

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2113 Session of
2012

INTRODUCED BY VITALI, HANNA, FRANKEL, GEORGE, STURLA, B. BOYLE,
K. BOYLE, BRADFORD, BRIGGS, V. BROWN, CALTAGIRONE, COHEN,
D. COSTA, CURRY, DAVIS, DAVIDSON, DELISSIO, FREEMAN, GERBER,
GOODMAN, HARPER, HICKERNELL, HORNAMAN, JOSEPHS, MAHONEY,
MUNDY, M. O'BRIEN, PARKER, PAYTON, QUINN, SAMUELSON,
SANTARSIERO, K. SMITH AND YOUNGBLOOD, JANUARY 10, 2012

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
JANUARY 10, 2012

AN ACT

1 Amending Title 35 (Health and Safety) of the Pennsylvania
2 Consolidated Statutes, consolidating the Air Pollution
3 Control Act; providing for air contaminant emissions, for
4 exemptions from air pollution requirements for unconventional
5 gas production processes prohibited and for permit fees; and
6 making a related repeal.

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

9 Section 1. Title 35 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 21

12 AIR POLLUTION CONTROL

13 Subchapter

14 A. Preliminary Provisions

15 B. Regulatory Program

16 SUBCHAPTER A

17 PRELIMINARY PROVISIONS

1 Sec.

2 2101. Scope of chapter.

3 2102. Declaration of policy.

4 2103. Definitions.

5 § 2101. Scope of chapter.

6 This chapter relates to air pollution control.

7 § 2102. Declaration of policy.

8 The General Assembly finds and declares as follows:

9 (1) It is the policy of the Commonwealth to protect the
10 air resources of this Commonwealth to the degree necessary
11 for the:

12 (i) protection of public health, safety and well-
13 being of its citizens;

14 (ii) prevention of injury to plant and animal life
15 and to property;

16 (iii) protection of the comfort and convenience of
17 the public and the protection of the recreational
18 resources of this Commonwealth;

19 (iv) development, attraction and expansion of
20 industry, commerce and agriculture; and

21 (v) implementation of the provisions of the Clean
22 Air Act in this Commonwealth.

23 (2) Interstate pollution transport commissions
24 established under the Clean Air Act should develop pollution
25 control strategies via a process which involves public review
26 and opportunity for comment.

27 (3) The public should be involved in developing and
28 committing the Commonwealth to the adoption of particular
29 pollution control strategies through review of State
30 implementation plans required to be submitted by the Clean

1 Air Act.

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

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

13 (6) The purpose of this subchapter is to provide
14 additional and cumulative remedies to abate the pollution of
15 the air of this Commonwealth.

16 § 2103. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

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

22 "Air contaminant." Smoke, dust, fume, gas, odor, mist,
23 radioactive substance, vapor, pollen or any combination of them.

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

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

1 "Air pollution." The presence in the outdoor atmosphere of
2 any form of contaminant, including the discharging from stacks,
3 chimneys, openings, buildings, structures, open fires, vehicles,
4 processes or any other source of any smoke, soot, fly ash, dust,
5 cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases,
6 vapors, odors, toxic, hazardous or radioactive substances, waste
7 or any other matter in a place, manner or concentration inimical
8 or which may be inimical to the public health, safety or welfare
9 or which is or may be injurious to human, plant or animal life
10 or to property or which unreasonably interferes with the
11 comfortable enjoyment of life or property.

12 "Approved air pollution control agency." An air pollution
13 control agency of any political subdivision of the Commonwealth
14 which has been granted approval by the Environmental Quality
15 Board.

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

17 "Clean Air Act." (Public Law 95-95, 42 U.S.C. § 7401 et
18 seq.).

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

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

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

26 "Hearing board." The Environmental Hearing Board.

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

municipality, district, authority or any other legal entity
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 on the source any air pollution control
equipment or device.

"Region." Any geographical subdivision of this 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 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 50 tons per year of any regulated
pollutant; and

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

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

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

SUBCHAPTER B

REGULATORY PROGRAM

Sec.

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2112. (Reserved).

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21 2133.5. (Reserved).
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23 § 2111. (Reserved).
24 § 2112. (Reserved).
25 § 2113. (Reserved).
26 § 2114. Administration.
27 The department shall have the power and its duty shall be to:
28 (1) Implement the provisions of the Clean Air Act in
29 this Commonwealth.
30 (2) Enter any building, property, premises or place and

1 inspect any air contamination source for the purpose of
2 investigating an actual or a suspected source of air
3 pollution or for the purpose of ascertaining the compliance
4 or noncompliance with this subchapter, a regulation
5 promulgated under this subchapter or any plan approval,
6 permit or order of the department. In connection with the
7 inspection or investigation, samples of air, air
8 contaminants, fuel, process material or other matter may be
9 taken for analysis, a duplicate of the analytical report
10 shall be furnished promptly to the person who is suspected of
11 causing air pollution or air contamination.

12 (3) Have access to, and require the production of,
13 books, papers and records, including, but not limited to,
14 computerized information in a format as the department may
15 reasonably prescribe pertinent to any matter under
16 investigation.

17 (4) Require the owner or operator of any air
18 contamination source to establish and maintain records and
19 make reports and furnish the information, including
20 computerized information, in a format as the department may
21 reasonably prescribe.

22 (5) Require the owner or operator of any air
23 contamination source to install, use and maintain air
24 contaminant monitoring equipment or methods as the department
25 may reasonably prescribe.

26 (6) Require the owner or operator of any air
27 contamination source to sample the emissions of the source in
28 accordance with methods and procedures and at locations and
29 intervals of time as the department may reasonably prescribe,
30 and to provide the department with the results of the

1 samples.

2 (7) Enter upon any property on which an air
3 contamination source may be located and make tests upon the
4 source as are necessary to determine whether the air
5 contaminants being emitted from the air contamination source
6 are being emitted at a rate in excess of a rate provided for
7 by this subchapter, any regulation promulgated under this
8 subchapter or any plan approval, permit or order of the
9 department or otherwise causing air pollution. If the
10 department determines that a source test is necessary, it
11 shall give reasonable written or oral notice to the person
12 owning, operating or otherwise in control of the source, that
13 the department will conduct a test on the source. After the
14 test, the person to whom the notice is given shall provide
15 reasonably safe access to the testing area and sampling
16 ports, facilities, electrical power and water, as the
17 department shall specify in its notice.

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

24 (9) Do the following in regard to orders:

25 (i) Issue orders to any person owning or operating
26 an air contamination source or owning or possessing land
27 on which the source is located, if the source is
28 introducing or is likely to introduce air contaminants
29 into the outdoor atmosphere in excess of any rate
30 provided for by this subchapter, any regulation

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

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

1 issue a supersedeas.

2 (10) Institute, in a court of competent jurisdiction,
3 proceedings to compel compliance with this subchapter, any
4 regulation promulgated under this subchapter or any plan
5 approval, permit or order of the department.

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

8 (12) Institute prosecutions under this subchapter.

9 (13) Recommend the minimum job qualifications of
10 personnel employed by county and municipal air pollution
11 control agencies hereafter created.

12 (14) Require the submission of, and consider for
13 approval, plans and specifications of air pollution control
14 equipment, devices or process changes and inspect the
15 installations or modifications to ensure compliance with the
16 plans which have been approved.

17 (15) Conduct or cause to be conducted studies and
18 research with respect to air contaminants, their nature,
19 causes and effects, and with respect to the control,
20 prevention, abatement and reduction of air pollution and air
21 contamination.

22 (16) Evaluate motor vehicle emission control programs,
23 including vehicle emission standards, clean alternative
24 fuels, oxygenated fuels, reformulated fuels, vehicle miles of
25 travel, congestion levels, transportation control measures
26 and other transportation control strategies with respect to
27 their effect upon air pollution and determine the need for
28 modifications of the programs.

29 (17) Determine by means of field studies and sampling
30 the degree of air pollution existing in any part of the

1 Commonwealth.

2 (18) Prepare and develop a general comprehensive plan
3 for the control and abatement of existing air pollution and
4 air contamination and for the abatement, control and
5 prevention of any new air pollution and air contamination,
6 recognizing varying requirements for the different areas of
7 this Commonwealth, and to submit a comprehensive plan to the
8 board for its consideration and approval.

9 (19) Encourage the formulation and execution of plans in
10 conjunction with air pollution control agencies or civil
11 associations of counties, cities, boroughs, towns and
12 townships of this Commonwealth where any sources of air
13 pollution or air contamination may be located, and enlist the
14 cooperation of those who may be in control of the sources for
15 the control, prevention and abatement of air pollution and
16 air contamination.

17 (20) Encourage voluntary efforts and cooperation by all
18 persons concerned in controlling, preventing, abating and
19 reducing air pollution and air contamination.

20 (21) Conduct and supervise educational programs with
21 respect to the control, prevention, abatement and reduction
22 of air pollution and air contamination, including the
23 preparation and distribution of information relating to the
24 means of controlling and preventing air pollution and air
25 contamination.

26 (22) Develop and conduct, in cooperation with local
27 communities, demonstration programs relating to air
28 contaminants, air pollution and air contamination and the
29 control, prevention, abatement and reduction of air pollution
30 and air contamination.

1 (23) Provide advisory technical consultative services to
2 local communities for the control, prevention, abatement and
3 reduction of air pollution and air contamination.

4 (24) Cooperate with the appropriate agencies of the
5 United States or of other states or any interstate agencies
6 with respect to the control, prevention, abatement and
7 reduction of air pollution and, as appropriate, formulate
8 interstate air pollution control compacts or agreements for
9 the submission to the General Assembly.

10 (25) Serve as the agency of the Commonwealth for the
11 receipt of money from the Federal Government or other public
12 or private agencies, and expend money for studies and
13 research with respect to air contaminants, air pollution and
14 the control, prevention, abatement and reduction of air
15 pollution.

16 (26) Develop and submit to the Environmental Protection
17 Agency a procedure to implement and enforce the regulations
18 which the Environmental Protection Agency promulgates under
19 section 183(e) of the Clean Air Act to reduce emissions from
20 consumer and commercial products, provided the department
21 will receive credits for the reductions attributed to the
22 Federal consumer and commercial products regulations under
23 section 182 of the Clean Air Act regulations, and the
24 department has the resources to implement and enforce the
25 program.

26 (27) Do any and all other acts and things not
27 inconsistent with any provision of this subchapter, which it
28 may deem necessary or proper for the effective enforcement of
29 this subchapter and the regulations promulgated under this
30 subchapter.

1 § 2114.1. Agricultural regulations prohibited.

2 (a) Applicability.--Except as may be required by the Clean
3 Air Act or the regulations promulgated under the Clean Air Act,
4 this subchapter shall not apply to the production of
5 agricultural commodities and the Environmental Quality Board
6 shall not have the power nor the authority to promulgate
7 regulations relating to air contaminants and air pollution
8 arising from the production of agricultural commodities.

9 (b) Definitions.--As used in this section, the term
10 "production of agricultural commodities" shall include:

11 (1) The commercial propagation, production, harvesting
12 or drying on the premises of the farm operation or the
13 disposal of residual materials resulting from the commercial
14 propagation, production, harvesting or drying on the premises
15 of the farm operation of the following:

16 (i) Field crops, including corn, wheat, oats, rye,
17 barley, hay, potatoes and dry beans.

18 (ii) Fruits, including apples, peaches, grapes,
19 cherries and berries.

20 (iii) Vegetables, including tomatoes, snap beans,
21 cabbage, carrots, beets, onions, mushrooms, sweet corn
22 and green peas.

23 (iv) Horticultural specialties, including nursery
24 stock, ornamental shrubs, ornamental trees and flowers.

25 (v) Livestock and livestock products, including
26 cattle, sheep, hogs, goats, horses, poultry, furbearing
27 animals, milk, eggs and furs.

28 (vi) Timber, wood and other wood products derived
29 from trees.

30 (vii) Aquatic plants and animals and their by-

1 products.

2 (2) The processing of agricultural commodities
3 propagated, produced, harvested or dried under paragraph (1)
4 or the disposal of residual materials resulting from the
5 processing. This paragraph shall apply to agricultural
6 commodities propagated, produced, harvested or dried on the
7 premises of the farm operation.

8 (3) The commercial production, processing or storage of
9 compost, except for compost including, all or in part,
10 biosolids originating at a municipal sewage treatment
11 facility, to be predominantly used in the commercial
12 propagation or production of any agricultural commodity
13 identified under paragraph (1), regardless of whether the
14 compost is being produced, processed or stored on a different
15 premises than the premises in which the compost is being
16 used.

17 (4) The use of any material whose production, processing
18 or storage is exempt from this subchapter under paragraph (3)
19 in the commercial propagation or production of any
20 agricultural commodity identified under paragraph (1), or any
21 odor or malodor or fugitive air emission resulting from the
22 production, processing or storage of any material so
23 exempted.

24 § 2114.2. Permissible actions.

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

1 unless otherwise specifically authorized or required by this
2 subchapter or specifically required by the Clean Air Act.

3 (b) Limitation.--Control measures or other requirements
4 promulgated under subsection (a) shall be no more stringent than
5 those required by the Clean Air Act unless authorized or
6 required by this subchapter or specifically required by the
7 Clean Air Act. This requirement shall not apply if the board
8 determines that it is reasonably necessary for a control measure
9 or other requirement to exceed minimum Clean Air Act
10 requirements in order for the Commonwealth:

11 (1) to achieve or maintain ambient air quality
12 standards;

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

15 (3) to prevent an assessment or imposition of Clean Air
16 Act sanctions; or

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

18 (c) Prohibition.--The board may not by regulation promulgate
19 an ambient air quality standard for a specific pollutant which
20 is more stringent than the air quality standard which the EPA
21 has adopted for the specific pollutant under section 109 of the
22 Clean Air Act.

