air pollution control plan  
30 approval process, operating permit program required by Title V

1 of the Clean Air Act, other requirements of the Clean Air Act  
2 and the indirect and direct costs of administering the Small  
3 Business Stationary Source Technical and Environmental  
4 Compliance Assistance Program, Compliance Advisory Committee and  
5 Office of Small Business Ombudsman. This section also authorizes  
6 the board by regulation to establish fees to support the air  
7 pollution control program authorized by this act and not covered  
8 by fees required by section 502(b) of the Clean Air Act.

9 (b) An annual interim air emission fee of fourteen dollars  
10 (\$14.00) per ton on emissions of sulfur dioxide, nitrogen  
11 oxides, particulate matter of ten (10) microns or less and  
12 volatile organic compounds is hereby established to cover the  
13 reasonable direct and indirect costs of developing and  
14 administering the air pollution control operating permit program  
15 required by Title V of the Clean Air Act, other requirements of  
16 the Clean Air Act and the reasonable indirect and direct costs  
17 of administering the Small Business Stationary Source Technical  
18 and Environmental Compliance Assistance Program, Compliance  
19 Advisory Committee and the Office of Small Business Ombudsman to  
20 be collected during fiscal year 1992-1993 covering actual  
21 emissions occurring in calendar year 1991, fiscal year 1993-94  
22 covering actual emissions occurring in calendar year 1992, and  
23 fiscal year 1994-1995 covering actual emissions occurring during  
24 calendar year 1993. The interim fee shall not apply to air  
25 emissions of less than one hundred (100) tons for any of the  
26 listed pollutants, provided that when emissions exceed one  
27 hundred (100) tons the entire amount of all air emissions for  
28 any of the listed pollutants up to five thousand five hundred  
29 (5,500) tons shall be chargeable emissions for interim fee  
30 purposes.



1     (c) The board shall establish, by regulation, a permanent  
2 annual air emission fee as required for regulated pollutants by  
3 section 502(b) of the Clean Air Act to cover the reasonable  
4 direct and indirect costs of administering the operating permit  
5 program required by Title V of the Clean Air Act, other related  
6 requirements of the Clean Air Act and the reasonable indirect  
7 and direct costs of administering the Small Business Stationary  
8 Source Technical and Environmental Compliance Assistance  
9 Program, Compliance Advisory Committee and the Office of Small  
10 Business Ombudsman to be collected starting in fiscal year 1995-  
11 1996 covering air emissions occurring during calendar year 1994.  
12 In no case shall the amount of the permanent fee be more than  
13 that which is necessary to comply with section 502(b) of the  
14 Clean Air Act. The permanent fee shall not apply to emissions of  
15 more than four thousand (4,000) tons for any regulated  
16 pollutant. In the event a final regulation containing the  
17 permanent annual air emission fee is not effective by July 1,  
18 1995, the permanent annual air emission fee for sources subject  
19 to the Title V operating permit program shall be the adjusted  
20 minimum dollar amount set under section 502(b) of the Clean Air  
21 Act until such time as the final regulation is effective.

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

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

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

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

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

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

20     (h) (1) Unless the board establishes a different payment  
21 schedule by regulation, each facility subject to the emission  
22 fees established in subsections (b) and (c) of this section  
23 shall report its emissions and pay the fee within one hundred  
24 twenty (120) days after receipt of a reporting form from the  
25 department or by September 1 of each year for the emission from  
26 the preceding year, whichever occurs first.

27     (2) An air contamination source that fails to pay the fees  
28 within the time frame established by this act or by regulation  
29 shall pay a penalty of fifty per centum of the fee amount, plus  
30 interest on the fee amount computed in accordance with section

6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the date the fee was required to be paid. In addition, such source may have its permit terminated or suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1.

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

(1) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the twelve (12) month period ending on August 31 of each calendar year.

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

(j) The board may, by regulation, establish the following categories of fees not related to Title V of the Clean Air Act. Until such regulations are adopted stationary air contamination sources shall pay the following fees:

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

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

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

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

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

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

(m) As used in this section, the term "regulated pollutant" shall mean a volatile organic compound, each pollutant regulated under sections 111 and 112 of the Clean Air Act and each pollutant for which a national primary ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

Section 6.4. Fee for Certain Ozone Areas.--(a) If an area identified in a State implementation plan or any revision as a severe or extreme ozone nonattainment area has failed to meet the national primary ambient air quality standard for ozone by the applicable attainment date, each major source of volatile organic compounds (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.

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

(2) (i) For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the administrator may provide, as the lower of the amount of actual VOC emissions (referred to as actuals) or VOC emissions allowed under the permit applicable to the source or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (referred to as allowables) during the attainment year.

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

(3) The fee amount under clause (1) of this subsection shall be adjusted annually, beginning 1991 in accordance with

1 subsections (h) and (i) of section 6.3.

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

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

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

20 (c) The owner or operator or the designated representative  
21 of each source affected under section 405 of the Clean Air Act  
22 shall submit a permit application and compliance plan for the  
23 affected source to the department no later than January 1, 1996.  
24 In the case of affected sources for which application and plans  
25 are timely received, the permit application and the compliance  
26 plan, including amendments thereto, shall be binding on the  
27 owner or operator or the designated representative of the owners  
28 or operators and shall be enforceable as a permit for purposes  
29 of this section until a permit is issued by the department. Any  
30 permit issued by the department shall require the source to

1 achieve compliance as soon as possible but no later than the  
2 date required by this act, the Clean Air Act or the regulations  
3 promulgated under either this act or the Clean Air Act for the  
4 source.