23 (d) Challenges.--In any challenge to the enforcement of
24 regulations promulgated to achieve and maintain the ambient air
25 quality standards or to satisfy related Clean Air Act
26 requirements, the person challenging the regulation shall have
27 the burden to demonstrate that the control measure or other
28 requirement or the stringency of the control measure or
29 requirement is not reasonably required to achieve or maintain
30 the standard or to satisfy related Clean Air Act requirements.

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

4 (f) Applicability.--This section shall not apply to
5 regulations approved as a final rulemaking by the board prior to
6 September 8, 1992, or to any ambient air quality standards
7 promulgated by the board if no standard has been promulgated by
8 the EPA.

9 (g) Construction.--This section shall not be construed to
10 weaken or otherwise affect site-specific standards or other
11 requirements for individual sources or facilities in place prior
12 to September 8, 1992.

13 § 2114.3. Evaluation.

14 Beginning five years after July 9, 1992, and every five 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 2114.2 (relating to permissible actions) has hindered
21 in any way the Commonwealth's efforts to comply with the
22 Clean Air Act and a recommendation on whether that provision
23 should be changed.

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

28 (3) An evaluation of the funding available to implement
29 the Clean Air Act programs and whether that funding is
30 sufficient or inadequate and recommendations on if

1 adjustments should be made.

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

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

15 (6) A summary of the activities undertaken by the
16 Citizens Advisory Council and the air technical advisory
17 committee under section 2117.6 (relating to advice to
18 department).

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

23 (8) An assessment of the impact of missing Federal
24 deadlines identified under section 2117.12 (relating to
25 missed Federal deadlines) has had or will have on the State
26 implementation of the Clean Air Act programs.

27 § 2115. Environmental Quality Board.

28 (a) Powers and duties.--The board shall have the power and
29 its duty shall be to:

30 (1) Promulgate regulations, for the prevention, control,

1 reduction and abatement of air pollution, applicable
2 throughout this Commonwealth or to parts or regions or
3 subregions specifically designated in the regulation which
4 shall be applicable to all air contamination sources
5 regardless of whether the source is required to be under
6 permit by this subchapter. Regulations may establish maximum
7 allowable emission rates of air contaminants from the
8 sources, prohibit or regulate the combustion of certain
9 fuels, prohibit or regulate open burning, prohibit or
10 regulate any process or source or class of processes or
11 sources, require the installation of specified control
12 devices or equipment or designate the control efficiency of
13 air pollution control devices or equipment required in
14 specific processes or sources or classes of processes or
15 sources. Regulations shall be promulgated under the
16 provisions of the act of July 31, 1968 (P.L.769, No.240),
17 referred to as the Commonwealth Documents Law, upon notice
18 and after public hearings as the board deems appropriate. In
19 exercising its authority to promulgate regulations, the board
20 may, and to the extent deemed desirable by it shall, consult
21 with a council of technical advisers properly qualified by
22 education or experience in air pollution matters, appointed
23 by the board and to serve at the pleasure of the board, to
24 consist of the number of advisers as the board may appoint,
25 but the technical advisers shall receive no compensation
26 other than their actual and necessary expenses for their
27 services to the board.

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

1 various areas of this Commonwealth so as to control air
2 pollution.

3 (3) By regulation, classify air contaminant sources,
4 according to levels and types of emissions and other
5 characteristics which relate to air pollution.

6 Classifications made under this subsection shall apply to the
7 entire Commonwealth or any part. Any person who owns or
8 operates an air contaminant source of any class to which the
9 regulations of the board under this subsection apply, shall
10 make reports containing information as may be required by the
11 board concerning location, size and height of air contaminant
12 outlets, processes employed, fuels used and the nature and
13 time periods or duration of emissions, and other information
14 as is relevant to air pollution and available or reasonably
15 capable of being assembled.

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

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

26 (6) Promulgate regulations for the approval and the
27 rescission and suspension of approval of local air pollution
28 control agencies.

29 (7) Promulgate regulations designed to reduce emissions
30 from motor vehicles, including centrally clean-fueled fleets,

1 clean alternative fuels, oxygenated fuels, reformulated
2 fuels, vehicle miles of travel, transportation control
3 measures and other transportation control strategies.
4 Regulations shall be developed in consultation with the
5 Department of Transportation. The board shall not promulgate
6 regulations mandating the sale or use of any set of
7 specifications for motor fuel prescribed by the State of
8 California under 42 U.S.C. § 7545(c) (4) (B) (relating to
9 regulation of fuels) unless the set of specifications is
10 required under the Clean Air Act or the regulations
11 promulgated under the Clean Air Act.

12 (8) Promulgate regulations to implement the provisions
13 of the Clean Air Act. The regulations promulgated to
14 implement the provisions of the Clean Air Act shall be
15 consistent with the requirements of the Clean Air Act and the
16 regulations promulgated under the Clean Air Act.

17 (9) Promulgate regulations to exempt sources or
18 categories of sources of minor significance from the
19 provisions of section 2116.1 (relating to plan approvals and
20 permits).

21 (10) Promulgate regulations establishing provisions to
22 allow changes within a permitted facility or one operating
23 under section 2116.1(b) (3) without requiring a permit
24 revision if the changes are not modifications under any
25 provision of 42 U.S.C. Ch. 85 Subch. I (relating to programs
26 and activities) and the changes do not exceed the emissions
27 allowable under the permit, whether expressed in the permit
28 as a rate of emissions or in terms of total emissions,
29 provided that the facility provides the department and the
30 administrator with written notification in advance of the

1 proposed changes which shall be a minimum of seven days,
2 unless the board provides in its regulations a different time
3 frame for emergencies.

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

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

17 (13) Promulgate, by regulation, alternative volatile
18 organic compound emission limitations for aerospace coatings
19 and solvents, including extreme performance coatings, which
20 are required to be used by the United States Department of
21 Defense, the United States Department of Transportation and
22 the National Aeronautic and Space Administration or to meet
23 military and aerospace specifications, provided the
24 alternative limitations are authorized by the Clean Air Act.

25 (b) Limitation.--In promulgating regulations containing
26 transportation control measures, the board shall not have the
27 authority to promulgate any regulation limiting or expanding any
28 municipalities' authority under the Municipal Planning Code to
29 regulate land development, subdivision approval, zoning
30 revision, building permit or any other development activity

1 unless specifically required by the Clean Air Act.

2 § 2116. Environmental Hearing Board.

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

12 § 2116.1. Plan approvals and permits.

13 (a) Plan approval.--No person shall construct, assemble,
14 install or modify any stationary air contamination source, or
15 install on the source any air pollution control equipment or
16 device unless the person has applied to and received written
17 plan approval from the department to do so: Provided, however,
18 That no written approval shall be necessary with respect to
19 normal routine maintenance operations, nor to any source,
20 equipment or device used solely for the supplying of heat or hot
21 water to one structure intended as a one-family or two-family
22 dwelling, nor where construction, assembly, installation or
23 modification is specifically authorized by the regulations of
24 the department to be conducted without written approval. All
25 applications for approval shall be made in writing and shall be
26 on forms and contain information as the department shall
27 prescribe and shall have appended to the applications detailed
28 plans and specifications related to the proposed installation.

29 (b) Permit required.--

30 (1) No person shall operate any stationary air

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

12 (2) A permit may be issued after July 9, 1992, to any
13 applicant for a stationary air contamination source requiring
14 construction, assembly, installation or modification if the
15 requirements of subsection (a) have been met and there has
16 been performed upon the source a test operation or evaluation
17 which shall satisfy the department that the air contamination
18 source will not discharge into the outdoor atmosphere any air
19 contaminants at a rate in excess of that permitted by
20 applicable regulation of the board, or in violation of any
21 performance or emission standard or other requirement
22 established by the EPA or the department for the source and
23 which will not cause air pollution.

24 (3) A stationary air contamination source operating
25 lawfully without a permit for which fees are required by
26 section 2116.3 (relating to fees) or the regulations
27 promulgated under this subchapter have been paid is
28 authorized to continue to operate without a permit until 120
29 days after the department provides notice to the source that
30 a permit is required or until November 1, 1996, whichever

1 occurs first. If the applicant submits a complete permit
2 application within the time frames in this subsection and the
3 department fails to issue a permit through no fault of the
4 applicant, the source may continue to operate if the fees
5 required by section 2116.3 or the regulations promulgated
6 under this subchapter have been paid and the source is
7 operated in conformance with this subchapter, the Clean Air
8 Act and the regulations promulgated under both this
9 subchapter and the Clean Air Act. For any performance or
10 emission standard or other requirement established by the EPA
11 or the department for the source subsequent to January 8,
12 1960, but prior to the permit issuance date, the permit may
13 contain a compliance schedule authorizing the source to
14 operate out of compliance and requiring the source to achieve
15 compliance as soon as possible but not later than the time
16 required by this subchapter, the Clean Air Act or the
17 regulations promulgated under either this subchapter or the
18 Clean Air Act. For purposes of this subsection, a source is
19 operating lawfully without a permit if it is a source for
20 which no permit was previously required and the source is
21 operating in compliance with applicable regulatory
22 requirements.

23 (4) For repermitting of any stationary air contamination
24 source which is operating under a valid permit on January 8,
25 1960, or which has received a permit under the provisions of
26 paragraphs (2) and (3) and which is required to meet
27 performance or emission standards or other requirements
28 established subsequent to the issuance of the existing
29 permit, the new permit may contain a compliance schedule
30 authorizing the source to operate out of compliance and

1 requiring the source to achieve compliance as soon as
2 possible but not later than the time required by this
3 subchapter, the Clean Air Act or the regulations promulgated
4 under either this subchapter or the Clean Air Act.

5 (b.1) Terms and conditions.--A permit or plan approval
6 issued under subsection (a) or (b) may contain terms and
7 conditions as the department deems necessary to assure the
8 proper operation of the source. The board shall by regulation
9 establish a permit shield for permits issued under the authority
10 delegated to the Commonwealth by the EPA under Title V of the
11 Clean Air Act. The program shall be consistent with the
12 requirements of section 504(f) of the Clean Air Act and the
13 regulations promulgated under the Clean Air Act. Each permittee,
14 on a schedule established by the department, shall submit
15 reports to the department containing information as the
16 department may prescribe relative to the operation and
17 maintenance of the source.

18 (b.2) Permit term.--A permit issued or reissued under
19 subsection (b) shall be issued for a five-year term unless a
20 shorter term is required to comply with the Clean Air Act and
21 regulations promulgated under the Clean Air Act or the permittee
22 requests a shorter term, except that a permit for acid
23 deposition control shall be issued for a five-year term. A
24 permit may be terminated, modified, suspended or revoked and
25 reissued for cause. The terms and conditions of an expired
26 permit are automatically continued pending the issuance of a new
27 permit if the permittee has submitted a timely and complete
28 application for a new permit and paid the fees required by
29 section 2116.3 or the regulations promulgated under this
30 subchapter and the department is unable, through no fault of the

1 permittee, to issue or deny a new permit before the expiration
2 date of the previous permit. Failure of the department to issue
3 or deny a new permit prior to the expiration date of the
4 previous permit shall be an appealable action as described in
5 section 2120.2 (relating to appealable actions). The hearing
6 board may require that the department take action on an
7 application without additional delay.

8 (b.3) Procedures.--The board shall by regulation establish
9 adequate, streamlined and reasonable procedures for
10 expeditiously determining when applications are complete and for
11 expeditious review of applications. The department shall approve
12 or disapprove a complete application, consistent with the
13 procedures established by the board for consideration of
14 applications, within 18 months after the date of receipt of the
15 complete application except that the department shall establish
16 a phased schedule for acting on permit applications submitted
17 within the first full year after the effective date of the Title
18 V permit program established to implement the requirements of
19 the Clean Air Act. The schedule shall assure that at least one-
20 third of the permits shall be acted upon by the department
21 annually over a period not to exceed three years after that
22 effective date. Failure of the department to issue or deny a
23 permit by a deadline established by this subsection shall be an
24 appealable action as described in section 2120.2. The hearing
25 board may require that the department take action on an
26 application without additional delay.

27 (b.4) Reactivation.--

28 (1) During the term of a permit, a permittee may
29 reactivate any source under the permit that has been out of
30 operation or production for a period of one year or more,

1 provided that the permittee has submitted a reactivation plan
2 to and received written approval from the department. The
3 reactivation plan shall describe the measures that will be
4 taken to ensure the source will be reactivated in compliance
5 with all applicable permit requirements. A reactivation plan
6 may be submitted to and approved by the department at any
7 time during the term of a permit. The department shall take
8 action on the reactivation plan within 30 days unless the
9 department determines that additional time is needed based on
10 the size or complexity of the reactivated source.

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

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

21 (c) Termination, modification, suspension or revocation of
22 plan approval or permit.--A plan approval or permit issued under
23 this section may be terminated, modified, suspended or revoked
24 and reissued if:

25 (1) the permittee constructs or operates the source
26 subject to the plan approval or permit in such a manner as to
27 be in violation of this subchapter, the Clean Air Act, the
28 regulations promulgated under either this subchapter or the
29 Clean Air Act, a plan approval or permit or in such a manner
30 as to cause air pollution;

1 (2) the permittee fails to properly or adequately
2 maintain or repair any air pollution control device or
3 equipment attached to or otherwise made a part of the source;

4 (3) the permittee has failed to submit a report required
5 by a plan approval or operating permit under this section; or

6 (4) the Environmental Protection Agency determines that
7 the permit is not in compliance with the requirements of the
8 Clean Air Act or the regulations promulgated under the Clean
9 Air Act.