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

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

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

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

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

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

22 Section 6.6. Hazardous Air Pollutants.--(a) The regulations  
23 establishing performance or emission standards promulgated under  
24 section 112 of the Clean Air Act are incorporated by reference  
25 into the department's permitting program. After the effective  
26 date of the performance or emission standard, new,  
27 reconstructed, modified and existing sources shall comply with  
28 the performance or emission standards pursuant to the compliance  
29 schedule established under section 112 of the Clean Air Act and  
30 the regulations promulgated under the Clean Air Act. The

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

15 (b) In the event the administrator has not promulgated a  
16 standard to control the emissions of hazardous air pollutants  
17 for a category or subcategory of major sources under section 112  
18 of the Clean Air Act, pursuant to a schedule established  
19 pursuant to section 112(c) of the Clean Air Act, the department  
20 shall have the authority to establish a performance or emission  
21 standard on a case-by-case basis for individual sources or a  
22 category of sources. The department shall have the authority to  
23 make the determinations required by section 112(g)(2) of the  
24 Clean Air Act regarding the construction, reconstruction and  
25 modification of sources. Any person challenging the performance  
26 or emission standards established by the department shall have  
27 the burden to demonstrate that the performance or emission  
28 standard does not meet the requirements of section 112 of the  
29 Clean Air Act. The department shall incorporate the standard to  
30 control the emissions of hazardous air pollutants into the plan



approval or operating permit of any source within the category or subcategory. The performance or emission standard established on a case-by-case basis by the department shall be equivalent to the limitation that would apply to the source if a performance or emission standard had been promulgated by the administrator under section 112 of the Clean Air Act.

(c) The department is authorized to require that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using the best available technology.

(d) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the department may impose health risk-based emission standards or operating practice requirements. In developing such health risk-based emission standards or operating practice requirements, the department shall provide an explanation and rationale for such standards or requirements and provide for public review and comments on plan approvals, operating permits, guidelines and regulations which contain health risk-based emission standards or operating practice requirements. Standards or requirements adopted pursuant to this subsection shall be developed using an analysis which, among other factors, considers, where appropriate for a source or source category, the criteria set forth in section 112(f)(1) of the Clean Air Act in assessing the proposed risk to the public health, welfare and the environment from the source. IN THE CASE OF COKE BATTERIES WHICH COMPLY WITH THE OPERATING STANDARDS IN THE CLEAN AIR ACT, THE DEPARTMENT MAY NOT CONSIDER IMPOSING HEALTH BASED RISK STANDARDS FOR EIGHT (8) YEARS AFTER

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PROMULGATION OF MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT)  
STANDARDS, AND NOT UNTIL THE YEAR 2020 FOR COKE BATTERIES  
MEETING SPECIFIED CONDITIONS OF THE CLEAN AIR ACT, IF THERE IS A  
REMAINING RESIDUAL RISK WHICH MUST BE ADDRESSED.

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

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

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

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

1     (b) (1) This subsection applies to gasoline dispensing  
2 facilities located in areas classified as moderate, serious or  
3 severe ozone nonattainment areas under section 181 of the Clean  
4 Air Act, including the counties of Allegheny, Armstrong, Beaver,  
5 Berks, Bucks, Butler, Chester, Delaware, Fayette, Montgomery,  
6 Philadelphia, Washington and Westmoreland with monthly  
7 throughputs greater than 10,000 gallons (37,850 liters). In the  
8 case of independent small business marketers of gasoline as  
9 defined in section 325 of the Clean Air Act this section shall  
10 not apply if the monthly throughput is less than 50,000 gallons  
11 (189,250 liters).

12     (2) Facilities for which construction was commenced after  
13 November 15, 1990, shall achieve compliance not later than six  
14 months after the effective date of this section.

15     (3) Facilities which dispense greater than 100,000 gallons  
16 (378,500 liters) of gasoline per month, based on average monthly  
17 sales for the two-year period immediately preceding the  
18 effective date of this section, shall achieve compliance not  
19 later than one year from the effective date of this section.

20     (4) All other affected facilities shall achieve compliance  
21 not later than two years from the effective date of this  
22 section.

23     (c) Gasoline dispensing facilities with annual throughputs  
24 greater than 10,000 gallons (37,850 liters) in the counties of  
25 Bucks, Chester, Delaware, Montgomery and Philadelphia shall be  
26 subject to the requirements of this section immediately upon the  
27 addition or replacement of any underground gasoline storage  
28 tanks for which construction was commenced after the effective  
29 date of this section.

30     (d) For purposes of this section the term "construction"

shall include, but is not limited to, the addition or replacement of any underground storage tank.

(e) Owners or operators, or both, of gasoline dispensing facilities subject to the requirements of this section shall:

(1) Install all necessary Stage II vapor collection and control systems, provide necessary maintenance and make any modifications necessary to comply with the requirements.

(2) Provide adequate training and written instructions to the operator of the affected gasoline dispensing facility to assure proper operation of the system.

(3) Immediately remove from service and tag any defective nozzle or dispensing system until the defective component is replaced or repaired. A component removed from service shall not be returned to service until the defect is corrected. If the department finds that a defective nozzle or dispensing system is not properly tagged during an inspection, the component shall not be returned to service until the defect is corrected, and the department approves its return to service.

(4) Conspicuously post operating instructions for the system in the gasoline dispensing area which, at a minimum, includes the following:

(i) A clear description of how to correctly dispense gasoline with the vapor recovery nozzles utilized at the site.

(ii) A warning that continued attempts to dispense gasoline after the system indicates that the vehicle fuel tank is full may result in spillage or recirculation of the gasoline into the vapor collection system.

(iii) A telephone number established by the department for the public to report problems experienced with the system.

(5) Maintain records of monthly throughput, type and

duration of any failures of the system and maintenance and repair records. The records shall be kept for at least two years and shall be made available for inspection by the department.

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

(g) If at any time prior to November 15, 1996, the United States Environmental Protection Agency promulgates a requirement for alternative automobile refueling emissions control systems identified in section 7521 of the Clean Air Act, the requirements of this section shall not apply to gasoline dispensing facilities located in areas classified as moderate ozone nonattainment areas under section 181 of the Clean Air Act, including the counties of Allegheny, Armstrong, Beaver, Berks, Butler, Fayette, Washington and Westmoreland.