10 (d) Refusal to grant plan approval or issuance of permit.--

11 (1) The department may refuse to grant plan approval for
12 any stationary air contamination source subject to the
13 provisions of subsection (a) or to issue a permit to any
14 source if:

15 (i) the department determines the source is likely
16 to cause air pollution or to violate this subchapter, the
17 Clean Air Act or the regulations promulgated under either
18 this subchapter or the Clean Air Act applicable to the
19 source; or

20 (ii) in the design of the source, no provision is
21 made for adequate verification of compliance, including
22 source testing or alternative means to verify compliance.

23 (2) The department may also refuse to issue a permit or
24 may for cause terminate or revoke and reissue a permit to a
25 person if:

26 (i) the EPA determines that the permit is not in
27 compliance with the requirements of the Clean Air Act or
28 the regulations promulgated under the Clean Air Act; or

29 (ii) the applicant has constructed, installed,
30 modified or operated any air contamination source or

1 installed any air pollution control equipment or device
2 on the source contrary to the plans and specifications
3 approved by the department.

4 (e) Written notice to affected person.--

5 (1) If the department refuses to grant an approval or to
6 issue or reissue a permit under this section or terminates,
7 modifies, suspends or revokes a plan approval or permit
8 already issued, the action shall be in the form of a written
9 notice to the person affected. The notice shall inform the
10 person of the action taken by the department and provide a
11 full and complete statement of the reasons for the action.

12 (2) The notice shall be served upon the person affected,
13 either personally or by certified mail, and the action stated
14 in the notice shall be final and not subject to review
15 unless, within 30 days of the service of the notice, any
16 person affected by the action appeals to the hearing board,
17 stating with particularity the grounds relied upon.

18 (3) The hearing board shall hear the appeal under the
19 provisions of the regulations relating to practice and
20 procedure before the hearing board and shall issue an
21 adjudication affirming, modifying or overruling the action of
22 the department.

23 (f) Establishment of general plan approval and permit
24 program.--

25 (1) The department may by regulation establish a general
26 plan approval and a general permit program. After the program
27 is established, the department may grant general plan
28 approval or a general permit for any category of stationary
29 air contamination source if the department determines that
30 the sources in the category are similar in nature and can be

1 adequately regulated using standardized specifications and
2 conditions.

3 (2) An applicant proposing to use a general plan
4 approval or general permit shall notify the department and
5 must receive written approval prior to the proposed use.

6 (3) The department shall take action on a notification
7 within 30 days.

8 (g) Stationary sources at multiple temporary locations.--

9 (1) The department may by regulation establish a plan
10 approval and permit program for stationary sources operated
11 at multiple temporary locations. After the program is
12 established, the department may grant a plan approval or
13 issue a single permit to any stationary air contamination
14 source that may be operated at multiple temporary locations.

15 (2) The approval or permit shall require the owner or
16 operator to notify the department and municipality where the
17 operation shall take place in advance of each change in
18 location and may require a separate application and permit or
19 approval fee for operations at each location.

20 (3) An applicant proposing to use the plan approval or
21 permit authorized by this subsection shall notify the
22 department and must receive written approval prior to the
23 proposed use.

24 (4) The department shall take action on a request within
25 30 days.

26 (h) Comprehensive plan approval and operating permit
27 programs.--The department shall establish comprehensive plan
28 approval and operating permit programs which meet the
29 requirements of this subchapter and the Clean Air Act.

30 (i) Changes without permit revision.--The board shall by

1 regulation establish provisions to allow changes within a
2 permitted facility or one operating under subsection (b) (3)
3 without requiring a permit revision, if:

4 (1) the changes are not modifications under any
5 provision of 42 U.S.C. Ch. 85 Subch. I (relating to programs
6 and activities);

7 (2) the changes do not exceed the emissions allowable
8 under the permit whether expressed in the permit as a rate of
9 emissions or in terms of total emissions; and

10 (3) the facility provides the administrator and the
11 department with written notification at least seven days in
12 advance of the proposed changes, unless the board provides in
13 its regulations a different time frame for emergencies.

14 (j) Availability or documents to public.--The department
15 shall make available to the public any permit application,
16 compliance plan, permit and monitoring or compliance report
17 required by this subchapter.

18 (k) Permit revisions.--

19 (1) The department shall require revision to any permit
20 to incorporate applicable standards and regulations
21 promulgated under the Clean Air Act after the issuance of the
22 permit. Revisions shall occur as expeditiously as
23 practicable, but not later than 18 months after the
24 promulgation of the standards and regulations.

25 (2) No revision shall be required if the effective date
26 of the standards or regulations is a date after the
27 expiration of the permit term or if less than three years
28 remain on the permit.

29 (3) The permit revision shall be treated as a permit
30 renewal if it complies with the requirements of this

1 subchapter regarding renewals.

2 § 2116.2. Emergency procedure.

3 (a) Generalized condition of air pollution.--Any other
4 provision of law to the contrary notwithstanding, if the
5 department finds, in accordance with the regulations of the
6 board promulgated under the provisions of section 2115(a)(5)
7 (relating to Environmental Quality Board), that:

8 (1) a generalized condition of air pollution exists; and

9 (2) it creates an emergency requiring immediate action
10 to protect human health or safety,

11 the department, with the concurrence of the Governor, shall
12 order or direct persons causing or contributing to the air
13 pollution to immediately reduce or discontinue the emission of
14 air contaminants.

15 (b) Absence of generalized condition of air pollution.--In
16 the absence of a generalized condition of air pollution, if the
17 department finds that emissions from the operation of one or
18 more air contamination sources are creating an imminent danger
19 to human health or safety, the department may, without regard to
20 the provisions of section 2114 (relating to administration),
21 order the persons responsible for the operation of the air
22 contamination sources in question to immediately reduce or
23 discontinue the emission of air contaminants.

24 (c) Hearing.--

25 (1) An order issued under subsection (a) or (b) shall
26 fix a place and time, not later than 24 hours after issuance
27 of the order, for a hearing to be held before the hearing
28 board.

29 (2) Within 24 hours after the commencement of the
30 hearing, and without adjournment, the hearing board shall

1 affirm, modify or set aside the order of the department.

2 (d) Construction.--This section shall not be construed to
3 limit any power which the Governor or any other officer may have
4 to declare an emergency and act on the basis of the declaration.

5 § 2116.3. Fees.

6 (a) Authorization.--This section authorizes:

7 (1) The establishment of fees sufficient to cover the
8 indirect and direct costs of administering the air pollution
9 control plan approval process, operating permit program
10 required by Title V of the Clean Air Act, other requirements
11 of the Clean Air Act and the indirect and direct costs of
12 administering the Small Business Stationary Source Technical
13 and Environmental Compliance Assistance Program, Compliance
14 Advisory Committee and Office of Small Business Ombudsman.

15 (2) The board by regulation to establish fees to support
16 the air pollution control program authorized by this
17 subchapter and not covered by fees required by section 502(b)
18 of the Clean Air Act.

19 (b) Annual interim air emission fee.--

20 (1) The board shall establish an annual interim air
21 emission fee of \$14 per ton on emissions of sulfur dioxide,
22 nitrogen oxides, particulate matter of ten microns or less
23 and volatile organic compounds to cover the reasonable direct
24 and indirect costs of developing and administering the air
25 pollution control operating permit program required by Title
26 V of the Clean Air Act, other requirements of the Clean Air
27 Act and the reasonable indirect and direct costs of
28 administering the Small Business Stationary Source Technical
29 and Environmental Compliance Assistance Program, Compliance
30 Advisory Committee and the Office of Small Business Ombudsman

1 to be collected during fiscal year 1992-1993 for actual
2 emissions occurring in calendar year 1991, for fiscal year
3 1993-1994 covering actual emissions occurring in calendar
4 year 1992 and for fiscal year 1994-1995 covering actual
5 emissions occurring during calendar year 1993.

6 (2) The interim fee shall not apply to air emissions of
7 less than 100 tons for any of the listed pollutants, provided
8 that when emissions exceed 100 tons, the entire amount of all
9 air emissions for any of the listed pollutants up to 5,500
10 tons shall be chargeable emissions for interim fee purposes.

11 (c) Permanent annual air emission fee.--

12 (1) The board shall establish by regulation a permanent
13 annual air emission fee as required for regulated pollutants
14 by section 502(b) of the Clean Air Act to cover the
15 reasonable direct and indirect costs of administering the
16 operating permit program required by Title V of the Clean Air
17 Act, other related requirements of the Clean Air Act and the
18 reasonable indirect and direct costs of administering the
19 Small Business Stationary Source Technical and Environmental
20 Compliance Assistance Program, Compliance Advisory Committee
21 and the Office of Small Business Ombudsman to be collected
22 starting in fiscal year 1995-1996 for air emissions occurring
23 during calendar year 1994.

24 (2) In no case shall the amount of the permanent fee be
25 more than that which is necessary to comply with section
26 502(b) of the Clean Air Act.

27 (3) The permanent fee shall not apply to emissions of
28 more than 4,000 tons for any regulated pollutant. In the
29 event a final regulation containing the permanent annual air
30 emission fee is not effective by July 1, 1995, the permanent

1 annual air emission fee for sources subject to the Title V
2 operating permit program shall be the adjusted minimum dollar
3 amount set under section 502(b) of the Clean Air Act until
4 the final regulation is effective.

5 (d) Factors to consider in establishing permanent air
6 emission fee.--Unless precluded by the Clean Air Act, the board
7 shall establish a permanent air emission fee which considers:

8 (1) The size of the air contamination source.

9 (2) The resources necessary to process the application
10 for plan approval or an operating permit.

11 (3) The complexity of the plan approval or operating
12 permit.

13 (4) The quantity and type of emissions from the sources.

14 (5) The amount of fees charged in neighboring states.

15 (6) The importance of not placing existing or
16 prospective sources in this Commonwealth at a competitive
17 disadvantage.

18 (7) Other relevant factors.

19 (e) Interim fees for stationary air contamination sources.--
20 Until alternative fees are established by the board under
21 subsection (c), stationary air contamination sources shall pay
22 the following interim fees:

23 (1) Two hundred dollars for the processing of an
24 application for an operating permit.

25 (2) Two hundred dollars for annual operating permit
26 administration fee.

27 (f) Prohibition.--No emissions fee established under
28 subsection (b), (c) or (j) shall be payable by any State entity,
29 instrumentality or political subdivision in relation to any
30 publicly owned or operated facility.

1 (g) Deposit of fees into restricted account.--

2 (1) Any fees imposed under this section in areas with
3 approved local air pollution control programs shall be
4 deposited in a restricted account established by the
5 governing body authorizing the local program for use by that
6 program to implement the provisions of this subchapter for
7 which they are responsible.

8 (2) The governing body shall annually submit to the
9 department an audit of the account in order to ensure that
10 the funds were properly spent.

11 (h) Duty to report emissions and pay fee.--

12 (1) Unless the board establishes a different payment
13 schedule by regulation, a facility subject to the emission
14 fees established in subsections (b) and (c) shall report its
15 emissions and pay the fee within 120 days after receipt of a
16 reporting form from the department or by September 1 of each
17 year for the emission from the preceding year, whichever
18 occurs first.

19 (2) An air contamination source that fails to pay the
20 fees within the time frame established by this subchapter or
21 by regulation:

22 (i) Shall pay a penalty of 50% of the fee amount,
23 plus interest on the fee amount computed in accordance
24 with section 6621(a)(2) of the Internal Revenue Code of
25 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) from the
26 date the fee was required to be paid.

27 (ii) May have its permit terminated or suspended.
28 The fee, penalty and interest may be collected following the
29 process for assessment and collection of a civil penalty
30 contained in section 2119.1 (relating to civil penalties).

1 (i) Annual increase to permanent air emission fee.--

2 (1) The permanent air emission fee imposed under
3 subsection (c) shall be increased in each year after
4 implementation of the fee by regulation by the percentage, if
5 any, by which the Consumer Price Index for the most recent
6 calendar year exceeds the Consumer Price Index for the
7 calendar year 1989.

8 (2) For purposes of this subsection, the Consumer Price
9 Index for any calendar year is the average of the Consumer
10 Price Index for All Urban Consumers, published by the United
11 States Department of Labor, as of the close of the 12-month
12 period ending on August 31 of each calendar year.

13 (3) The revision of the Consumer Price Index that is
14 most consistent with the Consumer Price Index for calendar
15 year 1989 shall be used.

16 (j) Categories of fees.--The board may by regulation
17 establish the following categories of fees not related to Title
18 V of the Clean Air Act. Until the regulations are promulgated,
19 stationary air contamination sources shall pay the following
20 fees:

21 (1) Two hundred dollars for the processing of any
22 application for plan approval.

23 (2) Two hundred dollars for the processing of any
24 application for an operating permit.

25 (3) Two hundred dollars for annual operating permit
26 administration fee.

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

1 (k) Limitations on collection and use of fees.--No
2 administrative action shall prevent the deposit of the fees
3 established under this section in the Clean Air Fund established
4 in section 2119.2 (relating to disposition of fees, fines and
5 civil penalties) during the fiscal year in which they are
6 collected. The fees shall only be used for the purposes
7 authorized in this section and section 2119.2 and shall not be
8 transferred or diverted to any other purpose by administrative
9 action.

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

13 (m) Definition.--As used in this section, the term
14 "regulated pollutant" shall mean a volatile organic compound,
15 each pollutant regulated under sections 111 and 112 of the Clean
16 Air Act and each pollutant for which a national primary ambient
17 air quality standard has been promulgated. The term does not
18 include carbon monoxide.

19 § 2116.4. Fee for certain ozone areas.