Section 7.1. Compliance Review.--(a) The department shall not issue, reissue or modify any plan approval or permit pursuant to this act or amend any plan approval or permit issued under this act and may suspend, terminate or revoke any permit or plan approval previously issued under this act if it finds that the applicant or permittee or a general partner, parent or subsidiary corporation of the applicant or permittee is in violation of this act, or the rules and regulations promulgated under this act, any plan approval, permit or order of the department, as indicated by the department's compliance docket,

1 unless the violation is being corrected to the satisfaction of  
2 the department.

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

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

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

18 Section 7.2. Permit Compliance Schedules.--In addition to  
19 the other enforcement provisions of this act, the department may  
20 issue a permit under clauses (3) and (4) of subsection (b) of  
21 section 6.1 to a source that is out of compliance with this act,  
22 the Clean Air Act or the regulations promulgated under either  
23 this act or the Clean Air Act. Any such permit must contain an  
24 enforceable schedule requiring the source to attain compliance.  
25 The compliance schedule may contain interim milestone dates for  
26 completing any phase of the required work, as well as a final  
27 compliance date, and may contain stipulated penalties for  
28 failure to meet the compliance schedule. If the permittee fails  
29 to achieve compliance by the final compliance date, the permit  
30 shall terminate. The permit shall be part of an overall

1 resolution of the outstanding noncompliance and may include the  
2 payment of an appropriate civil penalty for past violations and  
3 shall contain such other terms and conditions as the department  
4 deems appropriate. A permit may incorporate by reference a  
5 compliance schedule contained within a consent order and  
6 agreement, including all provisions related to implementation or  
7 enforcement of the compliance schedule or consent order and  
8 agreement.

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

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

25 Section 7.4. Interstate Transport Commission.--(a) The  
26 Commonwealth through its representatives on an interstate  
27 transport commission formed under the Clean Air Act shall  
28 provide public review of recommendations for additional control  
29 measures prior to final commission action consistent with the  
30 commission's public review requirements under section 184(c)(1)

1 of the Clean Air Act. The opportunity for public review  
2 established under this section shall run concurrently with the  
3 commission's public comment period established under section  
4 184(c)(1) of the Clean Air Act.

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

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

18 (D) THE GENERAL ASSEMBLY OF PENNSYLVANIA FINDS THAT THE  
19 INTERSTATE TRANSPORT OF POLLUTANTS FROM THE STATE OF OHIO  
20 CONTRIBUTES SIGNIFICANTLY TO THE VIOLATION OF NATIONAL AMBIENT  
21 AIR QUALITY STANDARDS BY THE COMMONWEALTH. THEREFORE, AS SET  
22 FORTH IN SECTION 176A OF THE CLEAN AIR ACT, THE GOVERNOR ON  
23 BEHALF OF THE COMMONWEALTH SHALL PETITION THE FEDERAL EPA  
24 ADMINISTRATOR TO INCLUDE THE STATE OF OHIO IN ANY INTERSTATE  
25 TRANSPORT COMMISSION TO WHICH PENNSYLVANIA IS A MEMBER STATE.

26 Section 7.5. Public Review of State Implementation Plans.--

27 (a) A state implementation plan required by the Clean Air Act  
28 which commits the Commonwealth to adopt air pollution control  
29 measures or procedures shall be the subject of a public comment  
30 period. The public comment period shall be no less than sixty



(60) days and the department may, at its discretion, hold public informational meetings or public hearings as part of the comment period.

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

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

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

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

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

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

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

1 review together with a document which responds to all comments  
2 made during the public comment period.

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

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

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

16 Section 7.6. Advice to Department.--(a) The department  
17 shall consult with the Citizens Advisory Council established  
18 under section 448 of the act of April 9, 1929 (P.L.177, No.175),  
19 known as "The Administrative Code of 1929," as appropriate, in  
20 the consideration of state implementation plans and regulations  
21 developed by the department and needed for the implementation of  
22 the Clean Air Act. Nothing in this section shall limit the  
23 council's ability to consider, study and review department  
24 policies and other activities related to the Clean Air Act,  
25 implementation as provided under section 1922-A of "The  
26 Administrative Code of 1929." This section shall not apply to  
27 state implementation plans or portions thereof comprised of:  
28 permit, emission offset or of reasonably available control  
29 technology requirements for individual sources; consent orders  
30 and agreements; or regulations. The requirements of this section

1 shall not apply to state implementation plans submitted by a  
2 local air pollution control agency.

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

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

14 Section 7.7. Small Business Compliance Assistance Program.--

15 (a) The department shall develop and implement a Small Business  
16 Stationary Source Technical and Environmental Compliance  
17 Assistance Program which shall include the following:

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

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

29 (3) A compliance assistance program for small business  
30 stationary sources which assists small business stationary

sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

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

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

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

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

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

(7) Procedures for soliciting input from and exchanging

information with the Office of Small Business Ombudsman  
regarding compliance requirements for small business stationary  
sources.

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

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

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

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

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

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

(c) The department shall consult with the Compliance  
Advisory Committee established in section 7.8 and the Office of  
Small Business Ombudsman established in section 7.9, in

developing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

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

(e) The department is authorized to expend funds from the Clean Air Fund collected pursuant to subsection (a), (b) or (c) of section 6.3 to support the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the Office of Small Business Ombudsman and the Compliance Advisory Committee.

(f) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this act any stationary source which does not meet the definition of "small business stationary source" in section 3 but which does not emit more than one hundred (100) tons per year of all regulated pollutants.

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

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

1 the Clean Air Act.

2 Section 7.8. Compliance Advisory Committee.--(a) There is  
3 hereby established a Compliance Advisory Committee which shall  
4 perform all of the following:

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

8 (2) Render advisory opinions concerning the effectiveness of  
9 the Small Business Stationary Source Technical and Environmental  
10 Compliance Assistance Program, difficulties encountered and  
11 degree and severity of enforcement.

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

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

17 (5) Have the Small Business Stationary Source Technical and  
18 Environmental Compliance Assistance Program serve as the  
19 secretariat for the development and dissemination of such  
20 reports and advisory opinions.

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

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

27 (b) The committee shall consist of eleven members as  
28 follows:

29 (1) Four members appointed by the Governor, three of whom  
30 shall not be owners or representatives of owners of small

1 business stationary sources.

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

6 (i) The majority leader of the Senate.

7 (ii) The minority leader of the Senate.

8 (iii) The majority leader of the House of Representatives.

9 (iv) The minority leader of the House of Representatives.

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

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

13 (5) The Small Business Ombudsman or his designee.

14 (c) The terms of appointed members shall be for four (4)  
15 years. Vacancies shall be filled by the original appointing  
16 member for the remainder of the unexpired term. Initial terms of  
17 appointed members shall be as follows:

18 (1) Of the members appointed by the Governor under clause  
19 (1) of subsection (b) of this section:

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

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

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

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

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

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

30 (iv) The minority leader of the House of Representatives



1 shall appoint one member for one (1) year.

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

7 (b) The Office of Small Business Ombudsman shall perform all  
8 functions necessary to implement the requirements of section  
9 507(a)(3) of the Clean Air Act. The Office of Small Business  
10 Ombudsman shall perform all of the following functions to the  
11 extent they are consistent with the guidelines developed by the  
12 Environmental Protection Agency:

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

18 (2) 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 (3) Make recommendations to the department regarding the  
22 content and operation of the Small Business Stationary Source  
23 Technical and Environmental Compliance Assistance Program.

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

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

30 (6) Serve on the Compliance Advisory Committee established

1 by section 7.8.

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

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

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

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

16 (c) The Office of Small Business Ombudsman shall report  
17 annually to the Governor and General Assembly on the  
18 effectiveness of the Small Business Stationary Source Technical  
19 and Environmental Compliance Assistance Program and other issues  
20 relating to the impact of the Clean Air Act implementation on  
21 small businesses in the Commonwealth.

22 (d) For each proposed rulemaking significantly affecting  
23 small businesses, the Office of Small Business Ombudsman shall  
24 prepare a report which contains a detailed analysis of the  
25 economic impact of such proposed rulemaking on small businesses.  
26 The economic impact report shall be completed no later than  
27 ninety (90) days from the date that the board approves the  
28 proposed rulemaking and shall be submitted to the board for  
29 consideration prior to approval of the final rulemaking package;  
30 provided the report is available within the time period

1 prescribed by this section. The department shall provide the  
2 ombudsman with a reasonable opportunity to revise the report to  
3 reflect any proposed substantial change in the rulemaking which  
4 affects the initial report.

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

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

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

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

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

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

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

30 Section 7.11. Notice of Sanctions.--(a) Whenever the

1 Commonwealth is notified that the Environmental Protection  
2 Agency has made a final or proposed finding on a State  
3 implementation plan submitted by the Commonwealth or a local air  
4 pollution control agency, the department shall notify within ten  
5 (10) working days of receipt of the notice the Environmental  
6 Resources and Energy Committee of the Senate and the  
7 Conservation Committee of the House of Representatives of the  
8 agency's findings.

9 (b) Whenever the Commonwealth is formally notified that it  
10 is subject to discretionary or mandatory sanctions under section  
11 179 of the Clean Air Act, the department shall within ten (10)  
12 working days of the receipt of this notice notify the  
13 Environmental Resources and Energy Committee of the Senate and  
14 the Conservation Committee of the House of Representatives.

15 Section 7.12. Missed Federal Deadlines.--Whenever the  
16 Environmental Protection Agency has missed a deadline for  
17 developing regulations or guidance on which states must rely to  
18 comply with deadlines in the Clean Air Act by more than ninety  
19 (90) days and, in the opinion of the department, the  
20 Environmental Protection Agency has failed to provide it with  
21 timely guidance needed to comply with the act in a timely  
22 manner, the department may bring a legal action against the  
23 Environmental Protection Agency in a court of competent  
24 jurisdiction seeking an injunction to restrain the Environmental  
25 Protection Agency from enforcing the applicable Clean Air Act  
26 deadline on the Commonwealth until and unless the Environmental  
27 Protection Agency develops the appropriate regulation or  
28 guidance which allows the Commonwealth a reasonable opportunity  
29 to comply with the Clean Air Act.

30 Section 10. Sections 8, 9, 9.1 and 9.2 of the act, amended

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

3 Section 8. Unlawful Conduct.--It shall be unlawful to fail  
4 to comply with [any rule or regulation of the board], or to  
5 cause or assist in the violation of, any of the provisions of  
6 this act or the rules and regulations adopted under this act or  
7 to fail to comply with any order, plan approval, permit or other  
8 requirement of the department[, to violate or to assist in the  
9 violation of any of the provisions of this act or rules and  
10 regulations adopted hereunder, to cause air pollution, or to in  
11 any manner hinder, obstruct, delay, resist, prevent or in any  
12 way interfere or attempt to interfere with the department or its  
13 personnel in the performance of any duty hereunder.] or to cause  
14 a public nuisance; or to cause air pollution, soil or water  
15 pollution resulting from an air pollution incident; or to  
16 hinder, obstruct, prevent or interfere with the department or  
17 its personnel in their performance of any duty hereunder,  
18 including denying the department access to the source or  
19 facility; or to violate the provisions of 18 Pa.C.S. § 4903  
20 (relating to false swearing) or 4904 (relating to unsworn  
21 falsification to authorities) in regard to papers required to be  
22 submitted under this act. The owner or operator of an air  
23 contamination source shall not allow pollution of the air, water  
24 or other natural resources of the Commonwealth resulting from  
25 the source. For any air pollutant for which the board has set an  
26 emissions standard or for any source for which a permit has been  
27 issued by the department, a release of such pollutant in  
28 accordance with that standard or permit shall not constitute a  
29 violation of this act.