20 (a) Authorization.--

21 (1) If an area identified in a State implementation plan
22 or any revision as a severe or extreme ozone nonattainment
23 area has failed to meet the national primary ambient air
24 quality standard for ozone by the applicable attainment date,
25 each major source of volatile organic compounds (VOCs), as
26 defined in the Clean Air Act and the regulations promulgated
27 under the Clean Air Act, located in the area shall, except
28 with respect to emissions during any year treated as an
29 extension year under section 181(a)(5) of the Clean Air Act,
30 pay a fee to the department as a penalty for the failure for

1 each calendar year beginning after the attainment date until
2 the area is redesignated as an attainment area for ozone.

3 (2) The fee shall be assessed and collected following
4 the process for collection and assessment of a civil penalty
5 contained in section 2119.1 (relating to civil penalties).

6 (b) Amount of fee.--

7 (1) The fee shall equal \$5,000 and shall be adjusted in
8 accordance with paragraph (3), per ton of VOC emitted by the
9 source during the calendar year in excess of 80% of the
10 baseline amount, computed under paragraph (2). The fee shall
11 be in addition to all other fees required to be paid by the
12 source.

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

22 (ii) Notwithstanding subparagraph (i), the
23 administrator may issue guidance authorizing the baseline
24 amount to be determined in accordance with the lower of
25 average actuals or average allowables determined over a
26 period of more than one (1) calendar year. This guidance
27 may provide that the average calculation for a specific
28 source may be used if that source's emissions are
29 irregular, cyclical or otherwise vary significantly from
30 year to year.

1 (3) The fee amount under paragraph (1) shall be adjusted
2 annually, beginning 1991 in accordance with section 2116.3(h)
3 and (i) (relating to fees).

4 (c) Nonapplicability of sanctions.--

5 (1) For areas with a total population under 200,000 that
6 fail to attain the standard by the applicable attainment
7 date, no sanction under this section or under any other
8 provision of this subchapter shall apply if the area can
9 demonstrate, consistent with guidance issued by the EPA, that
10 attainment in the area is prevented because of ozone or ozone
11 precursors transported from other areas.

12 (2) The prohibition in paragraph (1) applies only in a
13 case in which the area has met all requirements and
14 implemented all measures applicable to the area under the
15 Clean Air Act.

16 § 2116.5. Acid deposition control.

17 (a) Duty to develop permit program.--The department shall
18 develop a permit program for acid deposition control in
19 accordance with Titles IV and V of the Clean Air Act and submit
20 it to the administrator for approval.

21 (b) Definitions incorporated by reference.--For purposes of
22 the permit program authorized under subsection (a), the
23 definitions in sections 402 and 501 of the Clean Air Act are
24 incorporated in this subchapter by reference.

25 (c) Duty to submit permit application and compliance plan.--

26 (1) The owner or operator or the designated
27 representative of each source affected under section 405 of
28 the Clean Air Act shall submit a permit application and
29 compliance plan for the affected source to the department no
30 later than January 1, 1996.

1 (2) In the case of affected sources for which
2 application and plans are timely received, the permit
3 application and the compliance plan, including amendments to
4 them, shall be binding on the owner or operator or the
5 designated representative of the owners or operators and
6 shall be enforceable as a permit for purposes of this section
7 until a permit is issued by the department.

8 (3) Any permit issued by the department shall require
9 the source to achieve compliance as soon as possible but not
10 later than the date required by this subchapter, the Clean
11 Air Act or the regulations promulgated under either this
12 subchapter or the Clean Air Act for the source.

13 (d) Revised application and compliance plan.--At any time
14 after the submission of a permit application and compliance
15 plan, the applicant may submit a revised application and
16 compliance plan. In considering any permit application and
17 compliance plan under this section, the department shall
18 coordinate with the Pennsylvania Public Utility Commission
19 consistent with requirements that may be established by the
20 administrator.

21 (e) Prohibitions.--In addition to other provisions, permits
22 issued by the department shall prohibit all of the following:

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

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

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

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

1 § 2116.6. Hazardous air pollutants.

2 (a) Performance and emission standards.--The regulations
3 establishing performance or emission standards promulgated under
4 section 112 of the Clean Air Act are incorporated by reference
5 into the department's permitting program. After the effective
6 date of the performance or emission standard, new,
7 reconstructed, modified and existing sources shall comply with
8 the performance or emission standards under the compliance
9 schedule established under section 112 of the Clean Air Act and
10 the regulations promulgated under the Clean Air Act. The
11 Environmental Quality Board may not establish a more stringent
12 performance or emission standard for hazardous air pollutant
13 emissions from existing sources, except as provided in
14 subsection (d). This section shall not apply to regulations
15 promulgated as final prior to January 8, 1960, and shall not be
16 construed to weaken standards for individual sources or
17 facilities in effect prior to January 8, 1960. The board may
18 establish performance or emission standards for sources or
19 categories of sources that are not included on the list of
20 source categories established under section 112(c) of the Clean
21 Air Act.

22 (b) Establishment of standards by department.--In the event
23 the administrator has not promulgated a standard to control the
24 emissions of hazardous air pollutants for a category or
25 subcategory of major sources under section 112 of the Clean Air
26 Act, under a schedule established under section 112(c) of the
27 Clean Air Act, the department shall have the authority to
28 establish a performance or emission standard on a case-by-case
29 basis for individual sources or a category of sources. The
30 department shall have the authority to make the determinations

1 required by section 112(g)(2) of the Clean Air Act regarding the
2 construction, reconstruction and modification of sources. Any
3 person challenging the performance or emission standards
4 established by the department shall have the burden to
5 demonstrate that the performance or emission standard does not
6 meet the requirements of section 112 of the Clean Air Act. The
7 department shall incorporate the standard to control the
8 emissions of hazardous air pollutants into the plan approval or
9 operating permit of any source within the category or
10 subcategory. The performance or emission standard established on
11 a case-by-case basis by the department shall be equivalent to
12 the limitation that would apply to the source if a performance
13 or emission standard had been promulgated by the administrator
14 under section 112 of the Clean Air Act.

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

20 (d) Health-risk-based standards and operating practice
21 requirements.--

22 (1) When needed to protect public health, welfare and
23 the environment from emissions of hazardous air pollutants
24 from new and existing sources, the department may impose
25 health risk-based emission standards or operating practice
26 requirements. In developing the health-risk-based emission
27 standards or operating practice requirements, the department
28 shall provide an explanation and rationale for the standards
29 or requirements and provide for public review and comments on
30 plan approvals, operating permits, guidelines and regulations

1 that contain health-risk-based emission standards or
2 operating practice requirements. Standards or requirements
3 promulgated under this subsection shall be developed using an
4 analysis that, among other factors, considers, as appropriate
5 for a source or source category, the criteria set forth in
6 section 112(f)(1) of the Clean Air Act in assessing the
7 proposed risk to the public health, welfare and the
8 environment from the source.

9 (2) In the case of coke oven batteries, the department
10 may not impose health-risk-based emission standards more
11 stringent than Federal requirements until eight years after
12 promulgation of maximum achievable control technology (MACT)
13 standards and not until the January 1, 2020 for coke oven
14 batteries that satisfy the requirements of section 112(i)(8)
15 (A) of the Clean Air Act.

16 (3) Notwithstanding the limitation in paragraph (2), if
17 the operation of a coke oven battery would result in serious,
18 substantial and demonstrable harm to public health, welfare
19 and the environment, the department may impose health-risk-
20 based emission standards by regulation that utilize proven,
21 commercially available and economically available methods of
22 technology.

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

27 (ii) After January 1, 1998, the department shall
28 only impose health-risk-based emission standards adopted
29 under section 112(f) of the Clean Air Act, and, if no
30 emission standards are adopted under section 112(f) of

1 the Clean Air Act, the department may promulgate emission
2 standards, provided that the standards are consistent
3 with the criteria and the factors set forth in paragraph
4 (1) and section 112(f) of the Clean Air Act and until
5 health-risk-based standards are enacted by the Federal
6 Government under section 112(f) of the Clean Air Act.

7 (e) Reporting.--The department shall have the authority to
8 require, in the plan approval and operating permit, reasonable
9 monitoring, recordkeeping and reporting requirements for sources
10 that emit hazardous air pollutants.

11 (f) Emergency action.--Nothing in this section may preclude
12 the department from taking an emergency action if there is an
13 immediate or potential threat to public health, welfare and the
14 environment from an air pollutant, including a hazardous air
15 pollutant.

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

20 (h) Definition.--For purposes of this section, the term
21 "performance standard" includes design, equipment, work practice
22 or operational standards or any combination of them.

23 § 2116.7. Control of volatile organic compounds from gasoline-
24 dispensing facilities.--

25 (a) (Reserved).

26 (b) (Reserved).

27 (c) (Reserved).

28 (d) (Reserved).

29 (e) (Reserved).

30 (f) (Reserved).

1 (g) (Reserved).

2 (h) Functional testing and certification.--The department
3 shall implement the functional testing and certification
4 requirements specified in the EPA's Stage II enforcement and
5 technical guidance documents developed under section 182 of the
6 Clean Air Act to meet the Clean Air Act requirements for areas
7 classified as moderate, serious, severe or extreme ozone
8 nonattainment.

9 § 2117. Public hearings.

10 (a) In general.--Public hearings shall be held by the board
11 or by the department, acting on behalf and at the direction or
12 request of the board, in any region of this Commonwealth
13 affected before any regulations with regard to the control,
14 abatement, prevention or reduction of air pollution are
15 promulgated for that region or subregion. When it becomes
16 necessary to promulgate regulations for the control, abatement,
17 prevention or reduction of air pollution for more than one
18 region of this Commonwealth, the board may hold one hearing for
19 any two contiguous regions to be affected by the regulations.
20 The hearing may be held in either of the two contiguous regions.
21 If it becomes necessary to promulgate regulations for the
22 control, abatement, prevention or reduction of air pollution for
23 any area of this Commonwealth that encompasses more than one
24 region or parts of more than one region, public hearings shall
25 be held in the area concerned. Full stenographic transcripts
26 shall be taken of all public hearings and shall be made
27 available by the department to any party concerned with the
28 subject matter of the hearing upon the payment of prevailing
29 rates for the transcripts.

30 (b) Additional input.--In addition to the matters discussed

1 at the public hearings, the board may, in its discretion,
2 solicit the views, in writing, of persons who may be affected
3 by, or interested in, proposed regulations.

4 (c) Notice.--Notice to the public of the time and place of
5 any public hearing shall be given at least 30 days prior to the
6 scheduled date of the hearing by public advertisement in a
7 newspaper or newspapers of general circulation in the region of
8 this Commonwealth affected.

9 (d) Power to issue notices.--The persons designated to
10 conduct the hearing shall have the power to issue notices of
11 hearings in the name of the board.

12 (e) Opportunity to be heard.--Full opportunity to be heard
13 with respect to the subject of the hearing shall be given to all
14 persons in attendance, in addition to which persons, whether or
15 not in attendance, may, within 30 days, submit their views to
16 the department, which the department shall transmit to the board
17 with its report.

18 § 2117.1. Compliance review.

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

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

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

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

18 § 2117.2. Permit compliance schedules.

19 In addition to the other enforcement provisions of this
20 subchapter, the department may issue a permit under section
21 2116.1(b)(3) or (4) (relating to plan approvals and permits) to
22 a source that is out of compliance with this subchapter, the
23 Clean Air Act or the regulations promulgated under either this
24 subchapter or the Clean Air Act. The permit must contain an
25 enforceable schedule requiring the source to attain compliance.
26 The compliance schedule may contain interim milestone dates for
27 completing any phase of the required work, as well as a final
28 compliance date, and may contain stipulated penalties for
29 failure to meet the compliance schedule. If the permittee fails
30 to achieve compliance by the final compliance date, the permit

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

10 § 2117.3. Responsibilities of owners and operators.

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

18 (b) Collection of costs.--For purposes of collecting or
19 recovering the costs involved in taking corrective action or
20 pursuing a cost recovery action under an order or recovering the
21 cost of litigation, oversight, monitoring, sampling, testing and
22 investigation related to a corrective action, the department may
23 collect the amount in the same manner as civil penalties are
24 assessed and collected following the process for assessment and
25 collection of a civil penalty contained in section 2119.1
26 (relating to civil penalties).

27 § 2117.4. Interstate transport commission.

28 (a) Public review.--The Commonwealth, through its
29 representatives on an interstate transport commission formed
30 under the Clean Air Act, shall provide public review of

1 recommendations for additional control measures prior to final
2 commission action consistent with the commission's public review
3 requirements under section 184(c)(1) of the Clean Air Act. The
4 opportunity for public review shall run concurrently with the
5 commission's public comment period established under section
6 184(c)(1) of the Clean Air Act.

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

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

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

29 § 2117.5. Public review of State implementation plans.

30 (a) Public comment period.--A State implementation plan

1 required by the Clean Air Act that commits the Commonwealth to
2 adopt air pollution control measures or procedures shall be the
3 subject of a public comment period. The public comment period
4 shall be not less than 60 days, and the department may, at its
5 discretion, hold public informational meetings or public
6 hearings as part of the comment period.

7 (b) Notice.--Notice of a proposed State implementation plan
8 shall be published in the Pennsylvania Bulletin and in
9 sufficient newspapers having general circulation in the area
10 covered by the State implementation plan. If the State
11 implementation plan covers the entire State, notice shall be
12 published in at least six newspapers of general circulation
13 throughout this Commonwealth.

14 (c) Contents.--A State implementation plan subject to this
15 section shall include the following provisions:

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

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

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

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

29 (d) Submission of final plan.--After the public comment
30 period and prior to the submission to EPA of any State

1 implementation plan required by the Clean Air Act that commits
2 the Commonwealth to adopt air pollution control measures or
3 procedures, the department shall submit a final State
4 implementation plan to the board for its review together with a
5 document that responds to all comments made during the public
6 comment period.