30 [Section 9. Penalties.--(a) Summary offense. Any person as

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

10 (b) Misdemeanors. Any person as herein defined, except a  
11 department, board, bureau or agency of the Commonwealth, who,  
12 within two years after being convicted of a summary offense  
13 pursuant to subsection (a) of this section, engages in similar  
14 unlawful conduct, shall be guilty of a misdemeanor and, upon  
15 conviction thereof, shall, for each separate offense, be subject  
16 to a fine of not less than five hundred dollars (\$500.00) nor  
17 more than five thousand dollars (\$5,000.00), or to imprisonment  
18 for a period of not more than one year for each separate offense  
19 hereunder, or both. For the purposes of this subsection, similar  
20 unlawful conduct shall mean a violation of the same order of the  
21 department, or a violation of the same provision of any rule or  
22 regulation of the department by the same organizational unit of  
23 the defendant.

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

29 (d) Upon conviction of an association, partnership or  
30 corporation of an offense under subsection (a) or (b) of this

1 section, the responsible members, officers, employees or agents  
2 may be imprisoned for the term provided therein which shall run  
3 concurrently with any term of imprisonment imposed upon such  
4 persons individually upon conviction for the same offense.

5 Section 9.1. Civil Penalties.--In addition to proceeding  
6 under any other remedy available at law, or in equity, for a  
7 violation of a provision of this act, or a rule or regulation of  
8 the board, or an order of the department, the hearing board,  
9 after hearing, may assess a civil penalty upon a person for such  
10 violation. Such a penalty may be assessed whether or not the  
11 violation was wilful. The civil penalty so assessed shall not  
12 exceed ten thousand dollars (\$10,000.00), plus up to two  
13 thousand five hundred dollars (\$2,500.00) for each day of  
14 continued violation. In determining the amount of the civil  
15 penalty, the hearing board shall consider the wilfulness of the  
16 violation, damage or injury to the outdoor atmosphere of the  
17 Commonwealth or its uses, and other relevant factors. It shall  
18 be payable to the Commonwealth of Pennsylvania and shall be  
19 collectible in any manner provided at law for the collection of  
20 debt. If any person liable to pay any such penalty neglects or  
21 refuses to pay the same after demand, the amount, together with  
22 interest and any costs that may accrue, shall be a lien in favor  
23 of the Commonwealth upon the property, both real and personal,  
24 of such person, but only after same has been entered and  
25 docketed of record by the prothonotary of the county where such  
26 is situated. The hearing board may, at any time, transmit to the  
27 prothonotaries of the respective counties certified copies of  
28 all such liens, and it shall be the duty of each prothonotary to  
29 enter and docket the same of record in his office, and to index  
30 the same as judgments are indexed, without requiring the payment

1 of costs as a condition precedent to the entry thereof.]

2     Section 9. Penalties.--(a) Any person who violates any  
3 provision of this act, any rule or regulation adopted under this  
4 act, any order of the department or any condition or term of any  
5 plan approval or permit issued pursuant to this act commits a  
6 summary offense and shall, upon conviction, be sentenced to pay  
7 a fine of not less than one hundred dollars (\$100.00) nor more  
8 than two thousand five hundred dollars (\$2,500.00) for each  
9 separate offense, and, in default of the payment of such fine,  
10 may be sentenced to imprisonment for ninety (90) days for each  
11 separate offense. Employees of the department authorized to  
12 conduct inspections or investigations are hereby declared to be  
13 law enforcement officers authorized to issue or file citations  
14 for summary violations under this act, and the General Counsel  
15 is hereby authorized to prosecute these offenses. For purposes  
16 of this subsection, a summary offense may be prosecuted before  
17 any district justice in the county where the offense occurred.  
18 There is no accelerated rehabilitative disposition authorized  
19 for a summary offense.

20     (b) (1) Any person who wilfully or negligently violates any  
21 provision of this act, any rule or regulation adopted under this  
22 act or any order of the department or any condition or term of  
23 any plan approval or permit issued pursuant to this act commits  
24 a misdemeanor of the second degree and shall, upon conviction,  
25 be sentenced to pay a fine of not less than one thousand dollars  
26 (\$1,000.00) nor more than fifty thousand dollars (\$50,000.00)  
27 for each separate offense or to imprisonment for a period of not  
28 more than two (2) years for each separate offense, or both.

29     (2) Any person who knowingly makes any false statement or  
30 representation in any application, record, report, certification



or other document required to be either filed or maintained by this act or the regulations promulgated under this act or commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.

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

(c) (1) Any person who knowingly releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 that is not listed in section 112 of the Clean Air Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury commits a felony of the first degree and shall, upon conviction, be sentenced to pay a fine of not less than

1 twenty-five thousand dollars (\$25,000.00) nor more than one  
2 hundred thousand dollars (\$100,000.00) per day for each  
3 violation or to imprisonment for a period of not less than two  
4 (2) years nor more than twenty (20) years, or both. Any person  
5 which is an organization committing such violation shall, upon  
6 conviction under this clause, be subject to a fine of not more  
7 than one million dollars (\$1,000,000.00) per day for each  
8 violation. If a conviction of any person under this clause is  
9 for a violation committed after a first conviction of such  
10 person under this clause, the maximum punishment shall be  
11 doubled with respect to both the fine and imprisonment. For any  
12 air pollutant for which the board has set an emissions standard  
13 or for any source for which a permit has been issued by the  
14 department, a release of such pollutant in accordance with that  
15 standard or permit shall not constitute a violation of this  
16 section.

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

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

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

28 (3) It is an affirmative defense to a prosecution under this  
29 subsection that the conduct charged was freely consented to by  
30 the person endangered and that the danger and conduct charged

1 were reasonably foreseeable hazards of either of the following:

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

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

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

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

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

29 (e) For purposes of this section, the term "person"  
30 includes, in addition to the entities referred to in section 3,

1 any responsible corporate officer.

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

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

30 Section 9.1. Civil Penalties.--(a) In addition to

1 proceeding under any other remedy available at law or in equity  
2 for a violation of a provision of this act or any rule or  
3 regulation promulgated under this act or any order, plan  
4 approval or permit issued pursuant to this act, the department  
5 may assess a civil penalty for the violation. The penalty may be  
6 assessed whether or not the violation was wilful. The civil  
7 penalty so assessed shall not exceed ten thousand dollars  
8 (\$10,000.00) per day for each violation which occurs in the  
9 first three (3) years following enactment of this section;  
10 fifteen thousand dollars (\$15,000.00) per day for each violation  
11 which occurs in the fourth year following enactment of this  
12 section; and twenty-five thousand dollars (\$25,000.00) per day  
13 for each violation which occurs in the fifth year and all  
14 subsequent years following enactment of this section. In  
15 determining the amount of the penalty, the department shall  
16 consider the wilfulness of the violation; damage to air, soil,  
17 water or other natural resources of the Commonwealth or their  
18 uses; financial benefit to the person in consequence of the  
19 violation; deterrence of future violations; cost to the  
20 department; the size of the source or facility; the compliance  
21 history of the source; the severity and duration of the  
22 violation; degree of cooperation in resolving the violation; the  
23 speed with which compliance is ultimately achieved; whether the  
24 violation was voluntarily reported; other factors unique to the  
25 owners or operator of the source or facility; and other relevant  
26 factors.

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

1 person wishes to contest the amount of the penalty or the fact  
2 of the violation to the extent not already established, the  
3 person shall forward the proposed amount of the penalty to the  
4 hearing board within the thirty (30) day period for placement in  
5 an escrow account with the State treasurer or any Commonwealth  
6 bank or post an appeal bond to the hearing board within thirty  
7 (30) days in the amount of the proposed penalty, provided that  
8 such bond is executed by a surety licensed to do business in the  
9 Commonwealth and is satisfactory to the department. If, through  
10 administrative or final judicial review of the proposed penalty,  
11 it is determined that no violation occurred or that the amount  
12 of the penalty shall be reduced, the hearing board shall, within  
13 thirty (30) days, remit the appropriate amount to the person  
14 with any interest accumulated by the escrow deposit. Failure to  
15 forward the money or the appeal bond at the time of the appeal  
16 shall result in a waiver of all legal rights to contest the  
17 violation or the amount of the civil penalty unless the  
18 appellant alleges financial inability to prepay the penalty or  
19 to post the appeal bond. The hearing board shall conduct a  
20 hearing to consider the appellant's alleged inability to pay  
21 within thirty (30) days of the date of the appeal. The hearing  
22 board may waive the requirement to prepay the civil penalty or  
23 to post an appeal bond if the appellant demonstrates and the  
24 hearing board finds that the appellant is financially unable to  
25 pay. The hearing board shall issue an order within thirty (30)  
26 days of the date of the hearing to consider the appellant's  
27 alleged inability to pay. The amount assessed after  
28 administrative hearing or after waiver of administrative hearing  
29 shall be payable to the Commonwealth and shall be collectible in  
30 any manner provided by law for the collection of debts,

1 including the collection of interest at the rate established in  
2 subsection (c) of section 6.3, which shall run from the date of  
3 assessment of the penalty. If any person liable to pay any such  
4 penalty neglects or refuses to pay the same after demand, the  
5 amount, together with interest and any costs that may accrue,  
6 shall constitute a debt of such person, as may be appropriate,  
7 to the Clean Air Fund. The debt shall constitute a lien on all  
8 property owned by said person when a notice of lien  
9 incorporating a description of the property of the person  
10 subject to the action is duly filed with the prothonotary of the  
11 court of common pleas where the property is located. The  
12 prothonotary shall promptly enter upon the civil judgment or  
13 order docket, at no cost to the department, the name and address  
14 of the person, as may be appropriate, and the amount of the lien  
15 as set forth in the notice of lien. Upon entry by the  
16 prothonotary, the lien shall attach to the revenues and all real  
17 and personal property of the person, whether or not the person  
18 is solvent. The notice of lien, filed pursuant to this  
19 subsection, which affects the property of the person shall  
20 create a lien with priority over all subsequent claims or liens  
21 which are filed against the person, but it shall not affect any  
22 valid lien, right or interest in the property filed in  
23 accordance with established procedure prior to the filing of a  
24 notice of lien under this subsection.

25       Section 9.2. Disposition of Fees, Fines and Civil  
26 Penalties.--(a) All fines, civil penalties and fees collected  
27 under this act shall be paid into the Treasury of the  
28 Commonwealth in a special fund known as the ["Clean Air  
29 Fund,[" hereby established, which, along with interest earned,  
30 shall be administered by the department for use in the

1 elimination of air pollution. The department may establish such  
2 separate accounts as may be necessary or appropriate to  
3 implement the requirements of this act and the Clean Air Act.

4 The board shall adopt rules and regulations for the management  
5 and use of the money in the fund.

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

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

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

12 Section 9.3. Continuing Violations.--Each day of continued  
13 violation and each violation of any provision of this act, any  
14 rule or regulation adopted under this act or any order of the  
15 department or any condition or term of any plan approval or  
16 permit issued pursuant to this act shall constitute a separate  
17 offense and violation.