7 (e) Implementation plans from other departments.--This
8 section shall also apply in the case of State implementation
9 plans required under the Clean Air Act that are developed by
10 State agencies other than the department that commit the
11 Commonwealth to the adoption of air pollution control measures
12 or procedures.

13 (f) Applicability.--Subsections (c) and (d) shall not apply
14 to State implementation plans or portions of them comprised of
15 permit, emission offset or reasonably available control
16 technology requirements for individual sources, consent orders
17 and agreements or regulations.

18 (g) Plan from local air pollution control agency.--The
19 requirements of this section shall not apply to state
20 implementation plans submitted by a local air pollution control
21 agency.

22 § 2117.6. Advice to department.

23 (a) Citizens Advisory Council.--The department shall consult
24 with the Citizens Advisory Council established under section 448
25 of the act of April 9, 1929 (P.L.177, No.175), known as The
26 Administrative Code of 1929, as appropriate, in the
27 consideration of State implementation plans and regulations
28 developed by the department and needed for the implementation of
29 the Clean Air Act. Nothing in this section may limit the
30 council's ability to consider, study and review department

policies and other activities related to the Clean Air Act
implementation as provided under section 1922-A of The
Administrative Code of 1929. This section shall not apply to
State implementation plans or portions of them comprised of
permit, emission offset or reasonably available control
technology requirements for individual sources, consent orders
and agreements or regulations. The requirements of this section
shall not apply to State implementation plans submitted by a
local air pollution control agency.

(b) Air technical advisory committee.--

(1) The Secretary of Environmental Resources, within 30
days after January 8, 1960, shall designate an air technical
advisory committee. The committee shall include at least 11
members with technical backgrounds in the control of air
pollution from stationary or mobile sources.

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

§ 2117.7. Small Business Compliance Assistance Program.

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

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

1 the Clean Air Act.

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

8 (3) A compliance assistance program for small business
9 stationary sources that assists small business stationary
10 sources in determining applicable requirements and in
11 receiving permits under this subchapter in a timely and
12 efficient manner.

13 (4) Adequate mechanisms to assure that small business
14 stationary sources receive notice of their rights under this
15 subchapter and the Clean Air Act in a manner and form as to
16 assure reasonably adequate time for the sources to evaluate
17 compliance methods and relevant or applicable proposed or
18 final rulemaking plan, State implementation plan revision or
19 program issued under this subchapter and the Clean Air Act.

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

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

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

30 (ii) the schedule of milestones for implementing the

1 work practice or method of compliance preceding any
2 applicable compliance date based on the technological and
3 financial capability of any small business stationary
4 source. No modification may be granted unless it is in
5 compliance with the applicable requirements of this
6 subchapter and the Clean Air Act, including the
7 requirements of the applicable implementation plan. If
8 applicable requirements are set forth in Federal
9 regulations, only modifications authorized in the
10 regulations may be allowed.

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

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

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

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

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

29 (10) Procedures for conducting confidential, on-site
30 consultations with small business stationary sources

1 regarding applicability of compliance requirements.

2 (b) Administration.--The department shall evaluate the
3 feasibility of contracting with consultants to administer all or
4 part of the Small Business Stationary Source Technical and
5 Environmental Compliance Assistance Program. A third-party
6 consultant will act as a source of confidential support for
7 small business if one is selected by the department.

8 (c) Consultation.--The department shall consult with the
9 Compliance Advisory Committee established in section 2117.8
10 (relating to compliance advisory committee) and the Office of
11 Small Business Ombudsman established in section 2117.9 (relating
12 to Small Business Ombudsman) in developing the Small Business
13 Stationary Source Technical and Environmental Compliance
14 Assistance Program.

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

19 (e) Authorization.--The department is authorized to expend
20 funds from the Clean Air Fund collected under subsection (a),
21 (b) or (c) of section 2116.3 (relating to fees) to support the
22 development and implementation of the Small Business Stationary
23 Source Technical and Environmental Compliance Assistance
24 Program, the Office of Small Business Ombudsman and the
25 Compliance Advisory Committee.

26 (f) Certain stationary sources.--Upon petition by a source,
27 the department may, after notice and opportunity for public
28 comment, include as a small business stationary source for
29 purposes of this subchapter any stationary source that is not a
30 small business stationary source but that does not emit more

1 than 100 tons per year of all regulated pollutants.

2 (g) Exclusion from definition.--The department, in
3 consultation with the administrator and the Administrator of the
4 Small Business Administration and after providing notice and
5 opportunity for public hearing, may exclude from the definition
6 of "small business stationary source" in section 2103 (relating
7 to definitions) any category or subcategory of sources that the
8 department determines to have sufficient technical and financial
9 capabilities to meet the requirements of this subchapter and the
10 Clean Air Act without the application of this section.

11 (h) Reduction of fee.--The department may reduce any fee
12 required under this subchapter and the Clean Air Act to take
13 into account the financial resources of small business
14 stationary sources as authorized by the Clean Air Act.
15 § 2117.8. Compliance Advisory Committee.

16 (a) Establishment.--There is established a Compliance
17 Advisory Committee that shall perform all of the following:

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

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

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

30 (4) Review information for small business stationary

1 sources to assure the information is understandable by the
2 layperson.

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

7 (6) Review and advise the department on rulemaking,
8 State implementation plans and programs under this subchapter
9 and the Clean Air Act that affect small business stationary
10 sources.

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

14 (b) Composition.--The committee shall consist of eleven
15 members as follows:

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

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

23 (i) The Majority Leader of the Senate.

24 (ii) The Minority Leader of the Senate.

25 (iii) The Majority Leader of the House of
26 Representatives.

27 (iv) The Minority Leader of the House of
28 Representatives.

29 (3) The Secretary of Community and Economic Development
30 or his designee.

1 (4) The Secretary of Environmental Protection or his
2 designee.

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

4 (c) Terms and vacancies.--The terms of appointed members
5 shall be for four years. Vacancies shall be filled by the
6 original appointing member for the remainder of the unexpired
7 term. Initial terms of appointed members shall be as follows:

8 (1) Of the members appointed by the Governor under
9 subsection (b) (1):

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

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

12 (2) Of the members appointed under subsection (b) (2):

13 (i) The Majority Leader of the Senate shall appoint
14 one member for four years.

15 (ii) The Minority Leader of the Senate shall appoint
16 one member for two years.

17 (iii) The Majority Leader of the House of
18 Representatives shall appoint one member for three years.

19 (iv) The Minority Leader of the House of
20 Representatives shall appoint one member for one year.

21 § 2117.9. Small Business Ombudsman.

22 (a) Establishment.--There is established an Office of Small
23 Business Ombudsman within the Department of Environmental
24 Protection for the purpose of serving as the confidential
25 primary point of contact for small business on issues relating
26 to compliance with this subchapter and the Clean Air Act.

27 (b) Duties.--The Office of Small Business Ombudsman shall
28 perform all functions necessary to implement the requirements of
29 section 507(a) (3) of the Clean Air Act. The Office of Small
30 Business Ombudsman shall perform all of the following functions

1 to the extent they are consistent with the guidelines developed
2 by the EPA:

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

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

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

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

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

22 (6) Serve on the Compliance Advisory Committee
23 established by section 2117.8 (relating to Compliance
24 Advisory Committee).

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

28 (8) Review and provide comments and recommendations to
29 the EPA and department regarding the development and
30 implementation of regulations that impact small businesses.

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

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

9 (c) Annual report.--The Office of Small Business Ombudsman
10 shall report annually to the Governor and General Assembly on
11 the effectiveness of the Small Business Stationary Source
12 Technical and Environmental Compliance Assistance Program and
13 other issues relating to the impact of the Clean Air Act
14 implementation on small businesses in this Commonwealth.

15 (d) Certain proposed rulemakings.--For each proposed
16 rulemaking significantly affecting small businesses, the Office
17 of Small Business Ombudsman shall prepare a report that contains
18 a detailed analysis of the economic impact of the proposed
19 rulemaking on small businesses. The economic impact report shall
20 be completed not later than 90 days from the date that the board
21 approves the proposed rulemaking and shall be submitted to the
22 board for consideration prior to approval of the final
23 rulemaking package, provided the report is available within the
24 time period prescribed by this section. The department shall
25 provide the ombudsman with a reasonable opportunity to revise
26 the report to reflect any proposed substantial change in the
27 rulemaking that affects the initial report.

28 (e) Report contents.--The report shall include, but not be
29 limited to:

30 (1) An analysis of the economic impact of the selected

1 control strategies on small business.

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

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

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

9 (f) Transfer.--All equipment, files, records, contracts,
10 agreements and all other materials and supplies that are used,
11 employed or expended by the Office of Small Business Ombudsman
12 shall be transferred to the Department of Environmental
13 Protection.

14 § 2117.10. Transportation management associations.

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

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

1 § 2117.11. Notice of sanctions.

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

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

17 § 2117.12. Missed Federal deadlines.

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

30 § 2118. Unlawful conduct.

1 It shall be unlawful to:

2 (1) fail to comply with or to cause or assist in the
3 violation of any of the provisions of this subchapter or the
4 regulations adopted under this subchapter or to fail to
5 comply with any order, plan approval, permit or other
6 requirement of the department;

7 (2) cause a public nuisance;

8 (3) cause air pollution, soil or water pollution
9 resulting from an air pollution incident;

10 (4) hinder, obstruct, prevent or interfere with the
11 department or its personnel in its performance of any duty
12 under this subchapter, including denying the department
13 access to the source or facility; or

14 (5) violate the provisions of 18 Pa.C.S. § 4903
15 (relating to false swearing) or 4904 (relating to unsworn
16 falsification to authorities) in regard to papers required to
17 be submitted under this subchapter.

18 The owner or operator of an air contamination source shall not
19 allow pollution of the air, water or other natural resources of
20 this Commonwealth resulting from the source. For any air
21 pollutant for which the board has set an emissions standard or
22 for any source for which a permit has been issued by the
23 department, a release of the pollutant in accordance with that
24 standard or permit shall not constitute a violation of this
25 subchapter.

26 § 2119. Penalties.

27 (a) Violations and enforcement.--Any person who violates any
28 provision of this subchapter, any regulation promulgated under
29 this subchapter, any order of the department or any condition or
30 term of any plan approval or permit issued under this subchapter

1 commits a summary offense and shall, upon conviction, be
2 sentenced to pay a fine of not less than \$100 nor more than
3 \$2,500 for each separate offense and, in default of the payment
4 of the fine, may be sentenced to imprisonment for 90 days for
5 each separate offense. Employees of the department authorized to
6 conduct inspections or investigations are declared to be law
7 enforcement officers authorized to issue or file citations for
8 summary violations under this subchapter, and the General
9 Counsel is authorized to prosecute these offenses. For the
10 purpose of this subsection, a summary offense may be prosecuted
11 before any district justice in the county where the offense
12 occurred. There is no Accelerated Rehabilitative Disposition
13 authorized for a summary offense.

14 (b) Specific violations.--

15 (1) Any person who willfully or negligently violates any
16 provision of this subchapter, any regulation promulgated
17 under this subchapter or any order of the department or any
18 condition or term of any plan approval or permit issued under
19 this subchapter commits a misdemeanor of the second degree
20 and shall, upon conviction, be sentenced to pay a fine of not
21 less than \$1,000 nor more than \$50,000 for each separate
22 offense or to imprisonment for a period of not more than two
23 years for each separate offense, or both.

24 (2) Any person who knowingly makes any false statement
25 or representation in any application, record, report,
26 certification or other document required to be either filed
27 or maintained by this subchapter or the regulations
28 promulgated under this subchapter commits a misdemeanor of
29 the second degree and shall, upon conviction, be sentenced to
30 pay a fine of not less than \$2,500 nor more than \$50,000 for

1 each separate offense or to imprisonment for a period of not
2 more than two years for each separate offense, or both.

3 (3) Any person who negligently releases into the ambient
4 air any hazardous air pollutant listed under section 112 of
5 the Clean Air Act or any extremely hazardous substance listed
6 under section 302(a)(2) of the Superfund Amendments and
7 Reauthorization Act of 1986 (Public Law 99-499, 100 Stat.
8 1613) that is not listed in section 112 of the Clean Air Act
9 and who at the time negligently places another person in
10 imminent danger of death or serious bodily injury commits a
11 misdemeanor of the third degree and shall, upon conviction,
12 be sentenced to pay a fine of not less than \$5,000 nor more
13 than \$50,000 for each separate offense or to imprisonment for
14 a period of not more than one year for each separate offense,
15 or both.

16 (c) Knowing release of hazardous air pollutants.--

17 (1) Any person who knowingly releases into the ambient
18 air any hazardous air pollutant listed under section 112 of
19 the Clean Air Act or any extremely hazardous substance listed
20 under section 302(a)(2) of the Superfund Amendments and
21 Reauthorization Act of 1986 that is not listed in section 112
22 of the Clean Air Act and who knows at the time that he, by
23 that release, places another person in imminent danger of
24 death or serious bodily injury commits a felony of the first
25 degree and shall, upon conviction, be sentenced to pay a fine
26 of not less than \$25,000 nor more than \$100,000 per day for
27 each violation or to imprisonment for a period of not less
28 than two years nor more than 20 years, or both. Any person
29 that is an organization committing the violation shall, upon
30 conviction under this paragraph, be subject to a fine of not

1 more than \$1,000,000 per day for each violation. If a
2 conviction of any person under this paragraph is for a
3 violation committed after a first conviction of the person
4 under this paragraph, the maximum punishment shall be doubled
5 with respect to both the fine and imprisonment. For any air
6 pollutant for which the board has set an emissions standard
7 or for any source for which a permit has been issued by the
8 department, a release of the pollutant in accordance with
9 that standard or permit shall not constitute a violation of
10 this section.

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

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

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

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

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

1 (ii) Medical treatment or medical or scientific
2 experimentation conducted by professionally approved
3 methods and the other person had been made aware of the
4 risks involved prior to giving consent. The defendant may
5 establish an affirmative defense under this subparagraph
6 by a preponderance of the evidence.

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

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

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

30 (e) Definitions.--The following words and phrases when used

1 as indicated shall have the meanings given to them in this
2 subsection unless the context clearly indicates otherwise:

3 "Operator." For purposes of subsections (b) and (c), the
4 term includes any person who is senior management personnel or a
5 corporate officer. Except in the case of knowing and willful
6 violations, the term shall not include:

7 (1) Any person who is a stationary engineer or
8 technician responsible for the operation, maintenance, repair
9 or monitoring of equipment and facilities and who often has
10 supervisory and training duties, but who is not senior
11 management personnel or a corporate officer.

12 (2) For purposes of subsection (b)(3), an employee who
13 is carrying out his normal activities and who is not a part
14 of senior management personnel or a corporate officer.

15 (3) For the purposes of subsections (b)(1) and (2) and
16 (c), an employee who is carrying out his normal activities
17 and who is acting under orders from the employer.

18 "Person." The term includes, in addition to the entities
19 referred to in section 2103 (relating to definitions), any
20 responsible corporate officer.

21 "Serious bodily injury." For purposes of subsections (b) and
22 (c), bodily injury which involves a substantial risk of death,
23 unconsciousness, extreme physical pain, protracted and obvious
24 disfigurement or protracted loss or impairment of the function
25 of a bodily member, organ or mental faculty.

26 § 2119.1. Civil penalties.

27 (a) General rule.--In addition to proceeding under any other
28 remedy available at law or in equity for a violation of a
29 provision of this subchapter or any regulation promulgated under
30 this subchapter or any order, plan approval or permit issued

under this subchapter, the department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was willful. The civil penalty so assessed shall not exceed \$10,000 per day for each violation that occurs in the first three years following enactment of this section, \$15,000 per day for each violation that occurs in the fourth year following enactment of this section and \$25,000 per day for each violation that occurs in the fifth year and all subsequent years following enactment of this section. In determining the amount of the penalty, the department shall consider the willfulness of the violation; damage to air, soil, water or other natural resources of this Commonwealth or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the department; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operator of the source or facility; and other relevant factors.

(b) Procedure.--If the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full, or, if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the hearing board within the 30-day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the hearing board within 30 days in the

1 amount of the proposed penalty, provided that the bond is
2 executed by a surety licensed to do business in this
3 Commonwealth and is satisfactory to the department. If, through
4 administrative or final judicial review of the proposed penalty,
5 it is determined that no violation occurred or that the amount
6 of the penalty shall be reduced, the hearing board shall, within
7 30 days, remit the appropriate amount to the person with any
8 interest accumulated by the escrow deposit. Failure to forward
9 the money or the appeal bond at the time of the appeal shall
10 result in a waiver of all legal rights to contest the violation
11 or the amount of the civil penalty unless the appellant alleges
12 financial inability to prepay the penalty or to post the appeal
13 bond. The hearing board shall conduct a hearing to consider the
14 appellant's alleged inability to pay within 30 days of the date
15 of the appeal. The hearing board may waive the requirement to
16 prepay the civil penalty or to post an appeal bond if the
17 appellant demonstrates and the hearing board finds that the
18 appellant is financially unable to pay. The hearing board shall
19 issue an order within 30 days of the date of the hearing to
20 consider the appellant's alleged inability to pay. The amount
21 assessed after administrative hearing or after waiver of
22 administrative hearing shall be payable to the Commonwealth and
23 shall be collectible in any manner provided by law for the
24 collection of debts, including the collection of interest at the
25 rate established in section 2116.3(c) (relating to fees), which
26 shall run from the date of assessment of the penalty. If any
27 person liable to pay the penalty neglects or refuses to pay the
28 same after demand, the amount, together with interest and any
29 costs that may accrue, shall constitute a debt of the person, as
30 may be appropriate, to the Clean Air Fund. The debt shall

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

18 (c) Definitions.--The following words and phrases when used
19 in this subsection shall have the meanings given to them in this
20 subsection unless the context clearly indicates otherwise:

21 "Operator." As defined in section 2119(e) (relating to
22 penalties).

23 § 2119.2. Disposition of fees, fines and civil penalties.

24 (a) Clean Air Fund.--Except as provided under subsection
25 (a.1), all fines, civil penalties and fees collected under this
26 subchapter shall be paid into the State Treasury in a special
27 fund known as the Clean Air Fund, established by this
28 subsection, which, along with interest earned, shall be
29 administered by the department for use in the elimination of air
30 pollution. The department may establish separate accounts as may

1 be necessary or appropriate to implement the requirements of
2 this subchapter and the Clean Air Act. The board shall
3 promulgate regulations for the management and use of the money
4 in the fund.

5 (a.1) Procedure.--The following shall apply:

6 (1) If an incident results in the imposition of a fine
7 or civil penalty of at least \$50,000, 25% of the fine or
8 civil penalty collected shall be returned by the department
9 to the municipality in which the violation occurred to be
10 used for projects that eliminate or reduce air pollution or
11 for parks, recreation projects, trails or open spaces.

12 (2) The department shall notify the municipality in
13 which the violation occurred of the imposition of the fine or
14 civil penalty under subsection (a) within five business days
15 after the expiration of the right to file an appeal of the
16 fine or civil penalty or after all appeals of the fine or
17 civil penalty have been exhausted.

18 (3) Within 180 days of the department's notification of
19 the municipality under paragraph (2), the municipality shall
20 submit a project proposal to the department for review and
21 approval.

22 (4) Upon approval of the project, the department shall
23 release 25% of the fine or civil penalty collected to the
24 municipality. If the cost of the project exceeds 25% of the
25 fine or civil penalty, the department may award additional
26 money from the fine or civil penalty to the municipality.

27 (5) If all fines and civil penalties deposited into the
28 Clean Air Fund are less than \$1,850,000 for the previous
29 fiscal year, paragraph (1) shall not apply for the current
30 fiscal year.

1 (6) If the United States Environmental Protection Agency
2 and the department jointly prosecute a violation of the Clean
3 Air Act, this subchapter or a regulation promulgated under
4 this subchapter, the fines and penalties collected shall not
5 be subject to this subsection and subsection (a.2).

6 (7) A municipality may assign its claim to funding under
7 paragraph (1) to the county in which the violation occurred
8 within the 180-day period specified in paragraph (3). The
9 county shall submit a project proposal in compliance with
10 paragraph (1) to the department for review and approval
11 within 45 days of the expiration of the 180-day period.

12 (8) If a municipality does not submit a project proposal
13 within the 180-day period specified in paragraph (3) or
14 provides notification of its intent not to file a project
15 proposal during the 180-day period, the county in which the
16 violation occurred may submit a project proposal in
17 compliance with paragraph (1) to the department for review
18 and approval within 45 days of the expiration of the 180-day
19 period.

20 (a.2) Notification of violation.--Within five business days
21 of imposition of a fine or civil penalty under this subchapter,
22 the department shall notify the municipality in which the
23 violation occurred of the violation.

24 (b) Supplementation of Clean Air Fund.--The Clean Air Fund
25 may be supplemented by appropriations from the General Assembly,
26 the Federal, State or local government or any private source.

27 (c) Exemption.--The Clean Air Fund shall not be subject to
28 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer
29 system).

30 § 2119.3. Continuing violations.

1 Each day of continued violation and each violation of any
2 provision of this subchapter, any regulation promulgated under
3 this subchapter or any order of the department or any condition
4 or term of any plan approval or permit issued under this
5 subchapter shall constitute a separate offense and violation.
6 § 2120. (Reserved).

7 § 2120.1. Enforcement orders.

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

26 (b) Content.--The department may, in its order, require
27 compliance with conditions as are necessary to prevent or abate
28 air pollution or effect the purposes of this subchapter.

29 (c) Effectiveness.--An order issued under this section shall
30 take effect upon notice, unless the order specifies otherwise.

An appeal to the hearing board of the department's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the hearing board may issue a supersedeas under rules established by the hearing board.

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

§ 2120.2. Appealable actions.

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

§ 2120.3. Limitation on action.

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this subchapter may be commenced at any time within a period of seven years from the date the offense is discovered.

§ 2131. Powers reserved to the department under existing laws.

Nothing in this subchapter shall limit in any way whatsoever the powers conferred upon the department under laws other than this subchapter, it being expressly provided that all powers are preserved to the department and may be freely exercised by it. No court exercising general equitable jurisdiction shall be deprived of jurisdiction even though a nuisance or condition

detrimental to health is subject to regulation or other action
by the board under this subchapter.

§ 2132. Powers reserved to political subdivisions.

(a) General rule.--Nothing in this chapter shall prevent
counties, cities, towns, townships or boroughs from enacting
ordinances with respect to air pollution which will not be less
stringent than the provisions of this chapter, the Clean Air Act
or the regulations promulgated under either this chapter or the
Clean Air Act. This chapter shall not be construed to repeal
existing ordinances, resolutions or regulations of political
subdivisions under this section existing on January 8, 1960,
except as they may be less stringent than the provisions of this
chapter, the Clean Air Act or the regulations promulgated under
either this chapter or the Clean Air Act.

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

(b.1) Applicability of provisions relating to dust control
measures.--Provisions of this chapter pertaining to dust control
measures shall not apply to portions of highways in townships of
the second class where no businesses or residences are located.

(c) Notification of violation.--

(1) Whenever, either upon complaint made to or initiated
by the department, the department finds that any person is in

1 violation of air pollution control standards, or regulations
2 promulgated under the grant of authority made in subsection
3 (b), the department shall give notification of that fact to
4 that person and to the air pollution control agency of the
5 county involved.

6 (2) If the violation continues to exist after the
7 notification has been given, the department may take any
8 abatement action provided for under the terms of this
9 chapter.

10 (d) Failure of local county agency to enforce.--Whenever the
11 department finds that violations of this chapter or the
12 regulations promulgated under this chapter are so widespread
13 that the violations appear to result from a failure of the local
14 county control agency involved to enforce those requirements,
15 the department may assume the authority to enforce this chapter
16 in that county.

17 (e) Department authority.--The department shall have the
18 power to refuse approval, or to suspend or rescind approval,
19 once given, to any county air pollution control agency if the
20 department finds that the county agency is unable or unwilling
21 to conduct an air pollution control program to abate or reduce
22 air pollution problems within its jurisdiction in accordance
23 with the requirements of this chapter, the Clean Air Act or the
24 regulations promulgated under both this chapter and the Clean
25 Air Act.

26 (f) Notice of department action.--Whenever the department
27 takes action under subsection (d) or (e), it shall give written
28 notification to the air pollution control agency of the county
29 involved and the notification shall be an appealable action.

30 (g) Uniformity of penalties and remedies.--

1 (1) Irrespective of subsection (b), and in order that
2 the civil and criminal penalties and equitable remedies for
3 air pollution violations are uniform throughout this
4 Commonwealth, the penalties and remedies set forth in this
5 chapter shall be the penalties and remedies available for
6 enforcement of any municipal air pollution ordinance or
7 regulation, and shall be available to any municipality,
8 public official or other person having standing to initiate
9 proceedings for the enforcement of the municipal ordinance or
10 regulation, and the amounts of the fines or civil penalties
11 set forth in this chapter shall be the amounts of the fines
12 or civil penalties assessable and to be levied for violations
13 of any municipal ordinance or regulation.

14 (2) Any action for the assessment of civil penalties
15 brought for the enforcement of a municipal air pollution
16 ordinance or regulation shall be brought in accordance with
17 the procedures set forth in the ordinance. If a municipal
18 ordinance or regulation does not provide a procedure for the
19 assessment of civil penalties, the provisions related to
20 assessment and collection of civil penalties of section
21 2119.1 (relating to civil penalties) shall apply.

22 (3) The General Assembly finds and declares that the
23 intent of this section is to enunciate further that the
24 purpose of this chapter is to provide additional and
25 cumulative remedies to abate the pollution of the air of this
26 Commonwealth.

27 (h) Pennsylvania Municipalities Planning Code not
28 affected.--Nothing in this chapter shall affect the act of July
29 31, 1968 (P.L.805, No.247), known as the Pennsylvania
30 Municipalities Planning Code, unless required by the Clean Air

1 Act.

2 § 2132.1. Construction.

3 (a) Proceeding to abate pollution or nuisance.--Nothing in
4 this chapter shall be construed as estopping the Commonwealth,
5 or any district attorney or solicitor of a municipality, from
6 proceeding in a court of competent jurisdiction to abate
7 pollution forbidden under this chapter, or abate a nuisance
8 under existing law.

9 (b) Right of action.--Nothing contained in this chapter
10 shall in any way abridge or alter any existing right of action
11 or remedy under law, criminal or civil, nor shall any provision
12 of this chapter, or the granting of any plan approval or permit
13 under this chapter, or any act done by virtue of this chapter,
14 be construed as estopping the Commonwealth, persons or
15 municipalities, in the exercise of their rights under law, from
16 proceeding in a court of competent jurisdiction to suppress a
17 nuisance, or to abate any pollution existing, or enforce common
18 law or a statutory right.