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

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

20 Section 10.1. Enforcement Orders.--(a) The department may  
21 issue such orders as are necessary to aid in the enforcement of  
22 the provisions of this act. These orders shall include, but  
23 shall not be limited to, orders modifying, suspending,  
24 terminating or revoking any plan approvals or permits, orders  
25 requiring persons to cease unlawful activities or cease  
26 operation of a facility or air contamination source which, in  
27 the course of its operation, is in violation of any provision of  
28 this act, any rule or regulation promulgated under this act or  
29 plan approval or permit, order to take corrective action or to  
30 abate a public nuisance, or an order requiring the testing,



1 sampling or monitoring of any air contamination source or orders  
2 requiring production of information. Such an order may be issued  
3 if the department finds that any condition existing in or on the  
4 facility or source involved is causing or contributing to or is  
5 creating a danger of air pollution or if it finds that the  
6 permittee or any person is in violation of any provision of this  
7 act or of any rule, regulation or order of the department.

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

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

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

21 Section 10.2. Appealable Actions.--Any person aggrieved by  
22 an order or other administrative action of the department issued  
23 pursuant to this act or any person who participated in the  
24 public comment process for a plan approval or permit shall have  
25 the right, within thirty (30) days from actual or constructive  
26 notice of the action, to appeal the action to the hearing board  
27 in accordance with the act of July 13, 1988 (P.L.530, No.94),  
28 known as the Environmental Hearing Board Act, and 2 Pa.C.S. Ch.  
29 5 Subch. A (relating to practice and procedure of Commonwealth  
30 agencies).

1     Section 10.3. Limitation on Action.--The provisions of any  
2 other statute to the contrary notwithstanding, actions for civil  
3 or criminal penalties under this act may be commenced at any  
4 time within a period of seven (7) years from the date the  
5 offense is discovered.

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

9     Section 11. Powers Reserved to the Department Under Existing  
10 Laws.--Nothing in this act shall limit in any way whatever the  
11 powers conferred upon the department under laws other than this  
12 act, it being expressly provided that all such powers are  
13 preserved to the department and may be freely exercised by it.

14 [The department shall have the right upon approval of the  
15 Attorney General, to petition a court of competent jurisdiction  
16 to order the abatement of any nuisance or condition detrimental  
17 to health. For that purpose no] No court exercising general  
18 equitable jurisdiction shall be deprived of such jurisdiction  
19 even though [such] a nuisance or condition detrimental to health  
20 is subject to regulation or other action by the board under this  
21 act. THE DEPARTMENT SHALL NOT HAVE THE POWER TO RESTRICT OR DENY <—  
22 ANY PERMIT APPLICATION OR OTHERWISE LAWFUL ACTIVITY REGARDING  
23 THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS "THE CLEAN  
24 STREAMS LAW," OR THE ACT OF JANUARY 24, 1966 (1965 P.L.1535,  
25 NO.537), KNOWN AS THE "PENNSYLVANIA SEWAGE FACILITIES ACT,"  
26 BASED UPON THE POWERS GRANTED TO THE DEPARTMENT UNDER THIS ACT.

27     Section 12. Powers Reserved to Political Subdivisions.--(a)  
28 Nothing in this act shall prevent counties, cities, towns,  
29 townships or boroughs from enacting ordinances with respect to  
30 air pollution which will not be less stringent than the

1 provisions of this act, the Clean Air Act or the rules and  
2 regulations promulgated [pursuant to its provisions.] under  
3 either this act or the Clean Air Act. This act shall not be  
4 construed to repeal existing ordinances, resolutions or  
5 regulations of the aforementioned political subdivisions  
6 existing at the time of the effective date of this act, except  
7 as they may be less stringent than the provisions of this  
8 act[.], the Clean Air Act or the rules or regulations adopted  
9 under either this act or the Clean Air Act.

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

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

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

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

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

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

26 (g) Irrespective of subsection (b) above, and in order that  
27 the civil and criminal penalties and equitable remedies for air  
28 pollution violations shall be uniform [except insofar as they  
29 are inconsistent with the jurisdictional limitations of the  
30 minor judiciary and the Philadelphia Municipal Court,]

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

22 [(h) Any person, as herein defined, except a department,  
23 board, bureau, or agency of the Commonwealth, engaging in  
24 conduct in violation of a municipal air pollution control  
25 ordinance, shall, for each offense, upon conviction thereof in a  
26 civil proceeding before a judge of the Municipal Court of  
27 Philadelphia, district justice, magistrate, alderman or justice  
28 of the peace be sentenced to pay the cost of prosecution and a  
29 civil penalty of not less than twenty-five dollars (\$25.00), nor  
30 more than five hundred dollars (\$500.00), for each day of

1 continued violation. Such a penalty may be assessed whether or  
2 not the violation was wilful. Failure to pay any such penalty  
3 within the time prescribed by law shall be punishable as a civil  
4 contempt. Notwithstanding anything contained in section 9.2 of  
5 this act, all civil penalties and fees collected under this  
6 subsection shall be paid to the appropriate political  
7 subdivision, as provided by law, and shall be collectible in any  
8 manner provided by law for the collection of debt. If any person  
9 liable to pay any such penalty neglects or refuses to pay the  
10 same after demand, the amount, together with interest and any  
11 costs that may accrue, shall be a lien in favor of the  
12 appropriate political subdivision upon the property, both real  
13 and personal, of such person, but only after the same has been  
14 entered and docketed of record by the prothonotary of the county  
15 where such is situated: Provided, That nothing contained in this  
16 subsection shall preclude any public official from seeking, at  
17 law or at equity or before any appropriate administrative body,  
18 the assessment of civil penalties in the amount provided by  
19 section 9.1 of this act.]