19 (c) Jurisdiction.--No court of this Commonwealth having
20 jurisdiction to abate public or private nuisance shall be
21 deprived of jurisdiction to abate any private or public nuisance
22 instituted by any person for the reason that the nuisance
23 constitutes air pollution.

24 § 2133. Public nuisance.

25 (a) Violation.--A violation of this chapter or of any
26 regulation promulgated under this chapter or any order, plan
27 approval or permit issued by the department under this chapter
28 shall constitute a public nuisance.

29 (b) Department authority.--The department shall have the
30 authority to order any person causing a public nuisance to abate

1 the public nuisance. In addition, the department or any
2 Commonwealth agency that undertakes to abate a public nuisance
3 may recover the expenses of abatement following the process for
4 assessment and collection of a civil penalty contained in
5 section 2119.1 (relating to civil penalties).

6 (c) Nuisance continued.--Whenever the nuisance is maintained
7 or continued contrary to this chapter or any regulation
8 promulgated under this chapter or any order, plan approval or
9 permit, the nuisance may be abatable in the manner provided by
10 this chapter. Any person who causes the public nuisance shall be
11 liable for the cost of abatement.

12 § 2133.1. Search warrant.

13 (a) General rule.--Whenever an agent or employee of the
14 department, charged with the enforcement of this chapter, has
15 been refused access to property, or has been refused the right
16 to examine any air contamination source, or air pollution
17 control equipment or device, or is refused access to or
18 examination of books, papers and records pertinent to any matter
19 under investigation, the agent or employee may apply for a
20 search warrant to any Commonwealth official authorized by the
21 laws of this Commonwealth to issue the same to enable the agent
22 or employee to have access, examine and seize the property, air
23 contamination source, air pollution control equipment or device
24 or books, papers and records, as the case may be.

25 (b) Probable cause.--It shall be sufficient probable cause
26 to issue a search warrant that the inspection is necessary to
27 properly enforce this chapter.

28 § 2133.2. Confidential information.

29 (a) General rule.--All records, reports or information
30 obtained by the department or referred to at public hearings

under this chapter shall be available to the public, except that upon cause shown by any person that the records, reports or information, or a particular portion of them, but not emission data, to which the department has access under this chapter, if made public, would divulge production or sales figures or methods, processes or production unique to the person or would otherwise tend to affect adversely the competitive position of the person by revealing trade secrets, including intellectual property rights, the department shall consider the record, report or information, or particular portion of it, confidential in the administration of this chapter.

(b) Implementation.--The department shall implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act.

(c) Construction.--Nothing in this section shall be construed to prevent disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of any Federal, State or local air pollution control laws, or when relevant in any proceeding under this chapter.

§ 2133.3. Air contaminant emissions.

(a) Protocols for air contaminant emissions.--No later than three months after the effective date of this section, the department shall publish protocols for the detection, quantification and reporting of air contaminant emissions from unconventional gas production processes including wellhead activities and the storage of unconventional gas prior to processing.

(b) Report on air contaminant emissions.--No later than nine months after the effective date of this section, the department

1 shall publish for public comment a draft report quantifying
2 through measurements and calculations the total air contaminant
3 emissions in this Commonwealth from unconventional gas
4 development processes including wellhead activities and the
5 storage of unconventional gas prior to processing. The
6 department shall publish the final report no later than one year
7 after the effective date of this section. The department shall
8 publish a revised report every five years thereafter.

9 (c) Use of best available scientific principles.--The
10 department shall use best available scientific principles in
11 developing the protocols and reports required by this section.

12 § 2133.4. Exemptions from air pollution requirements for
13 unconventional gas production processes prohibited.

14 No later than 90 days after the effective date of this
15 section, the department shall amend its exemption list under 25
16 Pa. Code § 127.14 (relating to exemptions) to ensure that
17 unconventional gas exploration and production processes,
18 including wellhead activities and storage of natural gas prior
19 to processing, are not exempted from the plan approval process
20 and other requirements of this subchapter.

21 § 2133.5. (Reserved).

22 § 2133.6. Action to abate nuisance and restrain violation.

23 (a) Abatement action.--Any activity or condition declared by
24 this chapter to be a nuisance or which is otherwise in violation
25 of this chapter shall be abatable in the manner provided by law
26 for the abatement of public nuisance. In addition, in order to
27 restrain or prevent any violation of this chapter or the
28 regulations promulgated under this chapter or any plan approval
29 or permit or orders issued by the department or to restrain the
30 maintenance and threat of public nuisance, an action may be

1 instituted in the name of the Commonwealth upon relation of the
2 Attorney General, the General Counsel, the district attorney of
3 any county or the solicitor of any municipality affected after
4 notice has first been served upon the Attorney General of the
5 intention of the General Counsel, district attorney or solicitor
6 to so proceed.

7 (b) Jurisdiction.--Proceedings may be prosecuted in
8 Commonwealth Court or in the court of common pleas of the county
9 where the activity has taken place, the condition exists or the
10 public is affected, and, to that end, jurisdiction is conferred
11 upon the courts.

12 (c) Court action.--Except in cases of emergency if, in the
13 opinion of the court, the exigencies of the case require
14 immediate abatement of the nuisance, the court may, in its
15 decree, fix a reasonable time during which the person
16 responsible for the nuisance may make provision for the
17 abatement of the same.

18 (d) Injunction.--If circumstances require it or the public
19 health is endangered, a mandatory preliminary injunction,
20 special injunction or temporary restraining order may be issued
21 upon the terms prescribed by the court, notice of the
22 application for the injunction having been given to the
23 defendant. The Attorney General, the General Counsel, the
24 district attorney or the solicitor of any municipality shall not
25 be required to give bond. In the proceeding, the court shall,
26 upon motion of the Commonwealth, issue a prohibitory or
27 mandatory preliminary injunction if it finds that the defendant
28 is engaging in unlawful conduct as defined by this chapter or is
29 engaged in conduct that is causing immediate and irreparable
30 harm to the public. In addition to an injunction, the court may

1 levy civil penalties in the same manner as the department in
2 accordance with section 2119.1 (relating to civil penalties).

3 (e) Civil action.--

4 (1) Except as provided in subsection (f), any person may
5 commence a civil action to compel compliance with this
6 chapter or any regulation, order or plan approval or permit
7 issued under this chapter by any owner or operator alleged to
8 be causing or contributing to a violation of any provision of
9 this chapter or any regulation promulgated under this chapter
10 or any plan approval, permit or order issued by the
11 department.

12 (2) In addition to seeking to compel compliance, any
13 person may request the court to award civil penalties. The
14 court shall use the factors and amounts contained in section
15 2119.1 in awarding civil penalties under this subsection.
16 Penalties shall be paid into the Clean Air Fund or be used to
17 prevent air pollution in the county where the violation
18 occurred.

19 (3) Unless otherwise required under 42 Pa.C.S. (relating
20 to judiciary and judicial procedure), the courts of common
21 pleas shall have jurisdiction of actions brought under this
22 subsection.

23 (4) An action may not be commenced if the department has
24 commenced and is diligently prosecuting a civil action in a
25 Federal or State court or is in litigation before the hearing
26 board to require the alleged violator to comply with this
27 chapter, any regulation promulgated under this chapter or any
28 order, plan approval or permit issued under this chapter,
29 but, in an action in a Federal or State court or before the
30 hearing board, any person having or representing an interest

1 that is or may be adversely affected may intervene as a
2 matter of right without posting bond.

3 (f) Commencement of action.--An action under subsection (e)
4 may not be commenced prior to 60 days after the plaintiff has
5 given notice in writing of the violation to the department and
6 to any alleged violator.

7 (g) Exception to notice provision.--The notice provision of
8 subsection (f) to the contrary notwithstanding, any action under
9 subsection (e) may be initiated immediately upon written
10 notification to the department if the violation or condition
11 complained of constitutes an imminent threat to the health or
12 safety of the plaintiff or would immediately affect a legal
13 interest of the plaintiff.

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

22 SUBCHAPTER C

23 PERMIT FEES

24 Sec.

25 2141. General provisions.

26 2142. Definitions.

27 2143. Plan approval fees.

28 2144. Operating permit fees.

29 2145. Title V operating permit fees.

30 2146. Emission fees.

1 2147. Philadelphia County and Allegheny County financial
2 assistance.

3 2148. Failure to pay fee.

4 2149. Risk assessment.

5 § 2141. General provisions.

6 (a) Scope.--This subchapter establishes fees to cover the
7 direct and indirect costs of administering the air pollution
8 control planning process, operating permit program required by
9 Title V of the Clean Air Act (69 Stat. 322, 42 U.S.C. §§
10 7661-7661f), other requirements of the Clean Air Act, the
11 indirect and direct costs of administering the Small Business
12 Stationary Source Technical and Environmental Compliance
13 Assistance Program, Compliance Advisory Committee and the Office
14 of Small Business Ombudsman and the costs to support the air
15 pollution control program authorized by Subch. B (relating to
16 regulating program).

17 (b) Fund.--The fees collected under this subchapter shall be
18 made payable to the Pennsylvania Clean Air Fund and deposited
19 into the Clean Air Fund established under section 2119.2
20 (relating to disposition of fees, fines and civil penalties).

21 (c) Deposit.--Fees collected under this subchapter to
22 implement the requirements of Title V of the Clean Air Act and
23 the Small Business Stationary Source Technical and Environmental
24 Compliance Assistance, Compliance Advisory Committee and the
25 Office of Small Business Ombudsman shall be made payable to the
26 Pennsylvania Clean Air Fund and deposited into a restricted
27 revenue account within the Clean Air Fund.

28 (d) Evaluation.--At least every five years, the department
29 will provide the board with an evaluation of the fees in this
30 subchapter and recommend regulatory changes to the board to

address any disparity between the program income generated by the fees and the department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

§ 2142. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Title V facility." The term shall have the same meaning as in 25 Pa. Code § 121.1 (relating to definitions).

§ 2143. Plan approval fees.

(a) General rule.--Each applicant for a plan approval shall, as part of the plan approval application, submit the application fee required by this section to the department.

(b) Fees.--Except as provided in subsections (c), (d), (e), (f), (g), (h), (i) and (j), the owner or operator of a source requiring approval under 25 Pa. Code Ch. 127 Subch. B (relating to plan approval requirements) shall pay a fee equal to:

(1) One thousand three hundred dollars for applications filed during the 2012-2014 calendar years.

(2) One thousand six hundred dollars for applications filed during the 2015-2019 calendar years.

(3) Two thousand dollars for applications filed for the calendar years beginning in 2020.

(c) New nonattainment sources.--The owner or operator of a source requiring approval under 25 Pa. Code Ch. 127 Subch. E (relating to new source review) shall pay a fee equal to:

(1) Six thousand three hundred dollars for applications filed during the 2012-2014 calendar years.

(2) Seven thousand three hundred dollars for

1 applications filed during the 2015-2019 calendar years.

2 (3) Eight thousand dollars for applications filed for
3 the calendar years beginning in 2020.

4 (d) New stationary sources.--The owner or operator of a
5 source subject to standards adopted under 25 Pa. Code Ch. 122
6 (relating to national standards of performance for new
7 stationary sources) or 124 (relating to national emission
8 standards for hazardous air pollutants) or section 127.35(b)
9 (relating to maximum achievable control technology standards for
10 hazardous air pollutants) shall pay a fee equal to:

11 (1) Two thousand dollars for applications filed during
12 the 2012-2014 calendar years.

13 (2) Two thousand five hundred dollars for applications
14 filed during the 2015-2019 calendar years.

15 (3) Three thousand dollars for applications filed during
16 the calendar years beginning in 2020.

17 (e) Hazards.--The owner or operator of a source subject to
18 25 Pa. Code § 127.35(c), (d) or (h) shall pay a fee equal to:

19 (1) Ten thousand dollars for applications filed during
20 the 2012-2014 calendar years.

21 (2) Twelve thousand dollars for applications filed
22 during the 2015-2019 calendar years.

23 (3) Fourteen thousand dollars for applications filed
24 during the calendar years beginning in 2020.

25 (f) Deterioration.--The owner or operator of a source
26 requiring approval under 25 Pa. Code Ch. 127 Subch. D (relating
27 to prevention of significant deterioration of air quality) shall
28 pay a fee equal to:

29 (1) Twenty-seven thousand two hundred dollars for
30 applications filed during the 2012-2014 calendar years.

1 (2) Thirty thousand seven hundred dollars for
2 applications filed during the 2015–2019 calendar years.

3 (3) Thirty-five thousand seven hundred dollars for
4 applications filed during the calendar years beginning 2020.

5 (g) Changes.--Except as provided in subsection (h), the
6 owner or operator of a source proposing a modification of a plan
7 approval, extension of a plan approval or transfer of a plan
8 approval due to a change of ownership, shall pay a fee equal to:

9 (1) Four hundred dollars for applications filed during
10 the 2012–2014 calendar years.

11 (2) Five hundred dollars for applications filed during
12 the 2015–2019 calendar years.

13 (3) Six hundred fifty dollars for applications filed
14 during the calendar years beginning in 2020.

15 (h) Reassessment.--The amendment of a plan approval or
16 revision of an application by the applicant that requires the
17 reassessment of a control technology determination or of the
18 ambient impacts of the source is a significant modification of
19 the plan approval or application.

20 (1) The applicant proposing an amendment of the plan
21 approval or revision to an application that requires
22 reassessment of a control technology determination shall pay
23 fees as established under subsections (b), (c), (d), (e) and
24 (f).

25 (2) The applicant proposing an amendment of a plan
26 approval or revision to an application that requires changes
27 to the ambient impact analysis or department reanalysis of
28 the ambient impacts of the source to meet the requirements of
29 40 CFR 51, Appendix W (relating to guideline on air quality
30 models), shall pay fees in accordance with the following:

1 (i) For modeling using a screening technique as
2 defined in 40 CFR 51, Appendix W:

3 (A) Three thousand five hundred dollars for
4 applications filed during the 2012-2014 calendar
5 years.