20 Section 12.1. Construction.--Nothing in this act shall be  
21 construed as estopping the Commonwealth, or any district  
22 attorney or solicitor of a municipality, from proceeding in  
23 courts of law or equity to abate pollutions forbidden under this  
24 act, or abate nuisances under existing law. It is hereby  
25 declared to be the purpose of this act to provide additional and  
26 cumulative remedies to abate the pollution of the air of this  
27 Commonwealth, and nothing contained in this act shall in any way  
28 abridge or alter rights of action or remedies now or hereafter  
29 existing in equity, or under the common law or statutory law,  
30 criminal or civil, nor shall any provision of this act, or the

1 granting of any plan approval or permit under this act, or any  
2 act done by virtue of this act, be construed as estopping the  
3 Commonwealth, persons or municipalities, in the exercise of  
4 their rights under the common law or decisional law or in  
5 equity, from proceeding in courts of law or equity to suppress  
6 nuisances, or to abate any pollution now or hereafter existing,  
7 or enforce common law or statutory rights. No courts of this  
8 Commonwealth having jurisdiction to abate public or private  
9 nuisance shall be deprived of such jurisdiction to abate any  
10 private or public nuisance instituted by any person for the  
11 reason that such nuisance constitutes air pollution.

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

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

1 causes the public nuisance shall be liable for the cost of  
2 abatement.

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

18       Section 13.2. Confidential Information.--All records,  
19 reports or information obtained by the department or referred to  
20 at public hearings under the provisions of this act shall be  
21 available to the public, except that upon cause shown by any  
22 person that the records, reports or information, or a particular  
23 portion thereof, but not emission data, to which the department  
24 has access under the provisions of this act, if made public,  
25 would divulge production or sales figures or methods, processes  
26 or production unique to such person or would otherwise tend to  
27 affect adversely the competitive position of such person by  
28 revealing trade secrets, including intellectual property rights,  
29 the department shall consider such record, report or  
30 information, or particular portion thereof confidential in the



1 administration of this act. The department shall implement this  
2 section consistent with sections 112(d) and 114(c) of the Clean  
3 Air Act. Nothing herein shall be construed to prevent disclosure  
4 of such report, record or information to Federal, State or local  
5 representatives as necessary for purposes of administration of  
6 any Federal, State or local air pollution control laws, or when  
7 relevant in any proceeding under this act.

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

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

11 Section 13.6. Suits to Abate Nuisances and Restrain  
12 Violations.--(a) Any activity or condition declared by this act  
13 to be a nuisance or which is otherwise in violation of this act  
14 shall be abatable in the manner provided by law or equity for  
15 the abatement of public nuisance. In addition, in order to  
16 restrain or prevent any violation of this act or the rules and  
17 regulations promulgated under this act or any plan approval or  
18 permit or orders issued by the department, or to restrain the  
19 maintenance and threat of public nuisance, suits may be  
20 instituted in equity or at law in the name of the Commonwealth  
21 upon relation of the Attorney General, the General Counsel, the  
22 district attorney of any county or the solicitor of any  
23 municipality affected, after notice has first been served upon  
24 the Attorney General of the intention of the General Counsel,  
25 district attorney or solicitor to so proceed. Such proceedings  
26 may be prosecuted in the Commonwealth Court or in the court of  
27 common pleas of the county where the activity has taken place,  
28 the condition exists or the public is affected, and, to that  
29 end, jurisdiction is hereby conferred in law and equity upon  
30 such courts. Except in cases of emergency where, in the opinion

1 of the court, the exigencies of the case require immediate  
2 abatement of the nuisance, the court may, in its decree, fix a  
3 reasonable time during which the person responsible for the  
4 nuisance may make provision for the abatement of the same.

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

21 (c) Except as provided in subsection (d) of this section,  
22 any person may commence a civil action to compel compliance with  
23 this act or any rule, regulation, order or plan approval or  
24 permit issued pursuant to this act by any owner or operator  
25 alleged to be causing or contributing to a violation of any  
26 provision of this act or any rule or regulation promulgated  
27 under this act or any plan approval, permit or order issued by  
28 the department. In addition to seeking to compel compliance, any  
29 person may request the court to award civil penalties. The court  
30 shall use the factors and amounts contained in section 9.1 in

1 awarding civil penalties under this subsection. Such penalties  
2 shall be paid into the Clean Air Fund established by section 9.2  
3 or be used to prevent air pollution in the county where the  
4 violation occurred. Except where 42 Pa.C.S. (relating to  
5 judiciary and judicial procedure) requires otherwise, the courts  
6 of common pleas shall have jurisdiction of such actions. Such an  
7 action may not be commenced if the department has commenced and  
8 is diligently prosecuting a civil action in a Federal or State  
9 court or is in litigation before the hearing board to require  
10 the alleged violator to comply with this act, any rule or  
11 regulation promulgated under this act or any order, plan  
12 approval or permit issued pursuant to this act, but, in any such  
13 action in a Federal or State court or before the hearing board,  
14 any person having or representing an interest which is or may be  
15 adversely affected may intervene as a matter of right without  
16 posting bond.

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

21 (e) The sixty (60) day notice provisions of subsection (d)  
22 of this section to the contrary notwithstanding, any action  
23 pursuant to subsection (c) of this section may be initiated  
24 immediately upon written notification to the department in the  
25 case where the violation or condition complained of constitutes  
26 an imminent threat to the health or safety of the plaintiff or  
27 would immediately affect a legal interest of the plaintiff.

28 (f) The court, in issuing any final order in any action  
29 brought pursuant to subsection (c) of this section, may award  
30 costs of litigation, including attorney and expert witness fees,

1 to any party whenever the court determines such an award is  
2 appropriate. Except as provided in subsection (b) of this  
3 section, the court may, if a temporary restraining order or  
4 preliminary injunction is sought, require the filing of a bond  
5 or equivalent security in accordance with the Pennsylvania Rules  
6 of Civil Procedure.

7 Section 17. This act shall take effect as follows:

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

9 (2) The remainder of this act shall take effect  
10 immediately.