6 (B) Four thousand five hundred dollars for
7 applications filed during the 2015-2019 calendar
8 years.

9 (C) Six thousand dollars for applications filed
10 for calendar years beginning in 2020.

11 (ii) For all other modeling as defined in 40 CFR 51,
12 Appendix W:

13 (A) Seven thousand five hundred dollars for
14 applications filed during the 2012-2014 calendar
15 years.

16 (B) Nine thousand dollars for applications filed
17 during the 2015-2019 calendar years.

18 (C) Eleven thousand dollars for applications
19 filed for the calendar years beginning in 2020.

20 (i) Multiple location sources.--The department may establish
21 application fees for general plan approvals and plan approvals
22 for sources operating at multiple temporary locations that will
23 not be greater than the fees established under this section.
24 These fees will be established at the time the plan approval is
25 issued and will be published in the Pennsylvania Bulletin as
26 provided in 25 Pa. Code §§ 127.612 (relating to public notice
27 and review period) and 127.632 (relating to public notice and
28 review period).

29 (j) Determination.--The owner or operator of a source that
30 submits a request for determination for:

1 (1) A plan approval application shall pay a fee equal
2 to:

3 (i) Four hundred dollars for requests for
4 determination filed during the 2012-2014 calendar years.

5 (ii) Five hundred dollars for requests for
6 determination filed during the 2015-2019 calendar years.

7 (iii) Six hundred fifty dollars for requests for
8 determination filed for the calendar years beginning in
9 2020.

10 (2) Both a plan approval under this section and an
11 operating permit under 2144 (relating to operating permit
12 fees) shall pay one request for determination fee.

13 (k) Publication of fees.--The owner or operator of a source
14 proposing to use a general plan approval under 25 Pa. Code Ch.
15 27 Subch. H (relating to general plan approvals and operating
16 permits) shall pay a fee that will not be greater than the fees
17 established under this section. The department will establish
18 these fees at the time the general plan approval is issued and
19 will publish the fees in the Pennsylvania Bulletin as provided
20 in 25 Pa. Code §§ 127.612 and 127.632.

21 § 2144. Operating permit fees.

22 (a) General rule.--Each applicant for an operating permit
23 which is not a Title V facility shall, as part of the operating
24 permit application and as required on an annual basis, submit
25 the fees required under this section to the department. These
26 fees apply to an administrative amendment, extension, minor
27 modification, revision, renewal, reissuance or transfer due to a
28 change of ownership of each operating permit or part thereof.

29 (b) Processing fees.--The fee for processing an application
30 for an operating permit is:

1 (1) Five hundred dollars for applications filed during
2 the 2012-2014 calendar years.

3 (2) Six hundred dollars for applications filed during
4 the 2015-2019 calendar years.

5 (3) Eight hundred fifty dollars for applications filed
6 for the calendar years beginning in 2020.

7 (c) Administration fee.--The annual operating permit
8 administration fee is due on or before March 1 of each year for
9 the current calendar year.

10 (1) Five hundred dollars for the 2012-2014 calendar
11 years.

12 (2) Six hundred dollars for the 2015-2019 calendar
13 years.

14 (3) Seven hundred fifty dollars for the calendar years
15 beginning in 2020.

16 (d) Establishment.--The department may establish application
17 fees for general operating permits and operating permits for
18 sources operating at multiple temporary locations that will not
19 be greater than the fees established under this section. These
20 fees will be established at the time the operating permit is
21 issued and will be published in the Pennsylvania Bulletin as
22 provided in 25 Pa. Code §§ 127.612 (relating to public notice
23 and review period) and 127.632 (relating to public notice and
24 review period).

25 (e) Determination fees.--The owner or operator of a source
26 that submits a request for determination for:

27 (1) An operating permit shall pay a fee equal to:

28 (i) Four hundred dollars for requests for
29 determination filed during the 2012-2014 calendar years.

30 (ii) Five hundred dollars for requests for

determination filed during the 2015-2019 calendar years.

(iii) Six hundred fifty dollars for requests for
determination filed for the calendar years beginning in
2020.

(2) Both an operating permit under this section and a
plan approval under 25 Pa Code § 127.702 (relating to plan
approval fees) shall pay one request for determination fee.

(f) General plans and permits.--The owner or operator of a
source proposing to use a general plan approval under 25 Pa.
Code Ch. 127 Subch. H (relating to general plan approvals and
operating permits) shall pay a fee that will not be greater than
the fees established under this section. The department will
establish these fees at the time the general plan approval is
issued and will publish the fees in the Pennsylvania Bulletin
provided in 25 Pa. Code §§ 127.612 and 127.632.

§ 2145. Title V operating permit fees.

(a) General rule.--Each applicant for an operating permit
which is a Title V facility shall, as part of the operating
permit application and as required on an annual basis, submit
the fees required under this section to the department. These
fees apply to an administrative amendment, extension, minor
modification, revision, renewal, reissuance or transfer due to a
change of ownership of each operating permit or part thereof.

(b) Fee.--The fee for processing an application for an
operating permit is:

(1) Nine hundred dollars for applications filed during
the 2012-2014 calendar years.

(2) One thousand one hundred dollars for applications
filed during the 2015-2019 calendar years.

(3) One thousand five hundred dollars for applications

1 filed for the calendar years beginning in 2020.

2 (c) Administration fee.--The annual operating permit
3 administration fee to be paid by a facility identified in
4 subparagraph (iv) of the definition of a Title V facility in 25
5 Pa. Code § 121.1 (relating to definitions):

6 (1) Nine hundred dollars for applications filed during
7 the 2012-2014 calendar years.

8 (2) One thousand one hundred dollars for applications
9 filed during the 2015-2019 calendar years.

10 (3) One thousand three hundred dollars for applications
11 filed for the calendar years beginning in 2020.

12 (d) Temporary locations.--The department may establish
13 application fees for general operating permits and operating
14 permits for sources operating at multiple temporary locations
15 that will not be greater than the fees established under this
16 section. These fees will be established at the time the
17 operating permit is issued and will be published in the
18 Pennsylvania Bulletin as provided in 25 Pa. Code §§ 127.612
19 (relating to public notice and review period) and 127.632
20 (relating to public notice and review period).

21 (e) Establishment of fees.--The owner or operator of a
22 source proposing to use a general plan approval under 25 Pa.
23 Code Ch. 127 Subch. H (relating to general plan approvals and
24 operating permits) shall pay a fee that will not be greater than
25 the fees established under this section. The department will
26 establish these fees at the time the general plan approval is
27 issued and will publish the fees in the Pennsylvania Bulletin as
28 provided in Pa. Code §§ 127.612 and 127.632.

29 § 2146. Emission fees.

30 (a) General rule.--Beginning January 1, 2010, the owner or

operator of a Title V facility including Title V facilities
located in Allegheny County and Philadelphia County, except a
facility identified in subparagraph (iv) of the definition of a
Title V facility in 25 Pa. Code § 121.1 (relating to
definitions), shall pay an annual Title V emission fee of \$70
per ton for each ton of a regulated pollutant actually emitted
from the facility. The owner or operator will not be required to
pay an emission fee for emissions of more than 4,000 tons of
each regulated pollutant from the facility. Sources located in
Philadelphia County and Allegheny County shall pay the emission
fee to the county program if the county Title V program has
received approval under section 2132 (relating to powers
reserved to political subdivisions), and 25 Pa. Code § 127.706
(relating to Philadelphia County and Allegheny County financial
assistance).

(b) Fees.--The emissions fees required by this section shall
be due on or before September 1 of each year for emissions from
the previous calendar year. The fees required by this section
shall be paid for emissions occurring in calendar year 2009 and
for each calendar year thereafter.

(c) Definition.--As used in this section, the term
"regulated pollutant" means a VOC, each pollutant regulated
under sections 111 and 112 of the Clean Air Act (69 Stat. 322,
42 U.S.C. §§ 111-112) and each pollutant for which a national
ambient air quality standard has been promulgated, except that
carbon monoxide shall be excluded from this reference.

(d) Increased fees.--The emission fee imposed under
subsection (a) shall be increased in each calendar year after
2010, by the percentage, if any, by which the Consumer Price
Index for the most recent calendar year exceeds the Consumer

1 Price Index for the previous calendar year.

2 \$ 2147. Philadelphia County and Allegheny County financial
3 assistance.

4 (a) General rule.--Philadelphia and Allegheny Counties shall
5 submit their local air pollution control program including Title
6 V operating permit program implementation plan to the department
7 for review and approval. The plan shall include the elements
8 necessary for approval of a Title V program under the Clean Air
9 Act (69 Stat. 322, 42 U.S.C. §7401 et seq.) and shall be
10 consistent with the department's regulations for implementation
11 of the air pollution control program, including the Title V
12 operating permit program.

13 (b) Report.--On an annual basis according to a schedule
14 established by the department, Philadelphia County and Allegheny
15 County shall submit a description of the implementation of the
16 local air pollution control program including the Title V
17 operating permit program in the county along with a detailed
18 accounting of the costs of implementation.

19 (c) Title V.--On an annual basis according to a schedule
20 established by the department, the department may provide
21 payment of a portion of the Title V emission fees collected by
22 the department as necessary, appropriate and available to
23 Philadelphia and Allegheny Counties to assist in implementation
24 of the Title V operating permit program in the counties. The
25 department may withhold this financial assistance if the county
26 has not implemented the Title V program in the manner required
27 by this section.

28 (d) Restricted account.--The fees imposed by Philadelphia
29 and Allegheny Counties shall be deposited in a restricted
30 account established by the governing body authorizing the local

1 program for use by that program to implement the provisions of
2 Subch. B (relating to regulatory program) for which they are
3 responsible. The governing body shall annually submit to the
4 department an audit of the account in order to insure that the
5 funds were properly spent.

6 § 2148. Failure to pay fee.

7 An air contamination source that fails to pay the fees within
8 the time frame established by this chapter shall pay a penalty
9 of 50% of the fee amount, plus interest on the fee amount
10 computed in accordance with 26 U.S.C. § 6621(a)(2) (relating to
11 determination of rate of interest) from the date the fee was
12 required to be paid. In addition, the source may have its
13 operating permit terminated or suspended. The fee, penalty and
14 interest may be collected following the process for assessment
15 and collection of a civil penalty contained in section 2119.1
16 (relating to civil penalties).

17 § 2149. Risk assessment.

18 (a) General rule.--Each applicant for a risk assessment
19 shall, as part of the plan approval application, submit the
20 application fee required by this section to the department.

21 (b) With screening model.--The owner or operator of a source
22 applying for a risk assessment that is inhalation only with a
23 screening model shall pay a fee equal to:

24 (1) Five thousand dollars for applications filed during
25 the 2012-2014 calendar years.

26 (2) Six thousand dollars for applications filed during
27 the 2015-2019 calendar years.

28 (3) Seven thousand two hundred dollars for applications
29 filed for the calendar years beginning in 2020.

30 (c) Inhalation only assessment.--The owner or operator of a

source applying for a risk assessment that is inhalation only
for all other modeling shall pay a fee equal to:

(1) Nine thousand dollars for applications filed during
the 2012-2014 calendar years.

(2) Eleven thousand dollars for applications filed
during the 2015-2019 calendar years.

(3) Thirteen thousand dollars for applications filed for
the calendar years beginning in 2020.

(d) Multipathway risk assessment.--The owner or operator of
a source applying for a risk assessment that is multipathway
shall pay a fee equal to:

(1) Ten thousand dollars for applications filed during
the 2012-2014 calendar years.

(2) Twelve thousand dollars for applications filed
during the 2015-2019 calendar years.

(3) Fourteen thousand five hundred dollars for
applications filed for the calendar years beginning in 2020.

Section 2. Repeals are as follows:

(1) The General Assembly declares that the repeal under
paragraph (2) is necessary to effectuate the addition of 35
Pa.C.S. Ch. 21.

(2) The act of January 8, 1960 (1959 P.L.2119, No.787),
known as the Air Pollution Control Act, is repealed.

Section 3. The addition of 35 Pa.C.S. Ch. 21 is a
continuation of the act of January 8, 1960 (1959 P.L.2119,
No.787), known as the Air Pollution Control Act. The following
apply:

(1) Except as otherwise provided in 35 Pa.C.S. Ch. 21,
all activities initiated under the Air Pollution Control Act
shall continue and remain in full force and effect and may be

1 completed under 35 Pa.C.S. Ch. 21. Orders, regulations, rules
2 and decisions which were made under the Air Pollution Control
3 Act and which are in effect on the effective date of section
4 3(2) of this act shall remain in full force and effect until
5 revoked, vacated or modified under 35 Pa.C.S. Ch. 21.

6 Contracts, obligations and collective bargaining agreements
7 entered into under the Air Pollution Control Act are not
8 affected nor impaired by the repeal of the Air Pollution
9 Control Act.

10 (2) Except as set forth in paragraph (3), any difference
11 in language between 35 Pa.C.S. Ch. 21 and the Air Pollution
12 Control Act is intended only to conform to the style of the
13 Pennsylvania Consolidated Statutes and is not intended to
14 change or affect the legislative intent, judicial
15 construction or administration and implementation of the Air
16 Pollution Control Act.

17 (3) Paragraph (2) does not apply to the addition of the
18 following provisions:

19 (i) 35 Pa.C.S. § 2133.3.

20 (ii) 35 Pa.C.S. § 2133.4.

21 (iii) 35 Pa.C.S. Ch. 21 Subch. C.

22 Section 4. This act shall take effect in 60 days.